

Court in 'XYZ' vs. State of MP and others in year 2022. the impugned order passed by learned trial court is found to be contrary to law and deserves to be set aside.

17. Accordingly, present criminal revision is **allowed** and the impugned order dated 23.6.2023, passed by learned Chief Judicial Magistrate, Hathras in Criminal Complaint Case No.849/12/2022, is hereby set aside and the matter is remanded to learned Chief Judicial Magistrate, Hathras to decide the same afresh after giving opportunity of hearing to the revisionist/de-facto complainant in the light of law propounded by the Hon'ble Apex Court as discussed hereinabove.

(2024) 10 ILRA 315

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 01.10.2024

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ-A No. 3561 of 2023

Siddharth Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Raghavendra Sharan Tiwari

Counsel for the Respondents:
C.S.C.

**A. Civil Law - Constitution of India,1950-
Article 226-The petitioner's candidature
for the position of Police Constable in
Uttar Pradesh was rejected by the Deputy
Commissioner of Police, Varanasi citing a
criminal case against him despite his
subsequent acquittal-The case pertains to
allegations u/s 498A,323,504,506 & 3/4
D.P. Act-this rejection was challenged –**

Held, the court criticized the mechanical approach of rejecting candidates based solely on pending or resolved criminal cases, especially in light of societal issues such as false implications in section 498A-the court emphasized that trivial incidents or social disputes should not permanently disqualify a person from public employment if they demonstrate otherwise clean antecedents-the court quashed the order of rejection and issued a mandamus directing the Deputy Commissioner of Police to reconsider the case within three weeks.(Para 1 to 21)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Commr. Of Police & ors.Vs Sandeep Kumar (2011) 4 SCC 644
2. Ram Kumar Vs St. of U.P. & ors.(2011) 14 SCC 709
3. Avtar Singh Vs U.O.I. & ors.(2016) 8 SCC 471

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

1. This writ petition is directed against an order of the Deputy Commissioner of Police, Police Headquarters, Police Commissionerate, Varanasi dated 03.02.2023, rejecting the petitioner's case for appointment as a Constable in the Uttar Pradesh Police, on account of a criminal case lodged against him, of which he has been later on acquitted.

2. The facts giving rise to this petition would show that the petitioner staked his claim for the post of a Police Constable in the Uttar Pradesh Police. This was in the recruitment year 2013. The petitioner was selected for the post and the date for his training was scheduled as 02.12.2015. After the petitioner was selected, in the Police Verification Report Form (PVR), he

disclosed that a criminal case had been lodged against him, in which this Court had stayed proceedings. The Senior Superintendent of Police, Varanasi by his order dated 02.02.2016 rejected the petitioner's candidature on ground of pendency of that case. That order of the Senior S.P., Varanasi was challenged by the petitioner before this Court by means of Writ-A No.18399 of 2016, wherein an interim order dated 26.04.2016 was granted to the following effect:

“In the meantime, the respondents are directed to send the petitioner for training and if he successfully completes his training, then in his appointment letter it would be mentioned that the appointment of the petitioner shall abide by the result of the writ petition.”

3. This order was challenged by the State by means of Special Appeal Defective No.130 of 2017. The Division Bench allowed the appeal vide judgment and order dated 27.02.2017 and set aside the interim order dated 26.04.2016. The learned Single Judge was required to decide the writ petition on merits. The writ petition came up before the learned Single Judge for hearing on 19.09.2022 and this Court vide judgment and order of that date set aside the order dated 02.02.2016 passed by the Senior Superintendent of Police, Varanasi, rejecting the petitioner's candidature, with a remit of the matter to the said Officer carrying a direction to take into account the subsequent acquittal that the petitioner had earned vide judgment and order dated 05.03.2019 passed by the learned Magistrate. The learned Judge directed the Senior S.P. that in taking his decision, he shall exercise his power independently, in accordance with law, but would consider the effect of the judgment

of acquittal dated 05.03.2019 passed by the learned Magistrate in the criminal case.

4. When the matter again came up before the respondents, this time, represented by the Deputy Commissioner of Police, Police Headquarters, Police Commissionerate, Varanasi, he proceeded to reject the petitioner's candidature vide order dated 03.02.2023, holding the judgment of the Trial Court not to have cleansed or purged the petitioner of the lingering shadows of the crime, which in the view of the Deputy Commissioner of Police, he had committed but got away because of some kind of a compromise reached outside Court.

5. Aggrieved, this writ petition has been instituted.

6. A notice of motion was issued on 03.03.2023. Parties have exchanged a short counter and a short rejoinder, besides a counter affidavit on behalf of respondent Nos.2, 3, 5 and 6, to which a rejoinder too has been filed. The parties having exchanged pleadings, this petition was admitted to hearing on 20.09.2024, which proceeded forthwith and judgment was reserved.

7. Heard Mr. Raghavendra Sharan Tiwari, learned Counsel for the petitioner and Mr. Girjesh Kumar Tripathi, learned Additional Chief Standing Counsel on behalf of the respondents.

8. A perusal of the impugned order shows that the Deputy Commissioner of Police has gone more by the fact that a crime was registered against the petitioner, wherein after investigation, the Police filed a charge-sheet. He has then opined that a perusal of the judgment passed by the

learned Magistrate, acquitting the petitioner, does not surely lend itself to a construction that the petitioner had not committed the crime. The reason for this conclusion is that the prosecution witnesses had turned hostile, the advantage of which went to the petitioner. There is a remark by the Deputy Commissioner of Police that in the social milieu of rural life, it is often seen that domestic disputes, leading to FIRs / NCRs, invite intervention of some respectable persons of the society, who mediate the dispute, resulting in a compromise between parties. This in turn causes the witness to go hostile. The impact of the hostility of witnesses in a Criminal Court is that the prosecution is not able to prove its case beyond reasonable doubt, leading to the accused being acquitted. It is then remarked that in the present case something of this kind has happened. It is then added that a person to be appointed to the Police must be a man of clean antecedents. A man with criminal antecedents, if appointed to the Police Force, would put a question mark on their image. It is more or less on the said reasoning that the Deputy Commissioner of Police has proceeded to pass the order impugned.

9. The short counter affidavit and the rejoinder are not of much relevance because the first respondent has disassociated itself from any issue in the matter, leaving it to the Police Authorities who passed the impugned order to answer the petitioner. In the counter affidavit, that has been filed on behalf of respondent Nos.2, 3, 5 and 6, the stand taken is that the Commissioner of Police, Varanasi directed verification of the petitioner and it was found that Crime No.359 of 2013, under Sections 498A, 323, 504, 506 IPC read with Section 3/4 of the Dowry Prohibition

Act was registered against him. In this regard, the opinion of the District Magistrate, Varanasi was obtained and he gave opinion that the petitioner is not a fit person for appointment on a Constable's post in the Civil Police. As such, the then Senior Superintendent of Police, Varanasi passed the order dated 02.02.2016, rejecting the petitioner's candidature, since set aside by this Court. There is then a copious reference to Government Order No. 4694-II-B-321-1947 dated 28.04.1958, which has bearing upon matters of character verification of candidates, seeking employment under the State Government. It is again mentioned there that the Senior Superintendent of Police referred the matter to the District Magistrate in accordance with the said Government Order, who opined the petitioner not fit for appointment vide his letter dated 20.01.2023. The stand is that the District Magistrate had given legal opinion to the effect that the judgment of the learned Additional Chief Judicial Magistrate, acquitting the petitioner, was due to the witnesses hostility, leaving the Appointing Authority free to take his decision. It is then averred that the Appointing Authority, taking into consideration the fact that the petitioner had been acquitted due to witnesses turning hostile, held that he was not a person of good character, free from criminal antecedents and, therefore, unfit to be recruited to the Police Force. If appointed, he would bring the Police a bad name. It is more or less on these grounds, most of which figure in the impugned order, that the respondents have sought to support their action.

10. Upon hearing learned Counsel for the parties, we are of opinion that the purpose of all rules relating to recruitment

and the way the law about it has evolved, is to keep persons with criminal antecedents out of government service; not just the Police. It is for this reason that the Government Order of 1958 makes very elaborate provision in keeping with the time when it was issued to check on the criminal antecedents of a prospective appointee to government service. It would be apposite to extract the relevant part of the Government Order dated 28.04.1958:

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 themselves in all such cases.”

11. A careful perusal of the aforesaid Government Order shows that it was never considered trite principle that every conviction would lead to refusal of a certificate of good character. It would, if moral turpitude was involved or there was participation in a crime of violence or association with a movement which had for its object overthrow of the lawful Government established in free India by violent means. It would show the concern of those who issued the Government Order not to alienate from government service young men of the time, who had participated in movements to free India, and may be, resorted to violent means against the British Government. There are also provisions about safeguarding the interest of candidates for government service against childhood indiscretions that were committed by young men at a juvenile age, who later on reformed themselves. The reason why the District Magistrate was associated with the process of character verification was to secure, what was thought at the time, a non-partisan view about the antecedents of the person and not just a stereotyped opinion, stencil cut on the basis of registered criminal cases alone.

The later Government Orders have not changed this position and the District Magistrate's opinion is still sought by the Police before verifying a candidate's character.

12. It is quite another matter, as it seems that the District Magistrates do not seem to have lived up to the trust reposed in them in that, that they too seem to refuse certification of good character, if they find a case registered against a candidate, or even a judgment of acquittal that makes them think that it was not honourable. Not every crime, irrespective of its triviality, or the fall out of a social malady, ought be regarded as a definitive, pre-determined disablement from government employment. A young man or a woman could for once be accused, rightly or wrongly, of indulging in some kind of a skirmish leading to the registration of a case, say for an offence punishable under Section 323, 504, 506 IPC. It may lead to a final report or a charge-sheet. If charge-sheeted, the trial may end in acquittal, or may be a conviction too for the young man or woman, who once committed the indiscretion. But, never again. Should such a person for all times to come be banished from the privilege of public employment, when otherwise the person possesses by all other standards sterling character. This, of course, would not hold true of a heinous offence committed by a man or woman, not a juvenile. Yet every indiscretion, as already remarked, must not become a lifetime disability for a person of good character and sound talent to be deprived of public employment. In this connection, reference may be made to **Commissioner of Police and others v. Sandeep Kumar, (2011) 4 SCC 644**. The facts in **Sandeep Kumar (supra)** can best be recapitulated in the words of their Lordships that say:

“2. The respondent herein, Sandeep Kumar applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed:

“12(a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence, debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any examination, rusticated by any university or any other education authority/institution.”

Against that column the respondent wrote: “No”.

3. It is alleged that this is a false statement made by the respondent because he and some of his family members were involved in a criminal case being FIR No. 362 under Sections 325/34 IPC. This case was admittedly compromised on 18-1-1998 and the respondent and his family members were acquitted on 18-1-1998.

4. In response to the advertisement issued in January 1999 for filling up of certain posts of Head Constables (Ministerial), the respondent applied on 24-2-1999 but did not mention in his application form that he was involved in the aforesaid criminal case. The respondent qualified in all the tests for selection to the post of temporary Head Constable (Ministerial). On 3-4-2001 he filled the attestation form wherein for the first time he disclosed that he had been involved in a criminal case with his tenant which, later on, had been compromised in 1998 and he had been acquitted.

5. On 2-8-2001 a show-cause notice was issued to him asking the

respondent to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17-8-2001 and an additional reply but the authorities were not satisfied with the same and on 29-5-2003 cancelled his candidature.”

13. In upholding the relief granted by the High Court to the candidate seeking employment in the police in **Sandeep Kumar**, it was held by the Supreme Court:

“8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be 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.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or

rape, and hence a more lenient view should be taken in the matter.”

14. Of particular relevance in connection with the present case is the authority of the Supreme Court in **Ram Kumar v. State of U.P. and others**, (2011) 14 SCC 709. This case too related to police service, where the candidate seeking recruitment, had a criminal case in the background, of which he was acquitted. The facts in **Ram Kumar** (supra) again can best be gathered from the report of their Lordships' decision, which read:

“2. The facts very briefly are that pursuant to an advertisement issued by the State Government of U.P. on 19-11-2006, the appellant applied for the post of Constable and he submitted an affidavit dated 12-6-2006 to the recruiting authority in the pro forma of verification roll. In the affidavit dated 12-6-2006, he made various statements required for the purpose of recruitment and in Para 4 of the affidavit he stated that no criminal case was registered against him. He was selected and appointed as a male constable and deputed for training.

3. Thereafter, Jaswant Nagar Police Station, District Etawah, submitted a report dated 15-1-2007 stating that Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC was registered against the appellant and thereafter the criminal case was disposed of by the Additional Chief Judicial Magistrate, Etawah on 18-7-2002 and the appellant was acquitted by the court. Along with this report, a copy of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate was also enclosed.

4. The report dated 15-1-2007 of Jaswant Nagar Police Station, District

Etawah, was sent to the Senior Superintendent of Police, Ghaziabad. By order dated 8-8-2007, the Senior Superintendent of Police, Ghaziabad, cancelled the order of selection of the appellant on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and his selection was irregular and illegal.

5. Aggrieved, the appellant filed Writ Petition No. 40674 of 2007 under Article 226 of the Constitution before the Allahabad High Court but the learned Single Judge dismissed the writ petition by his order dated 30-8-2007 [WP (C) No. 40674 of 2007, order dated 30-8-2007 (All)] . The learned Single Judge held that since the appellant had furnished false information in his affidavit in the pro forma verification roll, his case is squarely covered by the judgment rendered by this Court in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] and that he was rightly terminated from service without any inquiry. The appellant challenged the order of the learned Single Judge in Special Appeal No. 924 of 2009 but the Division Bench of the High Court did not find any merit in the appeal and dismissed the same by the impugned order dated 31-8-2009 [Special Appeal (Defective) No. 924 of 2009, order dated 31-8-2009 (All)].”

15. In **Ram Kumar**, 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.”

16. A mechanical approach, which reads like a mathematical equation, always leading to disqualification from public employment for a person, against whom a criminal case is registered - whatever be the charge - even if he is acquitted - has to be eschewed. The nature of the case against the person has to be taken into consideration and the background in which the accusation came to be made. The degree of moral turpitude attaching to the crime given the prevailing circumstances in society, must also be borne in mind. Also, it cannot be discounted if the offence is one that has become commonplace in society by easy false implications. Of course, this Court does not wish to say that any generalization be made out of these propositions. At the same time, the Appointing Authority and the Advising District Magistrate must carefully glean through the evidence and circumstances that may point towards a patently false accusation, given the prevalent social conditions about certain offences. The background of the person and his general reputation must also be taken into account, particularly, when considering the effect of a judgment of acquittal entered in his favour by the Court that tried him.

17. This is particularly true, this Court must make it bold to say, when an offence punishable under Section 498-A IPC and the accompanying charges under

Section 3/4 of the Dowry Prohibition Act are in issue. While the evil may be rife in society, it is equally true that there is abundant false implication. This is particularly so about the relatives of the husband, not so directly connected, with the so-called matrimonial bond between the spouses. This includes the husbands, brothers, married sisters and the sister's husband, all of whom may unnecessarily suffer the stigma of being under the malevolent shadow of a criminal case, when there is not the slightest of criminality about any facet of there being.

18. The petitioner in this case is the brother of the prosecutrix's husband. The District Magistrate and the Deputy Commissioner of Police, as the Certifying and the Appointing Authority, have applied a thumb rule to the judgment of acquittal to conclude against the petitioner on the ground alone that the witnesses had turned hostile. This is not a case involving a heinous offence, where the accused - a possible desperado or a hardened criminal - might have suborned witnesses or won them over. The crime itself is a fall out of matrimonial maladjustment between the spouses. The corpus delicti in this case would not show any case or evidence of violence. A perusal of the judgment, even if the witnesses have been motivated by compromise not to support the prosecution, does in no way show the petitioner to be a person of any kind of criminal antecedents. Rather, this Court has no hesitation in saying that he appears to be the victim of an accident, because his brother and sister-in-law could not get along in matrimony. Going a step further, if one were to think that indeed the husband or the in-laws demanded dowry or mistreated the prosecutrix, there is nothing in the judgment, particularly, appearing against

the petitioner. It would be too much, in our opinion, to deprive a man otherwise of clean antecedents, of hard won public employment in the fashion the respondents have done. It is clearly arbitrary.

19. The remarks about the disciplined character of the Police Force are no doubt very valid in themselves, but the idea of this disciplined force cannot be exalted to a position, where all candidates, seeking recruitment to the Force, must be expected to be men, unscathed by the wear and tear of life or the accidents of contemporary society. We think that the Deputy Commissioner of Police as well as the Collector, who advised in the matter, applied an entirely unrealistic standard to the case in judging the petitioner unsuitable for recruitment to the Police. Both sides have time and again placed reliance upon the celebrated decision of the Supreme Court on the issue in **Avtar Singh v. Union of India and others, (2016) 8 SCC 471**. The principles propounded there by their Lordships have been summarized thus:

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."

20. Going by the principles enumerated in **Avtar Singh** (*supra*), this Court must remark that here is not a case of any kind of suppression on the petitioner's part. He has truthfully disclosed his involvement in the case at the time he filled up the Police Verification Report Form, supported by an affidavit. The fact of disclosure is not disputed by the respondents too. The principles in **Avtar Singh**, also in the opinion of this Court, would not work to mechanically disqualify the petitioner in the manner the respondents have chosen to do.

21. In the result, this writ petition succeeds and is allowed. The impugned order dated 03.02.2023 passed by the Deputy Commissioner of Police, Police Headquarters, Police Commissionerate, Varanasi is hereby **quashed**. A mandamus is issued to the Deputy Commissioner of Police aforesaid to pass fresh orders within three weeks next of the receipt of a copy of this judgment, bearing in mind the guidance here.

22. There shall be no order as to costs

23. Let a copy of this judgment be communicated to the Deputy Commissioner of Police, Police Headquarters, Police Commissionerate,

Varanasi through the Chief Judicial Magistrate, Varanasi by the Registrar (Compliance).

(2024) 10 ILRA 327

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 17.10.2024

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ-A No. 3827 of 2023

Wasi Ahmad ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Brijesh Kumar

Counsel for the Respondents:

C.S.C.

A. Service Law – UP Government Servants (Discipline & Appeal) Rules, 1999 – Rule 7 – GO dated 19.07.2022 & 16.08.2022 – Enquiry proceeding was kept pending for five years – Chargesheet issuing authority and punishing authority is the same person – Effect – Principle of Natural justice and Principle of Bias – ‘One cannot be judge in his own case – Applicability – Held, failure to observe the principle that no person should adjudicate a dispute which he/she has dealt with in any capacity, creates an apprehension of bias – Entire disciplinary proceedings as well as the appeal has been decided contrary to the settled cannons of settled principles of natural justice and was clearly hit by the principles of bias . (Para 11 and 13)

B. Maxim '*nemo debet esse judex in propria causa*' – Meaning – No one can be a Judge in his own cause. (Para 10)

Writ petition allowed. (E-1)

List of Cases cited:

1. A.K. Kraipak & ors.. Vs U.O.I.: AIR 1970 SC 150

2. U.O.I.Vs Naseem Siddiqui; 2004 SCC OnLine MP 678

3. Rattan Lal Sharma Vs Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & ors.; (1993) 4 SCC 10

4. A. U. Kureshi Vs High Court of Guj.; (2009)
11 SCC 84

5. Ashok Kumar Yadav Vs St. of Har.; (1985) 4 SCC 417

6. Mohd. Yunus Khan Vs St. of U.P.; (2010) 10 SCC 539

(Delivered by Hon'ble Alok Mathur, J.)

1...Heard Sri Brijesh Kumar, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. A challenge has been made to the appellate order dated 14.12.2022 passed by the opposite party no. 2- Sri Ajay Kumar Shukla in his capacity as Secretary Election Anubhag, Lucknow Uttar Pradesh rejecting the appeal of the petitioner.

3. It has been contended by counsel for the petitioner that while serving on the post of Senior Assistant in the Office of District Relation Officer/District Magistrate, Amethi departmental proceedings were initiated against the petitioner and he was placed under suspension on 01.09.2017. The Sub Divisional Officer, Gauriganj, District Amethi was appointed as Enquiry Officer. The said Enquiry Officer was, in the meanwhile, transferred and on 11.6.2018, the Deputy District Election Officer, Gauriganj was appointed as the Enquiry Officer. The Deputy District Election Officer, Gauriganj also could not conclude