

---

**(2011) 09 UK CK 0045**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/S) No. 792 of 2009**

Mukesh Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

---

**Date of Decision : 13-09-2011**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 206, 253

Penal Code, 1860 (IPC) — Section 294, 325, 34

Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 — Section 3, 9

**Citation : (2012) 1 UC 480**

**Hon'ble Judges : Sudhanshu Dhulia, J**

**Bench : Single Bench**

**Advocate : Navnish Negi, for the Appellant; Anil Bisht, Brief Holder for the State of Uttarakhand, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

Hon'ble Sudhanshu Dhulia, J.—Heard Mr. Navnish Negi, Advocate for the petitioner and Mr. Anil Bisht, Brief Holder for the State of Uttarakhand. The petitioner was selected as a constable in Uttarakhand police on 1.6.2009. He had to undergo training. While he was under training in the month of June/July, 2009, an impugned order dated 3.7.2009 was passed by Superintendent of Police, Paur Garhwal, Dehradun which the services of the petitioner were terminated on the grounds that his appointment was subject to verification of his papers and his character. During the inquiry, it was found that a case was registered against the petitioner being Case Crime No. 142 of 2001 u/s 3/9 of Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 (from hereinafter referred to as "1998 Act") and he was punished by the Judicial Magistrate (First) Srinagar vide order dated 19.7.2001 and a fine of Rs. 500/- was imposed upon him. This fact was not disclosed by the petitioner while giving his particulars for the appointment and as such his services were terminated. It is this order which has been challenged by the petitioner in this writ petition.

2. The petitioner admits that he was convicted u/s 3/9 of 1998 Act. The law under which the petitioner was convicted and sentenced is a law relating to the State of Uttar Pradesh which was inter alia to prevent use of unfair means in public examinations and to provide for matter connected therewith and incidental thereto. It is admitted by the petitioner that he was writing intermediate examination in Srinagar, Pauri Garhwal where he was caught using unfair means and petitioner further states that at the relevant time he was in the Indian Army. He was though not arrested, and returned back to his duties in his Army Unit. The petitioner states that this nature of offence under which he was charged has to be disposed of by way of summary proceedings and it is an offence of a petty nature. A summon u/s 206 read with Section 253 of Cr.P.C. -was received by his father at his native village and consequently a lawyer was engaged and fine of " 500/- was deposited and the matter come to an end. Of this matter, the petitioner was not even having knowledge that he has been charged and the matter has now come to an end.

3. The petitioner was serving in the Indian Army and retired in the year 2005. Thereafter he appeared in an examination in Uttarakhand Police and he was selected. In the inquiry, it was found that he was actually charged, as already referred above, and therefore his services were now come to an end for this.

4. The petitioner has relied upon a decision of Hon"ble Apex Court in his favour namely Pawan Kumar Vs. State of Haryana and another, where the facts of the case are that the petitioner was appointed on 19.4.1978 on Class IV post in Government Service. Thereafter while he was on the said post, he was charged and later on convicted by Chief Judicial Magistrate, Bhiwani u/s 294 IPC. Consequently in the year 1984 the matter for regularisation of the petitioner was to be considered. Since the petitioner was being convicted u/s 294 IPC he was not fit for public employment and his services were terminated on 30.9.1984. Consequently the petitioner filed a suit challenging his termination order which was dismissed. Thereafter this order was upheld in the First Appeal as well as in the Second Appeal by the; High Court. All these orders were set aside by the Hon"ble Supreme Court.

5. In the aforesaid matter, the grounds that conviction of a person u/s 294 on its own would not involve moral turpitude depriving him the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirement of the policy decision above-quoted. The Hon"ble Supreme Court held as under:-

14. Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary Courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a

conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs. 2,000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service. This can brook no delay, whatsoever.

6. Section 294 of Indian Penal Code reads as follows:-

294. Obscene acts and songs-

Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description of a term which may extend to three months, or with fine, or with both.

7. The petitioner has also relied upon another decision namely Commr. of Police and Others Vs. Sandeep Kumar, . In the said case like in the present case a person while seeking appointment as a constable did not disclose the fact of his having been convicted u/s 325/34 IPC and therefore his services were terminated.

8. In a writ petition, termination order was set aside by Delhi High Court. In appeal the judgment of Delhi High Court was upheld but the Hon"ble Supreme Court gave its own reasoning while upholding the said order stating that 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. As already observed above, youth often commit indiscretions, which are often condoned. It is true that in the application form the respondent did not mention that he was involved in a criminal case u/s 325/34, I.P.C. Probably he did not mention this out of fear that if he did so he would automatically be disqualified"".

9. The Hon"ble Apex Court in the aforesaid judgment observed as under:-

12. 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."

10. In view of the above, decision and also considering the peculiar facts and circumstances of the case, where it cannot be said by any degree of reasonableness received that petitioner while being employed in the armed forces was even conscious of his being charged and the later on sentenced of an offence punishable u/s 3/9 of 1998 Act, benefit of doubt is also liable to be given to him. Therefore not only that the petitioner was charged of a petty offence, but this Court is also of the view that it can be said by certain degree of reasonableness that the petitioner was not aware of being charged for such an offence. The Court therefore is inclined to take a view in favour of the petitioner.

11. Learned counsel appearing for the State Mr. Anil Bisht though has relied upon a decision of this Hon"ble Supreme Court namely R. Radhakrishnan Vs. Director General of Police and others reported in (2008) 1 SCC 660 where the Hon"ble Supreme Court has held that in the similar circumstances when material facts were not disclosed the appointment was liable to be terminated. In the said case appointment was taken without disclosing the fact that he was charged u/s 294 (b) of I.P.C. In the aforesaid decision, the Court was of the view that :-

10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been adopted.

12. Undoubtedly the above two decisions hold different view on rather similar situation. In the present case, however, this Court is inclined to apply the ratio of Hon"ble Apex Court in Commr. of Police and Others Vs. Sandeep Kumar, for the simple reason that for the petty offence which the present petitioner has conducted i.e. use of unfair means in the examination and the fact that he was charged and punished for such an offence (by way of a fine of "500/-) was not even in his knowledge, as stated by him. This Court is inclined to grant a benefit to the petitioner on this score for the simple reason that even a lawyer engaged by an accused is entitled to deposit the fine in such petty offences. Therefore the presumption can very well be drawn in favour of the petitioner that these summons were received at his native place by his parents who engaged a lawyer and thought it better to finish the matter by paying fine, which was not in the knowledge of the petitioner as he was in the armed force service at the relevant time.

13. The writ petition therefore succeeds. The order dated 3.7.2009 is set aside. However in the peculiar facts and circumstances of the case the petitioner shall not be given the back wages. It is made clear that petitioner shall be treated to be in continuous service for all practical purposes. No order as to costs.