

/

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

O. A.Nos. 578 and 579 / 2011

[Reserved on 11.9.2012]

Date of decision: 10.12.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Madan Lal Poonia S/o Shri Harlal Poonia, by caste Jat, aged about 27 years, resident of House No. 36, Ward No. 23, Raisinghnagar, District Sriganganagar (Rajasthan).

..... Applicant in OA No. 578/2011

Rajesh Kumar S/o Shri Daljeet Singh Poonia by caste Jat aged about 29 years, resident of House No. 36, Ward No. 23, Raisinghnagar, District Sriganganagar (Rajasthan).

..... Applicant in OA No. 579/2011

[By Mr. Trilok Joshi, Advocate]

**Versus**

1. The Union of India through the Secretary, Ministry of Labour, Government of India, Head Office Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 66.
2. The Secretary, Ministry of Labour & Employment, Government of India, Shram Shakti Bhawan, Rafee Marg, New Delhi - 66.
3. The Regional Provident Fund Commissioner-I, Regional Office, SCO 4 to 7, Sector 17-D, Chandigarh.
4. The Assistant Provident Fund Commissioner (Administration), Regional Office, SCO 4 to 7, Sector 17-D, Chandigarh.

..... Respondents

[By Mr. U.S.Gehlot, Advocate, for Respondents No. 3 & 4]

**ORDER**

[PER MR. G. GEORGE PARACKEN]

Both these OAs are identical and therefore, they are disposed of by this common order.

2

2. Both the applicants have been selected for the post of Social Security Assistant in the Punjab Region of EPF Organization i.e. the Regional Provident Fund Commissioner, Regional Office, Chandigarh and accepted the offer of appointment. As per the conditions of their appointment, they filled-up their profile attestation roll and submitted to the respondents. They were forwarded to the District Magistrate, Sriganagar, Rajasthan for verification of their character antecedents. After due verification, the District Magistrate, Sriganagar, reported that both the applicants were involved in FIR 534 dated 25.10.2003 under Sections 307, 324, 326, 325, 334, 323, 147, 148 and 149 of I.P.C. The applicant, Shri Madan Lal Poonia was also involved in another FIR 96 dated 7.3.2004 under Sections 341, 323, 504 and 34 of IPC. However, according to the respondents, the applicants did not disclose the aforesaid fact while filling-up the attestation forms even though there was a specific column asking them whether they were involved in any criminal case or not. It was only on verification of their character and antecedents by the District Magistrate/Dy. Commissioners. Those information came to the knowledge of the respondents. However, according to the applicants they were already acquitted in the learned trial court by all the criminal charges pending against them and hence the whole

1/3

proceedings against them by the authorities were not sustainable in the eye of law. Further, they have submitted that those criminal charges were due to domestic disputes among family members/relatives and the applicants were falsely implicated therein. But, subsequently, they entered into a compromise and settled the matter. They have also stated that mere filing of FIR against a person does not cause any stigma on their character. This is particularly so when the Court has acquitted them of all the charges whether it was based on compromise or otherwise. They have also stated that after their selection on 11.6.2010 as Social Security Assistant, the respondent authorities have been giving them assurances that they will be permitted to join duty very soon.

3. The learned counsel for the applicants has also relied upon the case of **Commissioner of Police and Ors. Vs. Sandeep Kumar** (2011) DNL (SC) 710. In the said case, the candidature of the applicant was cancelled as he failed to disclose the true incidence in his application form. However, the Apex Court held that he did not commit any serious offence at the time of the alleged incident and he was about only 20 years and young people often commit such indiscretions and they could be condoned. The relevant part of the said judgment is as under :-

**"13. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such**

2

*indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.*

4. The learned counsel has also relied upon the judgment of the Rajasthan High Court (Jaipur) in **Yogender Kumar Sharma Vs. State and Ors.** reported in 2010 (3) D.N.J. (Raj) 1447. In the said case the Hon'ble High Court has considered the case where the petitioner was involved in a criminal case under Sections 147, 323 and 379 IPC but identically placed persons have been given appointment. The operative part of the said judgment reads as follows :-

*"6. Upon hearing the learned counsel for the parties and perusing material on record, I find that the Government has in matters of this nature rather acted in a very strange manner. When it comes to the Court, they would resist the prayer for appointment citing the reason of concealment of information with regard to lodgment of criminal case, even if eventually the incumbent was acquitted in such criminal case either before filling in the application form or thereafter. However, when the Government itself takes the decision, it has been applying double standards to similarly situated persons. One gets the impression that the officials in the Government have been issuing such orders to selectively help certain persons and disfavour the others, who even though may be exactly similarly situated but are not that fortunate once.*

*7. There is no reason why large number of persons cited by the petitioner who also had criminal cases registered against them and did not disclose this fact in their verification form were given the latitude by reason of the fact that they were acquitted in such criminal cases by reason of compromise or otherwise, how could the respondents not accord similar treatment to the petitioner and surprisingly the respondents have filed replica in response to the rejoinder filed by the petitioner wherein he has given all these examples, yet they have not brought to the notice of the Court, the recent Circular issued by the Police Headquarters on 22.10.2009 on the same subject matter, which the petitioner has produced to*

*show that the respondents have divided such cases into 10 categories and cases falling in categories Nos. 1, 2, 3, 4 and 10 namely those against whom criminal cases were registered after last date of submission of application form or against whom the final report was given or those who were ultimately acquitted by the criminal Court or those against whom criminal case were dropped on account of compromise and finally against whom the criminal cases were withdrawn by the Government, would be entitled to appointment, despite non disclosure of such a fact by them in their application form.*

**8. A division Bench of this Court in Rakesh Kumar Yadav, supra had taken note of such a discriminatory treatment meted by the respondent-State to the appellant in that case whose services were terminated on account of the fact that he suppressed the information about registration of criminal case against him for offence under Section 420 IPC, in which he was ultimately acquitted by the Criminal Court. The Division Bench set aside the order of termination by its judgment dated 31.1.2003, but since the termination took place way back in the year 1992, held the appellant entitled to only notional benefits for the intervening period.**

**9. In the circumstances, the present petitioner has made out a case for issue of writ of mandamus."**

However, the learned counsel for the respondents have submitted that the question is not whether the applicants have been acquitted in a criminal case or not but it is whether that they have concealed the material facts from them or not. According to the learned counsel for the respondents, when there was a specific column in the attestation forum asking the candidates whether they were involved in any criminal case or any criminal case is still pending against them, the applicants were expected to state the correct facts. However, in the case of the applicants herein, both of them have concealed the facts. Therefore, they have not been found suitable to be given appointment in the respondents' organization.

X  
16

They have also stated that their representations in the matter have not been decided so far and before that they have filed this O.A.

5. The learned counsel for the respondents has also relied upon the judgment of the Apex Court in **State of West Bengal and Ors. Vs. Sk. Nazrul Islam**, reported in AIR 2012 SC 160, wherein, it has been held that the respondents' action in not appointing the respondents therein, was proper because it was found in an inquiry that he was involved in a criminal case. The relevant part of the said judgment is as under :

*"5. We have heard learned counsel for the parties and we fail to appreciate how when a criminal case under Sections 148/323/380/427/596, IPC, against the respondent was pending in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, any mandamus could have been issued by the High Court to the authorities to appoint the respondent as a Constable. Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/427/596, IPC, he cannot possibly be held to be suitable for appointment to the post of Constable.*

*6. We, therefore, allow the appeal, set aside the impugned order of the High Court and dismiss the Writ Petition under Articles 226/227 of the Constitution filed by the respondent in the High Court. There shall be no order as to costs."*

6. He has also relied upon the judgment of the Apex Court in the case of **Daya Shankar Yadav. Vs. Union of India and Ors.** [Civil

2

Appeal 9913 of 2000 decided on 24.11.2010). The appellant in the said case was selected and appointed as Constable in the Central Reserve Police Force. Rule 14 (b) of the Central Reserve Police Force Rules, 1955 requires every newly recruited employee to furnish factual information about himself. The appellant was also required to fill up and sign verification roll which contained the warning that furnishing of false information or suppression of any facts in the verification roll, would be a disqualification and likely to render the candidate unfit for employment under the Government. However, the appellant did not give proper information about his antecedents and his involvement in criminal case. The Apex Court has, therefore, held that furnishing of false information or suppression of any factual information in the Verification Roll would be a disqualification and is likely to render candidate unfit for employment under the Government. The relevant part of the said judgment reads as under :-

"The legal position :

6. This Court has considered the consequences of making a false statement or suppressing material information in verification forms in several decisions. In *Delhi Administration v. Sushil Kumar* - 1996 (11) SCC 605, this Court stressed that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the state.

6.1- In *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* - 2003 (3) SCC 437, this Court held that the purpose of requiring an employee furnish information regarding prosecution / conviction etc. in the verification form which assess his character and antecedents for the purpose of 6. Employment and continuation in service; that suppression of material information and making a false statement in reply to

X-8

queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. This Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

6.2 In *R.Radhakrishnan vs. Director General of Police - 2008* (1) 660, this Court considered the case of a candidate for appointment as a Fireman, furnishing wrong information about his involvement in a criminal case, though he was acquitted. This Court held that the standards expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. As the application for appointment and the verification roll were both in Hindi as also in English, this Court concluded that the candidate knew and understood the 7 Implications of his statement or omission to disclose a vital information, and by not disclosing about his involvement in a criminal case, the candidate is preventing the authority from verifying his character as also suitability of the appointment. This Court therefore refused to exercise its equitable jurisdiction in favour of such a candidate who had suppressed material facts.

6.3 In *Union of India vs. Bipad Bhanjan Gayen - 2008* (11) SCC 314, this Court dealt with the validity of the termination of service of respondents therein who had been selected for training as a constable in a Railway Protection Force. This Court observed thus :

9. It is the admitted case that the respondent was still under probation at the time his services had been terminated. It is also apparent from the record that the respondent had been given appointment on probation subject to verification of the facts given in the attestation form. To our mind, therefore, if an enquiry revealed that the facts given were wrong, the appellant was at liberty to dispense with the services of the respondent as the question of any stigma and penal consequences at this stage would not arise.

10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but

L





the fact that he had withheld relevant information while filing in the attestation form. We are further of the opinion that an employment as a police officer presupposes a higher level of integrity as such a person is expected to uphold the law, and on the contrary, such a service born in deceit and subterfuge cannot be tolerated & quot; .....

7. On the other hand, where the non-furnishing of material information is due to absence of clarifying the question or due to the candidate not being aware of the said information, it cannot be said that he had suppressed material information or made false statements.

7.1 In Secretary, Department of Home, A.P. vs. B. Chinnam Naidu - 2005 (2) SCC 746, - this Court after reiterating that suppression of material information or giving false information in attestation form would result in the candidate being discontinued from service, cautioned that the court will have to examine in each case, whether a candidate has suppressed material information or has given false information in the attestation form; and where the candidate is required to state as to whether he has been convicted by a criminal court, if the candidate answered in the negative, the fact that a criminal case was pending as on that date, would not amount to misrepresentation. This Court held :

The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression:

In Kendriya Vidyalaya Sangathan case the position was the reverse. There the candidate took the stand that as there was no conviction, his negative answers to columns 12 and 13 were not wrong. This Court did not accept the stand that requirement was conviction and not prosecution in view of the information required under columns 12 and 13 as quoted above. The

90

requirement was 'prosecution' and not 'conviction'. The logic has 9 Applicable here. The requirement in the present case is 'conviction' and not 'prosecution'.

The question whether he was a desirable person to be appointed in government service was not the subject-matter of adjudication and the Tribunal was not justified in recording any finding in that regard. Whether a person is fit to be appointed or not is a matter within the special domain of the government & quot;

7.2) In State of Haryana vs. Dinesh Kumar - 2008 (3) SCC 222, this Court considered the case of an employee who had answered & quot: No & quot; to a query whether he was arrested. It was found that subsequent to registration of FIR, he had voluntarily appeared before the magistrate, without being taken into formal custody and was granted bail and was ultimately acquitted. It was held that in such circumstances, it was not altogether unreasonable to expect a layman to construe that he had never been arrested, even though the legal position may be otherwise. It was held that in such circumstances, even if what transpired may technically amount to arrest, the benefit of a mistaken impression rather than the consequences of a deliberate and willful misrepresentation and concealment of facts, should be extended to the employee.

8. Rule 14 of the Central Reserve Police Rules, 1955, relevant in this case relates to verification. Clauses (a) and (b) of the said Rule are extracted below :

(a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The Verification Roll shall be sent to the Distt. Magistrate or Dy. Commissioner of the District of which, the recruit is a resident.

(b) The Verification Roll shall be CRP Form-25 and after verification shall be attached to the Character and Service Roll of the member of the Force concerned & quot;

The purpose of seeking the said information is to ascertain character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these Columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would

2

19

demonstrate a conduct or character unbefitting for a uniformed security service.

9. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences :-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence / crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honorably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employment the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll / attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

10. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment :

L

72

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and

(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for an criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."

7. Further, he has relied upon the judgment of the High Court of Rajasthan in **Sunil Kumar Vs. Union of India and Ors.** 2012 (3) RLW 2458 (Raj) wherein it has considered the judgments of the Apex Court :-

(1) T.S. Vasudavan Nair vs. Director of Vikram Sarabhai Space Centre & Ors. [1988 (Supp) SCC 795].

(2) Commissioner of Police & Ors. vs. Sandeep Kumar [ (2011) 4 SCC 644].

(3) Yogendra Kumar Sharma vs. State & Ors. [2010(3) WLC (Raj). 675]

(4) Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan Yadav [(2003) 3 SCC 437]

(5) A.P. Public Service Commission vs. Koneti Venkateshwarulu & Ors. [2005 (7) SCC 177].

(6) R. Radhakrishnan vs. Director General of Police [2008 (1) SCC 660].

2

23

8. In the said judgment, a Division Bench of the High Court was considering the legality of the order passed by a Single Bench dismissing the Writ Petition. The relevant part of the said judgment of the Division Bench held as under :-

**"6. In the case of appellant Sunil Kumar, he suppressed the factum of involvement in criminal case No. 203/02 which was registered under Secs. 147, 149, 342, 365, 379, 377, 323 IPC at Police Station Singhana in which he was chargesheeted. He was acquitted for commission of offence under Sections 147, 365/149 IPC for lack of sufficient evidence. However, he entered into compromise for commission of offence under Secs. 323, 342, 379 IPC and was thus acquitted vide judgment dated 23.12.2010. However, he has suppressed the factum of pendency of criminal case while submitting application form on 16.7.2010. He also suppressed the involvement in criminal case while submitting form for medical test on 21.2.2011. While verifying his character, it was found that he was involved in aforesaid criminal case which he has suppressed. Thus, his appointment as Constable / Driver has been cancelled.**

**7. In the case of appellant Rajveer, he had filed the application form on 15.7.2010. He again filled the form on 23.2.2011 for the purpose of medical examination. In both the forms, he has suppressed his involvement in the criminal case No. 85/10 registered under Sections 323, 341/34 IPC at Police Station Pilani. In the said criminal case, he was convicted and released on probation by the Judicial Magistrate, Pilani vide judgment dated 26.11.2010. On account of suppression of this material fact in the application form, his appointment was also cancelled.**

**8. The orders of cancellation of appointment were questioned before the Single Bench by filing the writ petitions. The Single Bench has dismissed the writ petitions vide common order dated 16.9.2011. Hence, the appellants are before us.**

**9. Shri S.P.Sharma, learned senior counsel appearing on behalf of the appellants, has submitted that it was a case where suppression could not be said to be material one. ultimately, appellant Sunil Kumar has been acquitted for commission of offence under Secs. 147, 365/149 IPC for lack of sufficient evidence and was**

L

24

acquitted for commission of offence under Sections, 323, 342, 379 IPC on the basis of compromise. Learned senior counsel has also submitted that appellant Rajveer has been convicted u/s. 323, 341/34 IPC and released on probation. Thus, relying upon the decision of the Supreme Court in *Ram Kumar vs. State of U.P. & Ors.*, 2011 STPL (Web) 713 SC, he has submitted that cancellation of appointment was illegal. He has also pressed into service the decisions of the Apex Court in *T.S. Vasudavan Nair vs. Director of Vikram Sarabhai Space Centre & Ors.*, 1988 (Supp) SCC 795, *Commissioner of Police & Ors. vs. Sandeep Kumar*, (2011) 4 SCC 644, *State of Haryana & Ors. vs. Dinesh Kumar*, (2008) 3 SCC 222 and Single Bench decision of this court in *Yogendra Kumar Sharma vs. State & Ors.* 2010 (3) WLC (Raj.) 675.

10. The facts of the case of appellant Rajveer indicate that when he filled the application form, criminal case was pending against him. He filled the form twice, once at the time of filling application for recruitment and another when he filled the form at the time of medical examination. But, he has suppressed this material information on both occasions on 15.7.2010 and 23.2.2011 respectively. He has been found guilty of commission of offence under Sections 323, 341 IPC. He admitted the guilt in the court as is apparent from the orders of the criminal case passed on 26.11.2010. He has been released on probation. The appellant was well aware of the factum of criminal case against him. But, he deliberately suppressed it. That by itself has rendered him unfit for seeking employment in police. It was not a case of acquittal having been taken place before filling the application form.

11. Coming to the facts of appellant Sunil Kumar, suppression was made twice once on 16.7.2010 while submitting the application form and subsequently on 21.2.2011 while submitting form for medical examination after selection. Thus, when involvement was in a serious case under Sections 147, 149, 342, 365, 323, 379 IPC, it was necessary for the appellant to disclose the aforesaid fact. He was well aware of criminal case pending against him on the date of submitting the application form on 16.7.2010. Though he was acquitted vide judgment dated 23.12.2010 under Sections 147, 365/149 IPC. However, he has entered into compromise for commission of offence under Sections 323, 342, 379 IPC and was thus acquitted under said Sections. His involvement was in a serious case which ought to have been disclosed. Considering

2

X  
25

**the facts of the aforesaid case and nature of suppression, decision of Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan Yadav (supra) is fully attracted. There is no clear acquittal. Thus, we find that no relief could have been granted to appellant Sunil Kumar.**

**12. In Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan Yadav, (2003) 3 SCC 437, respondent Ram Ratan Yadav was selected for the post of Physical Education Teacher in Kendriya Vidyalaya. He has suppressed the information as to the criminal case in column No. 12 and 13 of the attestation form. He was involved in a criminal case registered under Sections 323, 341, 294, 506B read with Section 34 IPC which was pending against him on the date of filling the attestation form. Similar is the case here. The appellants filled the form initially on 15.7.2010. On that date, criminal case was pending against them. They suppressed the information deliberately. When they again filed the form for medical check-up in February, 2011, they again suppressed this material information. The Apex Court in Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan Yadav (supra) has considered the fact of such suppression. Paras 11 and 12 of the said decision are quoted below :-**

**"11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against column nos. 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand column nos. 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of column nos. 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent**

L

26

and the High Court committed a manifest error in accepting the contention that because the medium of instruction of respondent was Hindi, he could not understand the contents of column nos. 12 and 13. It is not the case that column nos. 12 and 13 are left blank. The respondent could not have said "no" as against column nos. 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling column nos. 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain any verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per column 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to

L





1/97

serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

13. In view of the aforesaid dictum, it is apparent that suppression in attestation form may incur disqualification in a given set of facts. The facts are similar in the instant cases. Hence, the decision of the Apex Court in *Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan (supra)* is clearly attracted.

8

98

14. Reliance has been placed by Shri S.P. Sharma, learned senior counsel, on decision of the Apex Court in *Ram Kumar vs. State of U.P. & Ors.* (supra) in which involvement of the employee was for commission of offence under Sections 323, 324, 504 IPC and he stood acquitted. The Apex Court has considered the facts of the case and held as under :-

"8. In the facts of the present case, we find that though Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant as Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18.7.2002 by the Addl. Chief Judicial Magistrate, Etawah. On a reading of the order dated 18.7.2002 of the Addl. Chief Judicial Magistrate would show that the sole witness examined before the Court, PW-1 Mr. Akhilesh Kumar, had deposed before the Court that on 2.12.2000 at 4.00 p.m. children were quarelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any Sharp weapon. In the absence of any other witness against the appellant, the Addl. Chief Judicial Magistrate acquitted the appellant of the charges under Secs. 323 / 34 / 504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable."

15. The facts in the instant case are totally different from that of *Ram Kumar* (supra). There was no acquittal in the instant cases as on date of submitting application. On the other hand, there is conviction in case of *Rajveer*. Case against *Sunil Kumar* involved serious charges. Moreover, the fact ought to have been disclosed regarding pending criminal case at the time of submitting the forms. Thus, in our opinion, the decision of the Apex Court in *Ram Kumar vs. State of U.P. & Ors.* (supra) is not attracted in the facts of the instant case.

L

29

16. Shri S.P. Sharma, learned senior counsel has also relied upon the decision of the Apex Court in *State of Haryana & Ors. vs. Dinesh Kumar (supra)* in which also there was acquittal. The incumbent had appeared before the Magistrate without being taken into formal custody and was granted bail. The Apex Court has held that the same did not amount to arrest. In view of acquittal which was made in the facts of the case, the Apex Court while considering the concept of arrest and custody and mandatory appearance of the accused for obtaining bail, decided the case in favour of the employee. The facts of the instant case are different. There is conviction and deliberate material suppression.

17. Reliance has also been placed on the decision of the Apex Court in *T.S. Vasudavan Nair vs. Director of Vikram Sarabhai Space Centre & Ors. (supra)*. The said case was of raising slogans during the time of emergency. In the aforesaid facts, non-disclosure was not found to be disqualification. The facts of the instant case are totally different hence ratio of the aforesaid decision is not at all attracted in the present matter.

18. Reliance has also been placed by the learned senior counsel on decision in *Yogendra Kumar Sharma vs. State & Ors. (supra)* by the Single Bench of this Court in which there was acquittal. Counsel was unable to state whether the appeal was pending against the decision in this Court. However, in view of decisions of the Apex Court it is apparent that the appellant has no case.

19. The Single Bench has rightly relied upon the decision of the Apex Court in *A.P. Public Service Commission vs. Koneti Venkateshwarulu & Ors., (29005) 7 SCC 177* in which the Apex Court has opined that if person indulges in suppression veri and suggestion falsi then he does not deserve public employment. The Apex Court has laid down as under :-

"7. We are unable to accept the contention of the learned counsel for the First Respondent. As to the purpose for which the information is called, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide Column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was

L

inadvertence which led the First Respondent to leave the particulars in Column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the First Respondent inform the appellant commission that there was a bonafide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant commission discovered by itself that there was suppressio veri and suggestion falsi on the part of the First Respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestion falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of *Kendriya Vidyalaya Sangathan (supra)* and contending that a person who indulges in such suppressio veri and suggestion false and obtains employment by false pretence does not deserve any public employment. We completely endorse this view."

**20. The decision in *R. Radhakrishnan vs. Director General of Police & Ors.* (2008) 1 SCC 660 has also been relied upon by the Single Bench as under :-**

"11. The question came up for consideration before this Court in *Delhi Administration through its Chief Secretary and Others vs. Sushil Kumar* [(1996) 11 SCC 605] wherein it was categorically held :

"3. .... The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC and under Section 323 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing

73

*authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted".*

*12. Mr. Prabhakar has relied upon a decision of this Court in T.S. Vasudavan Nair vs. Director of Vikram Sarabhai Space Centre and Ors. [1988 Supp. SCC 795]. The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.*

*13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."*

***21. In view of the aforesaid discussion, we find the order passed by Single Bench to be in accordance with law. We find no infirmity in it. The appeals being devoid of merit deserve to be dismissed and are hereby dismissed. Stay applications are also dismissed."***

9. In our considered view, the applicants' case is akin to the case of Sunil Kumar (supra) and hence we do not find any merit in it. Consequently, the O.As are dismissed. No order as to costs.

  
(B.K. Sinha)

Administrative Member

  
(G. George Parackal)

Judicial Member