

**(2004) 10 AHC CK 0015**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 29245 of 2003

Rakesh Kumar

APPELLANT

Vs

State of U.P., Director General of Police, Additional Director  
General and Commandant 15th Battalion

RESPONDENT

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**Date of Decision :** 26-10-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 132, 147, 148, 253, 506

**Citation :** (2005) 5 AWC 4339

**Hon'ble Judges :** Shishir Kumar, J

**Bench :** Single Bench

**Advocate :** Ashok Khare, V.D. Chauhan and V.K. Singh, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Shishir Kumar, J.—By means of this petition the petitioner has challenged the order-dated 6.6.2003 by which the Commandant 15 Battalion, P.A.C. Agra, has cancelled the selection of the petitioner. The facts arising out of the present petition are that the Deputy Inspector General of Police (Establishment), U.P. Police Headquarter, Allahabad issued an advertisement inviting applications for recruitment of 2200 male constables for Provincial Armed Constables in the State of U.P. The said advertisement was published in Newspaper "Amar Ujala" on 1.9.2001. It has been alleged in the writ petition that as the petitioner was fully qualified and was eligible, in pursuance of the aforesaid advertisement, he appeared in the physical test which was held between 5.9.2001 to 1.10.2001, and the petitioner was declared qualified. After that a written examination was held on 9.11.2001 and the petitioner was declared successful and qualified the test. Subsequently, in the interview the petitioner also participated and the final select list was published in the first week of December 2001 in which the petitioner was also amongst the selected candidates. It is the case of the petitioner that despite completion of the aforesaid selection process, no appointment letter was issued him. It appears that on the basis of some

radiogram and the interim order granted by the Supreme Court in Writ Petition No. 4882 of 2001, the appointments were withheld. Subsequently, in pursuance of the judgment dated 6.2.2002 the State Government issued a Government order in the month of April 2003 directing the implementation of the said judgment and granting the appointment though the selection proceedings were completed in 2001. As no appointment order was issued to the petitioner, instead of issuing of the appointment order in favour of the petitioner, an order was passed cancelling the selection of the petitioner by the Commandant 15 Battalion, Agra on 6.6.2003. Copy of the said impugned order is annexure 4 to the writ petition.

2. From the perusal of the order it is clear that the order dated 6.6.2003 has been passed taking into consideration that the petitioner who has filed an affidavit, has not stated the fact regarding pendency of any criminal proceeding. The challenge of the impugned order, by the petitioner is on the ground that the orders by the authorities concerned have been passed in an arbitrary manner without any notice and opportunity to the petitioner.

3. The Standing Counsel was granted time to file counter affidavit and a detailed counter affidavit was tiled and the rejoinder affidavit was exchanged. With the consent of the parties, the writ petition is being disposed of finally.

4. The contention of the petitioner is that he was selected in the selection and his name was included in the select list and, therefore, without any opportunity or notice, his selection cannot be cancelled and as the order has been passed without an opportunity to the petitioner therefore, the same is liable to be quashed.

5. I have heard Sri Ashok Khare, Senior Advocate on behalf of the petitioner and the learned Standing Counsel and have perused the record. There is no dispute to this effect that the petitioner was selected in the selection proceedings but at the time of interview, he was to submit an affidavit stating certain facts and has to give certain declarations. In the said affidavit filed on behalf of the petitioner the petitioner has not stated the fact that any criminal case is pending against him. Subsequently, it has been found that a criminal case as Case Crime No. 93 of 1997 under Sections 147/148/132/253 and 506 I.P.C. was pending against the petitioner at station Phaphund, district-Auraiya. As the petitioner has not disclosed the aforesaid fact, therefore, the selection of the petitioner has been cancelled. The petitioner submits that the criminal case which was pending against him. He has already been acquitted vide its order dated 26.6.2003 passed by judicial Magistrate, Auraiya. Therefore, in view of the aforesaid fact, he is entitled for appointment and the action of the respondent is wholly arbitrary.

6. The learned counsel for the petitioner has placed reliance on the case of *Qamrul Hoda v. Chief Security Commissioner, N.E. Railway, Gorakhpur* (reported in (1997) II UPLBEC 1201. In this case, the single Judge has held that the petitioner who was selected for recruitment as R.P.F. constable and not sent for

training because of his involvement in two criminal cases, subsequently, it has been found that he has been acquitted and he is entitled for training and appointment.

7. The learned Standing Counsel appearing on behalf of the has clearly stated that in the affidavit in which a declaration was to be given by the petitioner, the petitioner concealed this fact that any criminal case was pending against him. In Clauses 11 and 12 of the said affidavit it has clearly been stated that if any declaration made by the; person concerned is found to be incorrect, then his selection can be cancelled without any notice. In view of the aforesaid fact, the Standing Counsel submits that, as the petitioner has not declared regarding the pendency of the case deliberately and gave a false declaration, therefore, he is not entitled for any relief and the petition is liable to be dismissed.

8. The present controversy regarding giving a false declaration at this time of consideration of appointment is settled by the Apex Court as well as a revision, Bench of this Court. In one of the judgements reported in Judgment Today 2003 (2) SC 256, *Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav*, the Supreme Court has clearly held that false declaration regarding involvement in a criminal case in attestation for obtaining employment is fatal. In the present case also for the purpose of appointment the petitioner has given a false declaration. The Supreme Court has observed that if it is found that a declaration given by the person concerned is found false, then the selection and appointment cancelled.

9. In the case of *Delhi Administration through its Chief Secretary and Ors. v. Sushil Kumar* reported in 1997 Supreme Court Cases (Labour and Service) 492 also the Supreme Court has held that if a person is found physically fit and passed the written and, interview examination and provisionally selected for the post of constable in police service that is subject to verification of the Character of the said person. If ultimately it is found that he is involved in some criminal case and this fact has not been disclosed, then his selection can be cancelled. The Supreme Court has also held that "It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit passed the written test and interview and was provisionally selected on account of his antecedent record, the appointing authority found it not desirable to a person of such record as a Constable to the disciplined force." In another judgment in Special Appeal No. 1075 of 2002 a Division Bench of this Court while considering a similar type of controversy has clearly held that non disclosure of any pendency of a criminal case is fatal and the service of that person can be terminated if it is found that the has not declared the pendency of the criminal case against him. The Division Bench of this Court in Special Appeal No. 578 of 2003, *Krishna Chand Chaurasia v. Union of India and Ors.* reported in 2004 (2) Education and Service Cases 1022 while considering a similar type of controversy, has held that as the petitioner gave a false declaration while applying for his recruitment as a constable, the judgment and order passed by

the single Judge dismissing the writ petition is wholly justified in not exercising the extra ordinary jurisdiction of judicial review under Article 226 of the Constitution of India. In another case of the Division Bench of this Court In Rajesh Yadav v. Union of India, in 2002 (5) Education and Service Cases 140 the Division Bench also took a similar view. In that case the applicant was appointed but subsequently, it was found that in the declaration form he had given a false declaration and had not disclosed this fact that any criminal case was registered against him, as such he was dismissed from service. Aggrieved by the aforesaid order he filed a petition here and the writ petition was dismissed and subsequently special appeal was also dismissed holding therein that the order passed by the authority concerned is correct and as a person, while entering into service, has given a false declaration that led to his character and morale, therefore, he is not entitled to remain in service.

10. Taking into consideration the aforesaid decisions, I am of view that the petitioner is not entitled for any relief as it is apparent that he had not disclosed the fact regarding pendency of the criminal case and if ultimately he has been acquitted, this will not give any benefit to the petitioner.

11. In the result, the petition is devoid of any merit and is hereby dismissed. There shall be no order as to costs.