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C.S.C.

**Service Law – Recruitment – Character Verification** – Criminal Case – FIR registered after application – Disclosure by candidate – Subsequent quashing on compromise – Collector's opinion mechanical – Duty to carefully evaluate antecedents – Scope of G.O. dated 28.04.1958 – Suitability not to be rejected mechanically on basis of mere FIR/charge-sheet – Non-availability of vacancy not bar – Relief by appointment against supernumerary post.

Held: Where the petitioner had applied for police recruitment prior to registration of an FIR against him, and thereafter made full and bona fide disclosure of the pending case at the stage of verification, rejection of candidature on sole basis of such FIR/charge-sheet, without holistic consideration of antecedents as mandated under Government Order dated 28.04.1958, is arbitrary and unsustainable. A mechanical adverse opinion by Collector cannot form basis to deny appointment. Quashing of proceedings on compromise not by itself a disqualification. Non-availability of post due to passage of time or intervening recruitments cannot defeat accrued right; appointment may be made even against supernumerary post. Writ petition allowed; rejection order quashed; mandamus issued for reconsideration and appointment.

**Writ petition allowed.**

**Case Law Discussed:**

1. Ram Kumar Vs St. of U.P. (2011) 14 SCC 709
2. Avtar Singh Vs U.O.I.(2016) 8 SCC 471
3. Janhvi Vs St. of U.P. & ors., 2024:AHC:190814-DB
4. Smita Shrivastava Vs St. of U.P. (cited in Janhvi)

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order of the Deputy Commissioner of

Police, Headquarters, Varanasi dated 20.07.2024, rejecting the petitioner's claim for appointment as a Police Constable notwithstanding his selection in the Police Constable and Constable PAC (Male) Direct Recruitment, 2015 on ground of unsuitability based on his involvement in a criminal case.

2. An Advertisement, bearing No. PRB-1 (82)/2015 was issued on 29.12.2015 by the Uttar Pradesh Police Recruitment and Promotion Board, Lucknow, advertising posts of Police Constables, called the Police Constable and Constable PAC (Male) Direct Recruitment, 2015 (for short, 'the advertisement'). The petitioner, being eligible, applied for consideration of his candidature vide application dated 30.01.2026. He was allotted Roll No. 00126183. He sat in the selection test and declared successful, securing 410.73 marks. After the petitioner had already applied, there was an unfortunate incident, where some family members of his were brutally assaulted on 07.05.2016 at Village Ismaliyan, Police Station Cholahpur, District Varanasi at about 9.45 a.m. The matter was promptly reported to the Police, but the First Information Report (FIR) came to be registered at 11.00 p.m. on the same day i.e. 07.05.2016 against eight men, to wit, Vishnu son of Ram Pravesh Singh, Anoop Singh son of Ram Asarey Singh, Pyarey Lal Yadav, Surendra Yadav, Suresh Yadav, all sons of Sirahu Yadav, Ram Pravesh Singh son of Markandey Singh, Tunnu Singh son of Nagendra Pratap Singh and Toofani son of Chhakauri Yadav. The aforesaid FIR was registered as Case Crime No. 185 of 2016, under Sections 147, 148, 149, 307, 308, 323, 506 IPC and Section 7 Criminal Law Amendment Act, P.S. Cholahpur, District Varanasi. The informant in the FIR was Panchu Yadav son of late

Naggu Yadav, a cousin of the petitioner's grandfather. The incident reported through the FIR was one of assault by the accused, all armed with deadly weapons, including fire arms.

3. Once the FIR lodged by the petitioner's family was registered on 07.05.2016, relating to the incident of the day, on the following day, a man from the members of the accused's family, to wit, Ram Dular Yadav son of Sirahu Yadav, that is to say, a brother of the accused, Pyarey Lal Yadav, Surendra Yadav and Suresh Yadav, lodged an FIR relating to the same incident dated 07.05.2016, mentioning the time of occurrence as 9.30 a.m. He alleged assault by the nominated accused and the unknown men, naming the petitioner as well amongst the assailants and describing him as Vinod Yadav, an alias for the petitioner, Vivek Yadav. The FIR, last mentioned, was lodged on 08.05.2016 at 9.30 p.m., nearly a day after registration of the FIR lodged by the petitioner's family. This FIR was registered as Crime No. 186 of 2016, under Sections 147, 148, 149, 452, 323, 427, 307, 324, 308, 336, 504, 506 IPC and Section 7 Criminal Law Amendment Act, P.S. Cholakpur, District Varanasi. The petitioner says that the FIR lodged against his family was a measure of counter-blast, ultimately having for its object an avenue to coerce the petitioner's grandfather's brother into comprising the criminal case brought by him vide Crime No. 185 of 2016.

4. The Police investigated both the cases and submitted a charge-sheet in both the crimes. The petitioner is an accused in Case Crime No.186 of 2016. In that case, after investigation the Police submitted a *challan* under Sections 147, 148, 149, 323, 427, 504, 506 IPC and Section 7 Criminal

Law Amendment Act, but not under Sections 307, 324, 308 and 336 IPC. Parties entered into a compromise during the course of investigation, but that did not lead the police to exonerate either of them of the offences charged.

5. Therefore, the accused of Case Crime No.185 of 2016, against home a charge-sheet was filed for the offences punishable under Sections 147, 148, 149, 323, 506 IPC and Section 7 Criminal Law Amendment Act, challenged it by means of Application u/s 482 No. 39570 of 2016 before this Court. Likewise, the petitioner and his family, who were charge-sheeted, questioned it by means of Application u/s 482 No. 39567 of 2016. Upon the hearing of these applications, it was pointed out by learned Counsel for parties that the prosecution was instituted mala fide in the petitioner's case, whereas in the application u/s 482 brought by the other side, the factum of compromise was brought to the Court's notice. In both cases, this Court apparently intending to send the compromise for verification to the Magistrate, by clerical error, passed an order refusing to quash the charge-sheet and asked the applicants in both matters to surrender before the Magistrate within 30 days and apply for bail. Protection from coercive action was granted for a period of 30 days. This part of the direction and orders in the case were the result of a clerical error. Therefore, correction applications were filed in both the matters, which were allowed vide orders dated 07.07.2017, recalling the orders dated 20.06.2016 in both matters and substituting it with the corrected order, directing the compromise to be verified by the Magistrate within a period of six weeks. The compromise having been verified, when Application u/s 482 No. 39567 of

2016, and of course the connected matter, came up before this Court, the proceedings against the petitioner were quashed vide judgment and order dated 20.09.2021 in terms of the following orders:

“Considering the facts and circumstances of case, submissions made by counsel for parties and the material on record, this Court is of considered opinion that dispute between parties is a purely private dispute and not a crime against society. Moreover, parties have already compromised their dispute. Consequently, no useful purpose shall be served by prolonging the proceedings of above mentioned case. In view of compromise entered into by the parties, chances of conviction of accused-applicants are remote and bleak. As such continuation of proceedings would itself cause injustice to parties. The trial would only entail loss of judicial time in a futile pursuit particularly when torrents of litigation drown the courts with an unimaginable flood of dockets.

In view of above, present application succeeds and is liable to be allowed. Entire proceedings of Criminal Case No.5670 of 2016, (State Vs. Kamlesh Yadav and Others), under Sections- 147, 148, 149, 323, 427, 504, 506 I.P.C. and Section 7 Criminal Law Amendment Act, Police Station- Cholapur, District- Varanasi arising out of Case Crime No. 0186 of 2016, under Sections- 147, 148, 149, 452, 323, 427, 307, 324, 308, 336, 504, 506 I.P.C. and Section 7 Criminal Law Amendment Act, Police Station- Cholapur, District- Varanasi pending in the court of Additional Chief Judicial Magistrate-I, Varanasi, are hereby quashed.”

6. This is not a case where the petitioner suppressed from the respondents the pendency of the criminal case against

him. He disclosed it at the time when the FIR came to be registered against him. There was no FIR against the petitioner at the time that he applied for the post of Constable, to wit, 30.01.2026. The FIR was registered on 08.05.2016, relating to an incident that alleged happened on 07.05.2016, involving some members of his family. The petitioner, upon selection, was issued a call letter dated 21.05.2018 for his medical examination, testimonial verification as well as character verification. By this time, the FIR had come into being and the petitioner, therefore, disclosed the fact at the time of his character verification vide the notarized affidavit dated 11.06.2018. The conduct of the petitioner, in making a complete and forthright disclosure about the case registered against him, is above board. This is not, therefore, a case in the slightest measure, where it could be said that the petitioner indulged in any suppression or withholding of information about the FIR registered against him.

7. What appears to have weighed with the respondents, in rejecting the petitioner's case for appointment, is the fact, amongst others, that the Collector, when asked to opine about the petitioner's suitability for appointment in government service, did not opine in the petitioner's favour vide his letter dated 06.11.2018. A reference must be made to the relevance of the Collector's opinion in the matter of suitability of a candidate for appointment to government service. In the State of Uttar Pradesh, a Government Order dated 28.04.1958 is still in vogue, that makes very elaborate provision to check on the criminal antecedents of a candidate, seeking employment under the State. The relevant part of the Government Order dated 28.04.1958 reads:

“3. (a) Every direct recruit to any service under the Uttar Pradesh Government will be required to produce:

(i) A certificate of conduct and character from the head of the educational institution where he last studied (if he went to such an institution).

(ii) Certificates of character from two persons. The appointing authority will lay down requirements as to kind of persons from whom it desires these certificates.

b) In cases of doubt, the appointing authority may either ask for further references, or may refer the case to the District Magistrate concerned. The District Magistrate may then make further enquiries as he considers necessary.

Note(a) A conviction need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve on moral turpitude or association with crimes of violence or with a movement which has its object to overthrow by violent means of Government as by law now established in free India the mere conviction need not be regarded as disqualification. (Conviction of a person during his childhood should not necessarily operate as a bar to his entering Government service. The entire circumstances in which his conviction was recorded as well as the circumstances in which he is now placed should be taken into consideration. If he has completely reformed himself on attaining the age of understanding and discretion, mere conviction in childhood should not operate as a bar to his entering Government service).

(b) While no person should be considered unfit for appointment solely because of his political opinions, care should be taken not to employ persons who are likely to be disloyal and to abuse the

confidence placed in them by virtue of their appointment. Ordinarily, persons who are actively engaged in subversive activities including members of any organization the avowed object of which is to change the existing order of society by violent means should be considered unfit for appointment under Government. Participation in such activities at any time after attaining the age of 21 years and within three years of the date of enquiry should be considered as evidence that the person is still actively engaged in such activities unless in the interval there is positive evidence of change of attitude.

(c) Persons dismissed by the Central Government or by a State Government will also be deemed to be unfit for appointment to any service under this Government.

2(d) In the case of direct recruits to the State Services under the Uttar Pradesh Government includes requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above. The appointing authority shall refer all cases simultaneously to Deputy Inspector General of Police, intelligence and the District Magistrate (of the home district and of the district(s) where the candidate has resided for more than a year within five years of the date of the inquiry) giving full particulars about the candidate. The District Magistrate shall get the reports in respect of the candidates from the Superintendent of Police who will consult District Police Records and records of the Local Intelligence Unit. The District Police or the District Intelligence Unit shall not make any enquiries on the spot, but shall report from their records whether there is anything against the candidate, but if in any specific case the District Magistrate at the instance of the appointing authority ask for an enquiry on the spot the Local Police or

the Local Intelligence Units will do so and report the result to him. The District Magistrate shall then reports his own views to the appointing authority. Where the District Police or the Local Intelligence Units report adversely about a candidate the District Magistrate may give the candidate a hearing before sending his report.

(e) In the case of direct recruits (who are lower in rank than that of a State Service Officer) of:

(i) the police (including ministerial staff of Police Officers).

(ii) the Secretariat.

(iii) the staff employed in the government factories,

(iv) power houses and dams.

besides requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above, the appointing authorities shall refer all cases simultaneously to the Deputy Inspector General, C.I.D. and the District Superintendent of Police (of the home district and of the district(s) where the candidate has resided for more than a year within five year of the date of the inquiry) giving full particulars about the candidate. The Superintendents of Police will send his report direct to the appointing authority if there is nothing adverse against the candidate. In cases where the report is unfavourable the Superintendent of Police will forward it to the District Magistrate who will send for the candidate concerned, give him a hearing and then, form his own opinion. All the necessary papers (the Superintendent of Police's report the candidate's statement and the District Magistrate's finding) will there after be sent to the appointing authority.

4. It will be seen that in cases of direct recruit to services other than those

mentioned in paragraphs 3 (c) and 3 (d) above, verification shall not be necessary as a matter of routine except in cases of doubt when the procedure mentioned in paragraph 3 (b) shall be followed.

5. In the case of a candidate for services mentioned in paragraphs 3 (c) and 3 (d) above-

(i) if at the time of enquiry the candidate is residing in a locality situated outside Uttar Pradesh or if he has resided in such a locality at any time within five years of the date of enquiry for a period of one year or more it shall be the duty of the deputy Inspector General, C. I. D. to consult also the C. I. D. D. of the State concerned in which the locality is situated before making his verification report.

(ii) if the candidate was residing before partition in area now comprising Pakistan the Deputy Inspector General, C. I. D. shall also make a reference to the Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, in addition to the usual enquires as indicated above.

6. It has also been observed that where the District Magistrates are required to send the attestation forms they sometimes do not sign the forms themselves, Government consider it very desirable that the attestation forms should invariably be signed by the District Magistrates them selves in all such cases."

8. The Government Order dated 28.04.1958 shows that the purpose of this order is to verify if a person, selected and proposed to be appointed to government service, is indeed a man of criminal antecedents, unsuitable for appointment under the Government. It must be emphasized that the character of a person, being unsuitable for appointment to a post under the Government on account of his

criminal antecedents, is not a mathematical inference to be drawn from the mere registration of an FIR against the man. It is for this reason that the task of judging the suitability of a person for appointment to government service has been entrusted to the hands of the District Magistrate, who has to opine on the issue, taking into consideration reports from the Police, the Crime Investigation Department (CID) or the Local Intelligence Unit, whoever are to report on the antecedents of the candidate. The Collector has to apply his mind to the entire circumstances and the reports available in regard to a person before he opines on his suitability.

9. If there is a case where a person with no criminal antecedents is suddenly reported to the Police in connection with an alleged crime, which per se does not involve moral turpitude or shows for the person concerned a marginal role based on suspicion, the Collector must verify facts to judge his suitability, including the case and evidence appearing against him until time he opines. He must not act like a Post Office, where on a mere report from the Police Station and the S.P. that an FIR has been registered, the Collector reports the candidate unsuitable.

10. Here, although the Collector's opinion has not been placed before the Court, a perusal of the impugned order does not show or reflect that the Collector indeed gave a well considered opinion about the candidate's suitability. The order impugned also does not discuss the issue, lending force to the inference that the Collector's opinion does not carry a holistic evaluation about the candidate's suitability for appointment to the Police.

11. Turning to the case against the petitioner, one finds that it was primarily a dispute between the brother of the

petitioner's grandfather with some third party, who landed at the petitioner's relative's premises and beat them up seemingly in the morning hours of 07.05.2016. The petitioner's family members reported the offenders to the Police and their FIR was registered on the same day by evening hours at 11 o'clock. The FIR registered against the petitioner fixes him in the crime along with the other family members, but it was lodged with a delay of almost of 24 hours. The possibility of a blatant false implication to spite the petitioner's family, may well have been the reason. The fact that the petitioner had already been selected to government service, made him an ideal candidate to be framed in the case along with others in the family, so as to settle scores and compel the petitioner's grandfather's brother to withdraw from prosecution of the case, brought against the first informant of Crime No.186 of 2016 and other members of his family.

12. The Court cannot shut out its eyes to the fact that in this State it has become almost a malady that an able young man with good academic record, the moment he is selected in government service, leads to the sudden registration of an FIR against him or he is named in connection with an existing FIR, involving his family or friends. This often happens at the instance of his family themselves or neighbours or friends, apparently out of jealousy. Government service, in our country, is still a very coveted position to hold. It most certainly evinces the negative emotions of jealousy, hatred, even anger, sometimes amongst neighbours and the family members of the young person selected. It is, particularly, so in case of appointment to lower echelons of the police service. The almost perfect timing of

implication, like in the present case, in many others, certainly warrants a very careful scrutiny about the antecedents of the person selected in order to judge, if indeed it is a bona fide crime registered against him, or, is it just a device to deprive him of a hard earned government employment.

13. In the present case, a reading of the impugned order or the return filed on behalf of the State, does not show that any kind of a careful consideration was done. We notice with anguish that whatever we say in this regard, does not penetrate the thick armor of bureaucratic insensitivity. The moment a crime is registered against a candidate, selected to government service and is either brought or comes to the notice of the Government, the officers, without the slightest qualm of conscience, mechanically act to guillotine the candidate out of his hard earned public employment. They never base their consideration upon what is expected of them, that is, to find out if indeed the selectee is suitable for appointment to government service. The District Magistrates almost never scrutinize a candidate's case according to the spirit of the Government Order dated 28.04.1958. Here, also the same thing has happened.

14. We must remark that the larger number of cases, where the candidates do not report even a trivial crime registered against them, is out of fear of this insensitive attitude on the part of the officers of the Government, charged with offering appointment to selected candidates. The candidates, who do not then disclose out of fear of a mechanical rejection, are doubly accused of being unsuitable – one for the crime/ crime registered, and the other, due to deliberate suppression of their antecedents. We need

not delve upon the issue of suppression, because that is not involved here. We have mentioned it to highlight the ill-effects of the insensitive approach of government officers in judging suitability. They make liars out gentleman.

15. Here, the petitioner has disclosed the FIR registered against him, as already remarked, in the most *bona fide* and forthright manner. He reported it at the earliest stage after it was registered. It was not in existence when he applied. After selection, when he was called for character verification etc., he disclosed it on affidavit. The crime registered against the petitioner is one strongly suggestive of counter-blast and *mala fide* implication because the informant of the case against the petitioner's family, which includes him, were reported to the Police about an incident that happened earlier in the day, where the petitioner's family were on the receiving end of an assault. It is not the respondents' case, nor does it figure in the impugned order that prior to the FIR, giving rise to Crime No.186 of 2016, under Sections under Sections 147, 148, 149, 452, 323, 427, 307, 324, 308, 336, 504, 506 IPC and Section 7 Criminal Law Amendment Act, P.S. Cholapur, District Varanasi, any other case was registered against the petitioner, or there was any other material to show his criminal antecedents. After investigation into the crime, the Police charge-sheeted the petitioner and his family for offences punishable under Sections 147, 148, 149, 323, 427, 504, 506 IPC and Section 7 Criminal Law Amendment Act. The offences punishable under Sections 307, 324, 308 and 336 IPC were clearly not found to be there against the petitioner or his family by the police themselves. Looking to the entirety of allegations in the FIR, which is about offences of assault,

alleged after the petitioner's family had lodged an FIR against the informant of Crime No.186 of 2016 promptly, regarding a case of assault, do not show a case involving serious charge against the petitioner, laced with moral turpitude. The offences, for which the petitioner was charge-sheeted, read together with the circumstances, prima facie do not show the petitioner to be an outlaw or a desperado, unfit for public employment. Nevertheless, an opinion in this regard on the parameters prescribed in the Government Order dated 28.04.1958, would have to be formed on relevant materials by the respondent Authorities; not this Court.

16. The impugned order, in this case, has proceeded primarily to discard the petitioner's candidature as unsuitable, because of the fact that there was an FIR registered against him that resulted into a charge-sheet being filed in Court and the fact that though the charge-sheet had been quashed, it was the result of a compromise between parties. An FIR after all is not a judgment, holding the person guilty nor is the police report filed in Court. It is a different matter if there are multiple FIRs registered against a person, a legitimate inference of his criminal propensities may be drawn, but just the registration of an FIR and the police putting in a charge-sheet, would not ipso facto tarnish the good name of an otherwise respectable man. It is for this reason, as already emphasized, a very careful consideration of the entire circumstances of implication, the nature of the charges, the nature of the offence attributed to the candidate together with his reputation and background, all must enter consideration of the Authorities empowered to appoint, before the decision to deny public employment is taken.

17. In **Ram Kumar v. State of U.P. and others, (2011) 14 SCC 709**, which too was a case related to police service, denying employment to a candidate, who had a criminal case against him, of which he was acquitted, it was held by the Supreme Court:

“9. We have carefully read the Government Order dated 28-4-1958 on the subject *“Verification of the character and antecedents of government servants before their first appointment”* and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:

The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

“The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.”

10. It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of government servants before their first appointment is to ensure that the character of a government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.

11. 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 at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18-7-2002 by the Additional Chief Judicial Magistrate, Etawah.

12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it 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 quarrelling 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 Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 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.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his affidavit in the pro forma of verification roll that a criminal case has been registered against him.

14. As has been stated in the instructions in the Government Order dated 28-4-1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment.”

18. In **Avtar Singh v. Union of India and others, (2016) 8 SCC 471**, which lays down principles governing matters of employment, where there is in the background implication in a criminal case, it has been held:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government

orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion,

may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

19. A perusal of the principles summarized in paragraph Nos. 38.4.2, 38.4.3, 38.4.4, 38.4.5 and 38.4.6, would

have particular bearing on the issues involved here. The guidance in **Avtar Singh (supra)** also requires a careful consideration of the criminal case and where the candidate, though accused in an offence involving moral turpitude, or one that is heinous or serious, but acquitted on technical grounds, as distinguished from a clean acquittal, it is open to the employer to consider all relevant facts as to the candidate's antecedents and take an appropriate decision in the matter. Paragraph No. 38.4.3 would show that even in case of serious offences, where acquittal is by way of a judgment of doubt, it is not that the employer must always reject the candidate. The candidate's antecedents and other relevant facts must be taken into consideration before arriving at a decision.

20. One more point that deserves notice is the submission of the learned Additional Chief Standing Counsel that the present selection relates to the year 2015 and now we are in the year 2025. Many selections have gone by and no post from the relevant recruitment year is now available. The petitioner too would have become overage.

21. The last of the submissions about age is only stated to be rejected. The petitioner, at the time of filing this petition in the year 2024, was aged 27 years. There would, thus, be no difficulty about his age, if appointment were offered to him. The other issue about the recruitment, being one that had taken place long ago with no posts of the relevant year now available, fell for consideration before a Bench of this Court in the unreported decision in **Janhvi v. State of U.P. and others, 2024:AHC:190814-DB**. The Division Bench was confronted with a similar objection, which their Lordships have

recorded in the following words in **Janhvi (supra)**:

“7. We are only required to consider what relief may be granted to the petitioner at this belated stage. In that regard, we have heard learned counsel for the petitioner; learned senior counsel for the Commission; learned Additional Chief Standing Counsel and, learned counsel for High Court. The UPPSC admits it's mistake, yet learned senior counsel for the Commission would submit, the UPPSC is helpless at this stage. Not only recommendations were made pursuant to completion of the selection process for the UPPCS (J) 2018, two more examinations have been conducted in 2020 and 2022. In any case, the UPPSC acts on the requisition made by the State Government. That requisition having lapsed, the Commission does not have the authority and it is not in a position to revisit the final result as may provide for any recommendation to be made in favour of the petitioner, today.”

22. Here, for one, the recommendations has already been made and is with the Appointing Authority, which the Appointing Authority has rejected in error. The other issue about the post not being available and intervening recruitment examinations having been held, was answered in **Janhvi** thus:

“19. As observed by the Supreme Court in **Smita Shrivastava (supra)**, the petitioner is found entitled to restitutive relief. Here, we are mindful of the fact that the maximum age for appointment for UPPCS (J) is 35 years. We are also mindful of the fact that the selection to UPPCS (J) 2018 were completed sometime in 2020. The last candidate selected is described as "Master Fake 011549" (in paragraph 4 of

the affidavit filed by the Commission, today). He may have also worked for more than 2-3 years. He also was not at fault, to any extent. Therefore, equities commend that no direction may be issued as may lead to his termination from service, to accommodate the petitioner.

20. As on date, the petitioner is only 33 years of age. She would still have 27 years of active service, from today. We find, the petitioner is wholly entitled to the relief of appointment to UPPCS (J) 2018. Subject to due verification, let the petitioner be granted appointment to UPPCS (J), 2018 against one available vacant post with notional security and all consequential benefits except arrears of salary. If for any reasons it is required, a supernumerary post may be created. Let petitioner be placed at seniority position of her batch (2018) as she may have earned against marks secured.”

23. It must be remarked that the **Janhvi** was a case, which related to exclusion from appointment on account of a patently erroneous award of lesser marks, but it is in point to answer the objection raised, inasmuch as in **Janhvi** too, the right to relief was resisted on account of the time period that had elapsed, and successive recruitment having been held in the interregnum. This is certainly not a ground to deny relief.

24. In the totality of circumstances, we are of opinion that the impugned order, rejecting the petitioner's candidate's candidature, cannot be sustained and his case must receive a thorough re-consideration, all over again, bearing in mind the guidance in this judgment.

25. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 20.07.2024 passed by the Deputy Commissioner of Police, Headquarters, Commissionerate of Police, Varanasi is hereby **quashed**. A *mandamus* is issued to the Commissioner of Police, Commissionerate, Varanasi, the Deputy Commissioner of Police, Headquarters, Commissionerate, Varanasi, the Additional Secretary (Recruitment), U.P. Police Recruitment and Promotion Board, Lucknow, to ensure amongst themselves consideration of the petitioner's case for appointment as a Police Constable against the recruitment of the year 2015 in accordance law and bearing in mind the guidance in this judgment. The non-availability of a post from the relevant recruitment year shall not be an impediment in appointing the petitioner. If necessary, the petitioner's appointment would have to be considered against a supernumerary post. The necessary orders shall be passed within a period of six weeks from the date of receipt of a copy of this judgment by the first of the three respondents directed.

26. There shall be no order as to costs.

27. Let a copy of this order be communicated to the Commissioner of Police, Commissionerate, Varanasi, the Deputy Commissioner of Police, Headquarters, Commissionerate, Varanasi, the Additional Secretary (Recruitment), U.P. Police Recruitment and Promotion Board, Lucknow by the Registrar (Compliance).

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