

the colour of criminality and quite often the accused persons are not even aware of the fact that some criminal proceedings were going on – Further held, we fail to understand as to why a person would try to deprive himself of his job and would not give an information which he possessed. (Para 8)

Special Appeal dismissed. (E-1)

List of Cases cited:

1. Avtar Singh Vs U.O.I. & ors.; (2016) 8 SCC 471
2. Writ A No. 16791 of 2023; Satyendra Singh Vs St. of U.P. & ors. decided on 9.1.2024
3. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. Vs Anil Kanwariya; (2021) 10 SCC 136
4. Ravindra Kumar Vs St. of Uttar Pradesh & ors.; (2024) 5 SCC 264

(Delivered by Hon'ble Siddhartha Varma, J.)

1. In response to an advertisement issued by the Public Service Commission dated 5.3.2021, the petitioner, who was a Scheduled Caste candidate, applied for being appointed on the post of Samiksha Adhikari/Sahayak Samiksha Adhikari in the Central Secretariat of the Public Service Commission/Board of Revenue/office of the Chief Election Officer. In response thereof, the petitioner was allotted a Roll Number being Roll No.217801. After having participated in the examination process, the final result of the selection was published by a press notification dated 20.1.2023 wherein the petitioner was shown as selected as Sahayak Samiksha Adhikari and his name was shown at Serial No.99 of the list of selected candidates. On 19.5.2023, the petitioner was required to fill up a declaration/verification form and was required to be medically examined by the Chief Medical Officer, Sant Ravidas Nagar. In response thereof, the petitioner

submitted his verification form on the prescribed format on 31.5.2023. He was also medically examined on 2.6.2023. After having filled his verification form wherein the petitioner had indicated that no criminal proceeding had been undertaken against him, he shortly thereafter realized his mistake and therefore by an affidavit on 17.7.2023 informed the concerned officials that there was a criminal case which was registered against him by the police as Case Crime No.198/2019 and thereafter was being tried before the Court concerned as Criminal Case No.271/2020. He had also given the details of a Case Crime No.215/2018 in which the petitioner was never charge sheeted. Prior to the filing of the affidavit on 17.7.2023, the result of the petitioner had already been declared on 13.7.2023. When the final appointment order was not being issued, the petitioner had filed various representations and he had also found that on 4.7.2023 the District Magistrate as per the Government Order dated 24.4.1958 had submitted his report that the petitioner be issued a letter of appointment which shall be subject to the decision of the Criminal Case No.271/2020. However, despite the recommendation made by the District Magistrate, on 11.12.2023, the State Government passed an order declining to grant appointment to the petitioner. Aggrieved thereof, the petitioner had filed a writ petition being Writ-A No.817 of 2024. When the writ petition was filed on 26.2.2024, this Court had directed the learned Standing Counsel to seek instructions specially with regard to the filing of the affidavit dated 17.7.2023 which had been as per the petitioner filed by him. The petitioner was also required to file an affidavit submitting the proof of filing of the affidavit dated 17.7.2023. The writ petition was finally heard and decided

by this Court on 5.11.2024 whereby the order dated 11.12.2023 of the Joint Secretary, Secretariat Administration Section-5 (Establishment), Government of Uttar Pradesh, Lucknow was quashed and the petitioner was required to be given an appointment letter. Aggrieved thereof, the State of Uttar Pradesh has filed the instant Special Appeal.

2. Essentially, the Senior Counsel Sri Ajit Singh, learned Additional Advocate General assisted by Sri Sudhanshu Srivastava, learned counsel for the appellant submitted that the very fact that the petitioner-respondent had concealed the information about the pendency of a criminal case was itself indicative of the fact that the petitioner had not come with clean hands and that, therefore, he could not be retained in service as a Sahayak Samiksha Adhikari. Learned counsel for the appellant has submitted that as per the guidelines which the case of **Avtar Singh vs. Union of India & Ors.** reported in **(2016) 8 SCC 471** had provided, the following issues were required to be looked into :-

"a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials—more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. [See Raj Kumar (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a

criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable? "...

3. The above principles which were to be, as per learned counsel for the appellant, made applicable while deciding as to whether a candidate ought to be appointed despite his non-disclosure of criminal cases was further considered in the judgment of **Satyendra Singh vs. State of U.P. & Ors. (Writ-A No.16791 of 2023, decided on 9.1.2024)**. Learned counsel for the appellant further relied upon a judgment of the Supreme Court in **Rajasthan Rajya Vidyut Prasaran Nigam Ltd. vs. Anil Kanwariya : (2021) 10 SCC 136** and heavily relied upon

paragraph 14 of that judgment, which is being reproduced here as under :-

"The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right."

4. By quoting the above paragraph, learned counsel for the appellant submitted that when a particular candidate did not disclose about the pendency of criminal cases or about the criminal cases which had already been decided then the question was about the credibility or trustworthiness of

such an employee who had made a false declaration at the very initial stage of his employment and, therefore, learned counsel for the appellant submits that the petitioner-respondent could not be, therefore, trusted to become an employee of the appellant.

5. Learned counsel for the respondent Sri Siddharth Khare, however, relying upon the judgment of **Avtar Singh (supra)** submitted that in the instant case, the Court had to, as a matter of fact, see what kind of information had been concealed from the employers. He submitted that the suppression of "material information" would pre-suppose that not every suppression would be considered as material. Materials which are extremely technical or are of trivial nature, if are not disclosed then it would not amount to concealment of material information. Since, learned counsel for the petitioner relied upon paragraphs 35 to 38 of the judgment of **Avtar Singh (supra)** the same are being reproduced here as under :-

"35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more

rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarize 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.”

6. Learned counsel for the petitioner while referring to this judgment, also referred to a judgment of the Supreme Court in **Ravindra Kumar vs. State of Uttar Pradesh & Ors. : (2024) 5 SCC 264** and he submitted that non-disclosure of just any and every information would not be a disqualification as it would tantamount to being completely oblivious to the ground realities of our country. He submitted that

each case would depend on the facts and circumstances which would prevail and that the Court would have to take a holistic view and would have to look at every case individually and objectively. Since, learned counsel for the petitioner relied upon paragraph 34 of the judgment, the same is being reproduced here as under :-

"On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant. Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario."

7. Learned counsel for the petitioner-respondent further submitted that in the instant case, the Criminal Case No.215/2018 never saw the light of the day inasmuch as the petitioner was not charge-sheeted after investigation. However, with regard to Case Crime No.198/2019 which was tried as Criminal Case No.205/2020 under sections 147, 323, 504, 506 and 325 IPC was in fact a case which was absolutely of a civil nature and it had only been given a colour of criminality. He submitted that even if the averments made in the FIR were seen, they went to indicate that it was with regard to the damaging of some boundary wall and the accused

therein had been alleged to have beaten the complainants and had also abused them. Learned counsel for the petitioner, therefore, stated that there was every possibility that the petitioner, who was a lay man and was not very abreast with the laws of the land, had thought that it was only a civil case which was going on. To bolster his argument, learned counsel for the petitioner had stated that since the case was under very minor sections i.e. under sections 147, 323, 504, 506 IPC to begin with and that only after investigation the section 325 IPC was added, the petitioner had in fact never remained in jail and that he was without being arrested released on bail. Learned counsel for the petitioner stated that in our country in the villages, small scuffles do keep on taking place and they, though are given the colour of criminality, are of such a nature that the parties continue to believe that they were only civil cases. Learned counsel for the petitioner-respondent has also submitted that there was also a compromise entered into on 19.2.2024 and the petitioner in fact must have been under the mistaken belief that actually a civil case, because of the compromise, would come to an end. Learned counsel for the petitioner also submitted that even if the judgment in the Criminal Case No.271/2020 was seen, it would become apparent that there was absolutely no evidence against the petitioner and the other co-accused and in fact the PW-1, he submits, though in his examination-in-chief had supported the version of the FIR but during the trial he had categorically stated that there was only verbal altercation and thereafter in the dark when a wild animal went past the place where the accused and the complainants had collected, there was a bit of confusion and, therefore, the PW-1 had fallen down and had received a head injury. Learned

counsel for the petitioner, therefore, submitted that the case of the petitioner was squarely covered under paragraph 38.4.1 of the judgment of **Avtar Singh (supra)** inasmuch as the incident which had given rise to the criminal case had in fact been understood to be of a purely civil nature. He submits that the petitioner had in fact thought that there was a compromise also in the case and that compromises took place in only civil cases. Learned counsel for the petitioner also submitted that since the prosecution/complainants were not pursuing the case very aggressively, the petitioner who was a rustic villager and belonged to scheduled caste, was under the impression that in fact some civil litigation was going on. Learned counsel for the petitioner still further relying upon the judgment of **Ravindra Singh (supra)** submitted that since the petitioner belonged to rural background, it was not expected of him to give every detail of the case which he actually thought was of a civil nature. He further submits that apart from the fact that the petitioner was always under the impression that there was a civil case, the incident was of a very trivial nature. Learned counsel for the petitioner also stated that when after having consulted certain people of the village, the petitioner had realized that the case was in fact to be declared as a criminal case then he had filed an affidavit on 17.7.2023 declaring that he had been implicated in certain criminal cases. He also submits that with regard to the filing of the affidavit also there was no denial and that it was never considered before the passing of the impugned order.

8. Having heard learned Senior Counsel for the appellant Sri Ajit Kumar Singh assisted by Sri Sudhanshu Srivastava and learned counsel for the respondent-

