

(2014) 01 AHC CK 0237

Allahabad High Court

Case No: Special Appeal No. 2000 of 2013

Mohd. Aneesh Khan

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Jan. 3, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 323, 452, 504, 506

Citation: (2014) 3 ADJ 1 : (2014) 2 ALJ 156 : (2014) 103 ALR 179 : (2014) 2 AWC 2139 : (2014) 141 FLR 297 : (2014) 1 UPLBEC 440

Hon'ble Judges: Sunil Ambwani, J; Ram Surat Ram (Maurya), J

Bench: Division Bench

Advocate: Kashif Zaidi, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Sunil Ambwani and Ram Surat Ram (Maurya), JJ.

We have heard Sri Kashif Zaidi, learned Counsel appearing for the petitioner-appellant. In this intra-Court Special Appeal under Chapter VIII Rule 5 of the Rules of the Court, 1952, the petitioner-appellant is aggrieved by the judgment of the learned Single Judge dated 19.11.2013, by which, he has dismissed the writ petition against the order on the representation dated 8.4.2013, passed by the Commandant, 2nd Battalion, P.A.C., Sitapur, whereby, he has rejected the representation of the appellant, in pursuance of the directions issued by this Court on 2.11.2012, quoted as below:-

In view of the above, I am of the view that let the matter be relegated back to the Commandant IInd Battalion P.A.C. Sitapur to pass a fresh order within three months from the date of presentation of certified copy of this order after giving opportunity of hearing to the petitioner informing the reason for termination and giving opportunity to the petitioner to file the reply. While deciding the matter afresh and

dealing with the alleged affidavit, filed by the petitioner, the Commandant IInd Battalion P.A.C. Sitapur may examine that whether such two criminal cases were in the knowledge of the petitioner at the time of filing of the affidavit in which the petitioner has been acquitted and in the light of the law laid down by this Court Civil Misc. Writ Petition No. 38098 of 1994, Akhilesh Kumar @ Babloo v. Commandant, 47 P.A.C. Vnhini (Task Force), Bareilly and others, decided on 3.8.2012. The impugned order of Commandant IInd Battalion P.A.C. Sitapur dated 19.3.1999 and the appellate order dated 16.7.1999 shall be subject to the fresh order which will be passed by the Commandant IInd Battalion P.A.C. Sitapur.

With the aforesaid observations, the writ petition is disposed of.

2. The Commandant, 2nd Battalion, P.A.C., Sitapur found that the petitioner was arrested on 25.6.1995 in Case Crime No. 13 of 1995, under sections 323/452/504/506 I.P.C. and was granted bail on 25.6.1995. In another criminal case No. 26-A/1995 under sections 147/452/323/504/506 I.P.C., P.S. Dildarnagar, registered on 13.2.1995, the petitioner had surrendered in the Court on 8.6.1995 and was granted bail on the same date on 8.6.1995. The petitioner appeared in the selections and was recruited as a constable. In the enrollment form, he did not mention about the two criminal cases which by that time had resulted in acquittal on 11.2.1998. He also did not disclose in his affidavit dated 1.9.1998 at the time of enrollment in P.A.C. that he was implicated in the criminal cases, in which he was arrested/surrendered, granted bail, tried and thereafter, acquitted. When this fact came to the knowledge of the respondents in the police verifications, it was found that he had made false declaration and on which, he was terminated from service by order simplicitor dated 19.3.1999. A Writ Petition No. 3164 of 2000 filed by him was disposed of by the order 2.11.2012. The Commandant, 2nd Battalion, P.A.C., Sitapur, found that in the impugned order that the petitioner Mohd. Aneesh Khan had full knowledge of the criminal cases against him and which were concealed by him at the time of his entry into the services. He had thus been given entry into the services by fraudulent declaration, which is likely to adversely affect the discipline in the police force. It is not proper to keep such a person in the police force who has gained entry by playing fraud.

3. The learned Single judge has relied upon [Devendra Kumar Vs. State of Uttaranchal and Others,](#) in which it was held that the suppression of information of the criminal cases in obtaining employment reflects upon the conduct of the person. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

4. Learned Single Judge distinguished the judgment in [Ram Kumar Vs. State of U.P. and Others,](#) on the ground that the facts of the case were entirely different. In that case, the Court said that the mere fact that a person was tried in a criminal case wherein he has also been acquitted, will not mar his career for all the time by treating his character antecedents adverse only on the ground of his trial in a criminal case, particularly, when he has been honorably acquitted and that fact itself would not make such a person unsuitable for employment. The said case was not of verification of character and antecedents, but of the conduct of the person in making a false declaration and concealment of information, which was required to be disclosed by him in his affidavit for which he has been made to suffer and, therefore, the issue in question, was not the same.

5. Sri Kashif Zaidi, learned Counsel for the petitioner-appellant, has relied upon the judgment of learned Single Judge of Madras High Court in S.R. Sujith v. Director General of Police and others and other connected writ petitions (W.P. (MD) No. 474 of 2013) decided on 26.3.2013. The learned Single Judge sitting at Madras, adopting a reasoning that when the Government is pardoning the hardcore criminals and naxalites when they have surrendered and have undertaken to lead a normal life, a person cannot be denied a job for having suppressed his involvement, either in the application form or verification roll. He issued directions take a final decision on the basis of the judgment of Supreme Court in [Pawan Kumar Vs. State of Haryana and another,](#).

6. Sri Kashif Zaidi has also cited before us an order of the Apex Court in Jainendra Singh v. State of U.P. and others in Civil Appeal No. 5671/2012 dated 13.7.2012, by which the question of enrollment of a person by making a false declaration, has been referred to a Larger Bench. The Supreme Court while referring the conflicting views expressed by the Supreme Court in it's judgment, has reiterated the cardinal principles before granting any relief to the aggrieved parties as follows:-

31. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

(i) Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

(ii) Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a

person to a disciplined force and it be said to be unwarranted.

(iii) When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

(iv) A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

(v) Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

(vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

(vii) The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

(viii) An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a persons undesirable or unsuitable for the post.

(ix) An employee in the uniformed service pre-supposes 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.

(x) The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

32. When we consider the above principles laid down in majority of the decisions, the question that looms large before us is when consideration of such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.

33. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of Co-ordinate Benches, we feel it appropriate to refer the above mentioned issues to a Larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of view and which will enable the Court to apply the law uniformly while dealing with such issues.

34. With that view, we feel it appropriate to refer this matter to be considered by a Larger Bench of this Court. Registry is directed to place all the relevant documents before the Hon"ble the Chief Justice for constitution of a larger Bench.

7. This Court considering the judgments of Supreme Court and *Devendra Kumar v. State of Uttaranchal* (supra), has been consistently following the principles laid down therein, as to the character and conduct of the person seeking entry into a disciplined force by making a false declaration. It is not the acquittal of the person obtained prior to the enrollment or after the enrollment, but the making of the false declaration, which reflects upon his conduct and suitability of employment in the disciplined forces. A consistent view has been taken by this Court that a person who makes a false declaration, even if he was acquitted in the criminal case or that the criminal cases were of petty nature, is not entitled to continue in employment and that the employer has the right to terminate his employment on such admission into disciplined service.

8. We are not inclined to take a different view than the consistent approach taken by this Court. The admission of this appeal may affect large number of cases and thus, we find that it is not appropriate to await the judgment on the reference made by the Supreme Court to a larger Bench, which will finally lay down the law on the question to be followed by the Court. The referring order gives a clear indication that the Supreme Court is not in favour of making a departure from the settled position in law that such persons withholding or suppressing the relevant information are not entitled to be enrolled into disciplined service. The continuation of such person in service and the time spent in enquiries to be made with opportunity to be given to him to find out the circumstances in which the information was withheld or suppressed will not be in public interest and will allow such person to continue in service by deceit. A misplaced comparison has no place in dispensation of justice. The Special Appeal is dismissed.