

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**WRIT - A NO. 12055 OF 2024**

Baba Singh .....Petitioner

Versus

State of U.P. and others .....Respondents

**Appearance :-**

**For Petitioner** : Mr. Chandan Sharma, Advocate

Mr. Vinit Kumar Sharma, Advocate

**For Respondents** : Ms. Monika Arya, Additional  
Chief Standing Counsel for the State

**HON'BLE J.J. MUNIR, J.**

This writ petition is directed against an order of the Chief Engineer, Minor Irrigation Department, U.P., Lucknow dated 16.02.2024, rejecting the petitioner's representation dated Nil (received on 15.01.2024), in compliance with the orders of this Court dated 08.01.2024 passed in Writ - A No. 21694 of 2023, requiring the Chief Engineer to consider the petitioner's claim for appointment, already denied on ground of pendency of a criminal case against him.

2. A notice of motion was issued by a detailed order on 12.08.2024, in response where to, a personal affidavit has been filed by the Chief Engineer, Minor Irrigation, U.P., Lucknow, respondent No. 3. Another personal affidavit dated 24.08.2024 has been filed by the District

Magistrate, Mirzapur, respondent No. 2. Both these affidavits shall be read as counter affidavits in the writ petition.

3. Ms. Monika Arya, learned Additional Chief Standing Counsel, forgoes her right to file any further counter affidavit, whereas Mr. Chandan Sharma, learned Counsel for the petitioner, waives his right to file a rejoinder.

4. Parties have exchanged affidavits.

5. Admit.

6. Heard forthwith.

7. Heard Mr. Chandan Sharma, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel appearing for the State-respondents.

8. An advertisement, being Advertisement No. 06-Exam/2019 for the post of an Assistant Boring Technician was issued by the Uttar Pradesh Subordinate Services Selection Commission, Lucknow, which was published on 13.08.2019 for the recruitment of Assistant Boring Technicians in the Minor Irrigation Department of the State. Selections to the post of Assistant Boring Technician were to be made through an examination called the Assistant Boring Technician (General Selection) Competitive Examination, 2019. The petitioner, being eligible for the position of an Assistant Boring Technician, applied for it. The Uttar Pradesh Subordinate Services Selection Commission, Lucknow<sup>1</sup> issued an admit card to the petitioner, inviting him to participate in the competitive examination.

9. The petitioner appeared in the examination conducted by the Commission on 03.07.2022. The result of the examination was declared,

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1 'Commission' for short

wherein, admittedly, the petitioner turned out successful, standing at Serial No. 108 of the Select List published by the Commission. The petitioner was called for verification of his documents, but, when he appeared for the purpose, he was denied issue of an appointment letter on the ground that there was a criminal case pending against him, wherein, a summoning order had been passed. The case was said to be a complaint case under Sections 498A, 323 of the Indian Penal Code, 1860<sup>2</sup> and Section 4 of the Dowry Prohibition Act, 1961<sup>3</sup>, Police Station Chunar, District Mirzapur, pending in the Court of the Judicial Magistrate at Mirzapur. The petitioner has averred in paragraph No. 11 of the writ petition that he was unaware of the pendency of the aforesaid criminal case until time when the summoning order was passed and served upon him.

10. Despite request, when the petitioner was not considered for appointment by the respondents, he instituted Writ - A No. 21694 of 2023, praying that a *mandamus* be issued, directing the respondents to consider the petitioner's candidature for appointment as an Assistant Boring Technician, based on the result of his selection. This Court disposed of that writ petition by means of an order dated 08.01.2024, permitting the petitioner to submit a fresh representation, ventilating all his grievances before the Chief Engineer, Minor Irrigation Department within a period of two weeks from the date of the order, along with a certified copy thereof. The Chief Engineer was ordered to decide the petitioner's representation strictly in accordance with law, preferably within a period of six weeks from the date of the petitioner lodging the requisite representation before the Chief Engineer, last mentioned.

11. In compliance with this Court's order dated 08.01.2024, the petitioner preferred a representation along with a certified copy of the

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2 'IPC' for short

3 'Act of 1961' for short

order dated 08.01.2024 before the Chief Engineer. The Chief Engineer proceeded to reject the petitioner's representation on the ground that a criminal case under Sections 498A, 323 IPC and Section 4 of the Act of 1961, being Complaint Case No. 4792 of 2021, is pending before the Judicial Magistrate. The impugned order dated 16.02.2024 was communicated to the petitioner *vide* a letter dated 18.03.2024 issued by the Executive Engineer, Minor Irrigation Department, Lucknow.

12. It is the petitioner's case pleaded in paragraph No. 14 that at the time he made his application for the post in question, no criminal case was registered against him and he was unaware of the complaint case aforesaid. He came to know about the aforesaid criminal case after the summoning order was passed and summons were served upon him. The petitioner got to know that his elder brother's father-in-law, Babau Singh, had filed a criminal complaint, implicating the entire family, apart from his brother, on charges of mentally and physically harassing his daughter in connection with demand of dowry. There were allegations about pressure upon the complainant's daughter to get her father to buy a four-wheeler for her husband, failing which, she would be beaten and thrown out of the house. It was also said in the complaint that the prosecutrix's brothers-in-law would pressurize her to transfer her share in the ancestral property in their favour, since she did not have a brother. What was filed on these allegations as an application under Section 156(3) of the Code of Criminal Procedure, 1973, seeking a direction to the Police to register and investigate a case was proceeded with as a complaint by the learned Magistrate, registering it as Complaint Case No. 4792 of 2021 on the file of the Chief Judicial Magistrate, Mirzapur. A summoning order came to be passed by the Judicial Magistrate, Fast Track Court, Crime Against Women, Mirzapur on 22.11.2022. It was on the basis of the aforesaid summoning order that the petitioner's appointment was declined, with a refusal to issue a letter of appointment in his favour. It was at this stage

that the petitioner moved this Court for a direction to consider his case for appointment in accordance with his selection by the Commission, by filing a writ petition, being Writ - A No. 21694 of 2023, which was disposed of with a direction to make a fresh representation to the Chief Engineer in the terms already indicated. The petitioner's representation to consider his case for appointment having been rejected by the Chief Engineer, Minor Irrigation, he has instituted the present writ petition under Article 226 of the Constitution.

13. In the meantime, in a related development, the petitioner has challenged the entire proceedings of Complaint Case No. 62 of 2022, Babau Singh v. Suraj Kumar Singh and others, under Sections 498A, 323 IPC and Section 4 of the Act of 1961, Police Station Chunar, District Mirzapur, including the summoning order dated 22.11.2022 by means of Application U/S 482 No. 17829 of 2024. This Court *vide* order dated 28.05.2024, has issued notice to the complainant-opposite party and stayed further proceedings in the complaint. This Court, in the Application under Section 482 last mentioned, proceeded on ground that the petitioner has been implicated on the basis of general allegations, which had prejudiced him in the terms that he was not appointed to the post of an Assistant Boring Technician in the Irrigation Department, to which he had earned a selection through a public examination.

14. A perusal of the impugned order shows, for one, that it is riddled and clogged with unnecessary details. Leaving that aside, the order shows that the petitioner has been denied his appointment on the ground of pendency of the complaint case against him before the learned Magistrate, a fact that was verified. Upon a reference of the matter to the District Magistrate, Mirzapur, he, by his letter dated 17.11.2023 based on the confidential report of the Superintendent of Police, Mirzapur, did not verify the petitioner's character, for the reason alone that a complaint case

was pending against him for offences punishable under Section 498A IPC etc.

15. In the personal affidavit that has been filed by the District Magistrate, Mirzapur, it is averred in paragraphs Nos. 6 to 9 thus :

6. That it is submitted that in the list appended with letter dated 25-09- 2023 of the Chief Engineer, Minor Irrigation, Division, Lucknow, a letter dated 06.10.2023 was sent to the Superintendent of Police, Mirzapur to get character and previous verifications of the names of candidates belonging to District Mirzapur, mentioned in Sl. No. 8,15,19,22,27,29,32, 33, 41, 46, 55, 71, 75, 82, 85, 88, 91,95,104,114,135,142, 145, 148, 150, 161,177,179, 180, 190, 192,209,225, 227,228,230, 279,306,323,385 and 436, in which petitioner's name find mention at Sl. No. 150. True select list of District Mirzapur is being annexed herewith and marked as **Annexure-P.A. -1** to this affidavit.

7. That in pursuance of aforesaid communication, in respect of petitioner, the Superintendent of Police, Mirzapur vide his report dated 16.11.2023 coupled with report of Inspector In-Charge P.S. Chunar, District Mirzapur dated 22.10.2023 has mentioned that VR is not recommended. True copy of report of Superintendent of Police dated 16.11.2023 along with report of Inspector In-Charge P.S. Chunar, District Mirzapur dated 22.10.2023 are being annexed herewith and marked as **Annexure-P.A. -2** to this affidavit.

8. That thereafter, the report obtained from Superintendent of Police, Mirzapur and has been provided to Executive Engineer, Minor Irrigation Division, Mirzapur vide letter dated 17.11.2023. True copy of letter dated 17.11.2023 is **being annexed herewith and marked as Annexure-P.A. -3** to this affidavit.

16. The memo dated 17.11.2023, addressed by the District Magistrate, Mirzapur to the Executive Engineer, Minor Irrigation Department, Mirzapur, says nothing about the suitability or character verification of the petitioner, but reads as follows :

कृपया उपर्युक्त विषयक आपके पत्रांक सं०-776/ल०सि०/स्था०-1/स०बो०टे०-सत्या०/2023-24 दिनांक 04.10.2023 के सन्दर्भ में अवगत कराना है कि उक्त अभ्यर्थी के चरित्र एवं पूर्ववृत्त के सत्यापन के सम्बन्ध में पुलिस अधीक्षक मीरजापुर से गोपनीय जांच करायी गयी। उन्होंने अपने वी०आर०सं०-

1163 दिनांक 16.11.2023 द्वारा जांच आख्या मूलरूप से थाने की रिपोर्ट के साथ इस कार्यालय को प्रेषित किया है।

अतः पुलिस अधीक्षक मीरजापुर की जांच आख्या दिनांक 16.11.2023 एवं आप द्वारा प्रेषित किये गये समस्त अभिलेख मूल रूप में संलग्न कर प्रेषित है।

17. This letter of the District Magistrate is based on a report of the Station House Officer, Police Station Chunar, District Mirzapur, addressed to the Superintendent of Police, Mirzapur, the contents whereof read :

सविनय निवेदन है कि VR1163 के आवेदक बाबा सिंह S/o अमरनाथ सिंह R/o सिरसी कंठवा थाना चुनार मीरजापुर के सम्बन्ध में जाँच किया गया तथा थाना हाजा के रजि० नं० 8 रजि० नं० 4 अन्य सभी अभिलेख व अन्य स्रोत से जानकारी की गयी तो पाया गया कि उपरोक्त आवेदक के विरुद्ध परिवार संख्या, 4792/2021 ववऊ सिंह वनाम सुरज कुमार सिंह मा० न्यायालय मुख्य न्यायिक मजिस्ट्रेट मीरजापुर के न्यायालय में विचाराधीन है। VR की संस्तुति नहीं की जाती है।

रिपोर्ट सादर सेवा में प्रेषित है।

18. The report submitted to the Police Station Chunar by the Office of the District Crime Records Bureau, is a short report dated 14.11.2023, which says :

रिपोर्ट कार्या०डीसी आरबी मीरजापुर

महोदय,

जनपद के समस्त थानों से आख्या प्राप्त की गयी। आवेदक बाबा सिंह के विरुद्ध परिवार संख्या 4792/2021 मा० न्याया० मुख्य न्यायिक मजिस्ट्रेट मीरजापुर में विचाराधीन है।

रिपोर्ट सेवा में प्रेषित है।

आर० नं० 1163 दि० 16/11/23

ह० अप०

मूल रूप से थाने की रिपोर्ट के

14/11/23

साथ प्रेषित।

कार्यालय

ह० अप०

डी०सी० आर० बी०

पुलिस अधीक्षक

मीरजापुर

मीरजापुर

19. Apart from the wider question if for being summoned in a complaint case under Sections 498A, 323 IPC and Section 4 of the Act of 1961, arising out of a matrimonial dispute between a candidate's brother and his wife, should he at all be denied public employment, the other related question would be, if the report submitted by the District Magistrate at all refuses to verify the petitioner's character or finds him unfit for public employment. This Court proposes to answer the second question first.

20. Relating to the issue of verification, before a person is appointed to a service under the Government, 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.

21. A reading of this order shows that the entire purport is to verify if indeed, a person seeking appointment is a man of criminal antecedents, unsuitable for appointment to a post under the Government. It is for this reason that there is provision for the District Magistrate to report his own views to the Appointing Authority, after receiving reports from the Police, the Crime Investigation Department (CID) or the Local Intelligence Unit (LIU), whoever are to report on the antecedents of the candidate. The District Magistrate, therefore, is not to act as a Post Office and forward whatever the Police have reported, to the Appointing Authority. Here, this Court notices that whatever report was received by the Station House Officer of the police station concerned, from the Office of the District Crime Records Bureau, was communicated to the Senior Superintendent of Police of the district, and, in turn, to the District Magistrate. The District Magistrate, in his memo dated 17.11.2023, has not expressed any opinion if he thought that on the basis of the complaint case pending against the petitioner, he was a man of criminal antecedents, unsuitable for employment under the State. He has just reported the fact that a complaint case is pending against the petitioner and nothing more. This is certainly not what is required of the District Magistrate under the Government Order dated 28.04.1958, while making his recommendations to the Appointing Authority in the matter of suitability of a candidate for appointment to public service, based on criminal antecedents, if any, coming to his notice.

22. We are, therefore, of opinion that the District Magistrate has failed to discharge his duties in the present case under the Government Order dated 28.04.1958. This fact the District Magistrate has virtually acknowledged in paragraph No. 9 of his personal affidavit, where he has

said that no representation was submitted before him either by the petitioner or the Chief Engineer, and, therefore, the District Magistrate did not pass any order regarding cancellation of the petitioner's character verification. These assertions in paragraph No. 9 are rather clumsily-worded and are an expression of the District Magistrate fumbling in his words, realising that he has failed to do his duty under the Government Order dated 28.04.1958. After all, what was required of the District Magistrate, when the matter was referred to him by the Appointing Authority, was to verify the antecedents of the petitioner, like the other candidates. It did not require a representation by the petitioner or the Chief Engineer before the District Magistrate for him to give his opinion about the suitability of the petitioner for appointment under the State Government, based on his criminal antecedents. The District Magistrate has, therefore, clearly failed in his duty under the Government Order last mentioned.

**23.** This brings us to consider the first and wider question, in the manner if this is a case where the petitioner ought be denied employment, because his brother and brother's wife have had a matrimonial dispute, leading the wife to institute a complaint case for offences punishable under Sections 498A, 323 IPC and Section 4 of the Act of 1961 against the entire family of her husband, including the petitioner, her husband's brother? The purpose of the policy behind the Government Order dated 28.04.1958 and the subsequent orders is to ensure that no man with criminal antecedents enters government service. It is never the purport of the Government Orders on the subject or the service rules to keep all respectable and deserving men of the society out of public employment, merely because they have had in life the accident of being complained to the Police or the Court in connection with a crime that is either not heinous in itself or more of an implication in some statutorily created offence, owing to prevalent conditions in the society. In matters of public

employment, one cannot close eyes to the harsh social reality that matrimonial bickerings very often spill over to allegations of offences punishable by law to protect women in their matrimonial home. Some of these offences can be serious, like dowry death, and others not so serious, like, cruelty in the matrimonial home, or a case of mere dowry demand, punishable under Section 498A IPC or Section 3/4 of the Act of 1961. In a case of the latter kind, it would all depend upon the allegations and the complicity of the person. Besides, it could also depend upon the nature and stage of proceedings taken, related to the offence. Given the social conditions prevalent in society, while women do become victims of cruelty in their matrimonial homes, it is equally true, and by now, judicially acknowledged, that for slight or no infraction, the entire family of the husband is either reported to the Police or brought before the criminal Court by a disenchanted wife or her relatives, alleging cruelty. Should in a case like this, a candidate selected for his merit through a public examination, who otherwise has a clean image and is part of the mainstream society, be banished from the privileges of public employment?

**24.** Public employment is a fast moving process, the chances to secure which, denude with age. It is not that a candidate selected for appointment to a public service can forgo his chance, await his trial for years, which may lead to nothing, and then regain his employment at a much later point of time. He may either not be selected at all, or turn overage by time the criminal proceedings reach a terminus. This is not a case where the petitioner suppressed any information from the employers. In fact, when the petitioner applied and was appointed, the complaint was not pending, and, in any case, he had not been summoned. The complaint and the summoning came after the petitioner had applied for the post in question. Also, it has to be borne in mind that apart from the particular kind of offences arising out of matrimonial disputes, for trivial offences also,

public employment is not to be denied. Reference, in this connection, may be made to the decision of the Supreme Court in **Commissioner of Police and others v. Sandeep Kumar**<sup>4</sup>. The facts in **Sandeep Kumar** (*supra*) as they appear in the report, read :

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.

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4 (2011) 4 SCC 644

25. Their Lordships, while upholding the relief granted by the High Court to the candidate seeking employment in the Police in **Sandeep Kumar**, held :

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.

26. On the same issue is **Ram Kumar v. State of U.P. and others**<sup>5</sup>, which too was a case related to Police service. There, the candidate, seeking recruitment, had a criminal case against him, of which, he was acquitted. In **Ram Kumar (supra)**, 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

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5 (2011) 14 SCC 709

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.

27. What this Court, therefore, wishes to emphasize is that the Appointing Authority, the Chief Engineer, has to carefully consider if for an offence arising out of a soured marriage between the petitioner's brother and the latter's wife, the petitioner is to be denied public employment mechanically. We do not think so. The Chief Engineer has precisely done that and denied appointment mechanically, because a complaint case was reported to be pending against him by the District Magistrate and the Superintendent of Police, Mirzapur with an equally mechanical approach. The Chief Engineer did not consider at all, if, on a reading of the accusation and the evidence, any kind of complicity for the petitioner was disclosed or did it show the petitioner to be a man of criminal antecedents. In the facts that appear, this Court is of opinion that the material does not show the petitioner to be a man of criminal antecedents at all. Rather, it shows him to be an unfortunate victim of an accusation, which we do not intend to say is false, but, at the same time, not serious enough to deny him public employment, which he has earned for himself through the process of public recruitment. There has to be a different thinking about offences of the kind involved here, and these certainly cannot be carried to a level where public employment is denied, because a complaint case is filed on allegations of cruelty and demand of dowry by the candidate's brother's wife.

28. We have perused the complaint filed in this case, and that too does not show any particular or damning allegation against the petitioner,

except a general imputation against all in-laws of the complainant's daughter, that is to say, the petitioner's brother's wife. In this connection, reference may be made to the guidelines laid down by the Supreme Court in **Avtar Singh v. Union of India and others**<sup>6</sup>. The principles there have been summarised 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

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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.

**29.** Going by the principles enumerated in **Avtar Singh**, this Court must hold that this is not a case of any kind of suppression on the petitioner's part. He was not at all involved in the offence, when he applied for the post in question, or, may be, until time that he was selected. The

complaint, and certainly the summoning order, came later on. This fact is not disputed also by the respondents and they do not attribute any suppression about pendency of the case to the petitioner. The principles in **Avtar Singh** also, in the opinion of this Court, would not countenance the conclusions reached by the Chief Engineer in the order impugned. This is a case, given the nature of allegations and the offence, besides the nature of proceedings taken, which is a complaint case against the petitioner, who is the brother of the prosecutrix's husband, with no specific role assigned to him in the commission of the offence, where, appointment ought not have been denied. We are of considered opinion that the petitioner's case ought to be considered for appointment.

30. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 16.02.2024 passed by the Chief Engineer, Minor Irrigation Department, U.P., Lucknow, is hereby **quashed**. A *mandamus* is issued to the Chief Engineer to consider the petitioner's case for appointment to the post of Assistant Boring Technician in accordance with the recommendations of the Selection Commission within a month of receipt of a copy of this judgment and pass appropriate orders within the said period of time.

31. There shall be no order as to costs.

Allahabad

September 30, 2024

I. Batabyal/NSC

(J.J. MUNIR, J.)

Whether the order is speaking : Yes

Whether the order is reportable : Yes