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**(2006) 07 AHC CK 0171**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 60896 of 2005

Krishna Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** July 27, 2006

**Citation:** (2006) 7 ADJ 518 : (2007) 1 AWC 249

**Hon'ble Judges:** A.P. Sahi, J

**Bench:** Single Bench

**Advocate:** Neeraj Kanta Verma, Siddharth Khare, Avnish Kumar Srivastava, Amit Srivastava and Ashok Khare, for the Appellant; C.S. Singh and S.C., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A.P. Sahi, J.

The petitioner has prayed for a mandamus permitting the petitioner to join training upon having been selected on the post of constable in U.P. Police Services.

2. The parties have exchanged affidavits and it transpires that the objection to the petitioner's candidature, on verifying the character and antecedents of the petitioner, it was found that the petitioner had concealed the pendency of a criminal case against him. A written submission has also been filed by Sri Sidharth Khare, learned Counsel for the petitioner.

3. The ground on which the action of the respondents is being questioned is that the character verification form as prescribed by the respondents does not contain any such clause calling upon the candidate to declare that any criminal case is pending against him. Learned Counsel has invited the attention of the court to column No. 11 of the said verification form, which is part of Annexure V to the writ petition. A perusal of the same indicates that the only question posed is whether the concerned candidate has been found guilty and convicted for any offence by any court of law or not. In view of this it is urged that there is no such other requirement and therefore, the stand taken by the respondents that the petitioner suppressed this fact of

pendency of a case against him is irrelevant. Coupled with this, it is urged that the petitioner has been ultimately acquitted in the said case vide judgment dated 11.8.2005, a copy whereof is annexure VI to the writ petition and an information has been tendered to the respondents later on.

4. The respondents in their counter affidavit have stated that according to the Notification dated 6.2.2005 the petitioner was required to submit a public notary affidavit and in the affidavit so tendered by the petitioner, the aforesaid fact of the pendency of the criminal case against the petitioner has not only been suppressed, but a false statement has been made that the petitioner was never involved in a criminal case, nor was he apprehended and prosecuted. The respondents have filed the aforesaid directives contained in the letter dated 6.2.2005 and a photo stat copy of the affidavit filed by the petitioner has also been appended as C.A.2 to the counter affidavit. The petitioner has filed a rejoinder affidavit wherein it is urged that the affidavit was a standard affidavit, which was filled up and typed by the respondents on which the petitioner had only put his signature, and for which the petitioner cannot be held responsible as the petitioner did not get the affidavit prepared at his own level. It is also urged that all the 375 candidates including the petitioner were made to sign on similar affidavit and therefore, the contents of the said affidavit are not binding on the petitioner. It is also urged that the said circular dated 6.2.2005 was not made known to the petitioner and had it been so indicated, the petitioner might have taken a precaution in this regard. It is further urged that the petitioner cannot be held responsible for any suppression of facts or giving of false information to the respondents.

5. Sri Sidhdharth Khare has relied on two decisions in support of his submission. The first is the decision in the case of Qamrul Hoda v. Chief Security Commissioner 1997 (2) UPLBEC 1201 and the second decision of the Apex court in the case of [Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu,](#)

6. After having given my thoughtful consideration to the aforesaid aspects, it transpires that the verification form required only a response to the question posed therein, which was to the effect that whether the candidate was convicted in a criminal case or not. The petitioner correctly replied to the query as " not " inasmuch as the petitioner was not convicted and was later on in the trial acquitted as per the judgment brought on record. To that extent the authority of the Apex court relied upon by the learned Counsel for the petitioner comes to his aid, but the Apex court in C.B. Naidu 's case (supra) ultimately held that since the form did not require furnishing of any further information, in that event the candidate is not required to indicate as to whether he was arrested in any case or as to whether any case was pending against him. The Apex court drew a distinction to the said extent from the case of [Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav,](#)

7. However, the matter does not stop here In the instant case the petitioner has admitted the filing of an affidavit before the respondents. It is not the case of the

petitioner that the affidavit was forcibly demanded from him. In this view of the matter, a clear inference can be drawn to the effect that the petitioner voluntarily submitted the said affidavit. The petitioner is an educated person and it cannot be presumed that the petitioner filed the affidavit even without reading the contents thereof. Paragraphs 4 and 5 of the affidavit clearly indicate the tendering of a correct information in respect of a pending case or a person being arrested. The petitioner, therefore, had tendered an incorrect information through the said affidavit. The explanation set up in the rejoinder affidavit that such affidavits were filled up en mass by all the candidates cannot be an excuse for the petitioner to resile back from an incorrect information tendered by him. The filing of an affidavit is a requirement for verifying the antecedents and character of a candidate. The facts of this case therefore are distinguishable from the facts of the case decided by the Apex court relied on by the learned Counsel for the petitioner. In view of this clear distinction on facts, the ratio in Naidu's Case (supra) will not come to the aid of the petitioner.

8. The decision relied upon in Qamrul Hoda's case also cannot be pressed into service in view of the converse view taken by the Apex court in the case of Kendriya Vidhayalaya Sanghathan (supra). In the said case, the High Court drew a conclusion that The candidate had not tendered incorrect information as the criminal case instituted against him had been with drawn by the State Govt. and the case related to an agitation by the students, which did not involve any moral turpitude disqualifying a candidate seeking employment. In Qamrul Hoda's case also the petitioner therein had participated in an agitation against the visit of the then Chief Minister of the State. The Apex court reversed the view of the High Court stating therein that the suppression of material facts and making a false statement has a clear impact on the character and antecedents of a candidate in relation to his service. The court further held that the purpose of seeking information was not to find out the nature and gravity of the offence or the ultimate result of the criminal case, but for forming a view about the character and antecedents of a candidate. In view of the aforesaid position, Qamrul Hoda's case relied on by the learned Counsel for the petitioner cannot advance the cause of the petitioner.

9. Apart from this, learned standing counsel relied on the case of [Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar](#), to urge that the acquittal or discharge of a candidate has nothing to do with the question of judging the antecedents and character of a candidate. Inviting the attention of the court to para 3 of the said decision, learned standing counsel has urged that what is relevant is the conduct and character of a candidate to be appointed and not the actual result of the criminal case. From a perusal of the aforesaid decisions, referred to herein above, it can be said that the petitioner was not fair in his disclosure. On the contrary the affidavit filed by the petitioner amounts to tendering of a false information and therefore, the petitioner was rightly non suited for employment in the Police services.

10. Accordingly the writ petition fails and is hereby dismissed.