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**(2008) 04 AHC CK 0160**  
**In the Allahabad High Court**  
**Case No : Writ Petition No.5240 (S/S) of 2007**

Rama Shanker Yadav

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

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**Date of Decision :** 04-04-2008

**Acts Referred:**

**Citation :** (2008) 04 AHC CK 0160

**Hon'ble Judges :** V.K.Shukla, J

**Final Decision :** Disposed Of

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## Judgement

V.K. Shukla, J.—Petitioner has filed present writ petition questioning the validity of the order 7.8.2007 passed by Superintendent of Police, Ambedkarnagar, dispensing with the services of the petitioner on the ground of wrong declaration being furnished by the petitioner.

2. Brief background of the case is that petitioner was recruited as Constable on 17.11.2006 at Police Lines, Faizabad and thereafter petitioner was deputed at Junior Training Course for recruits at Police Lines, Sultanpur on 6.11.2006. Prior to it for the purposes of character verification, petitioner was asked to give declaration in verification roll and also asked to furnish an affidavit. Petitioner submitted verification form as well as an affidavit contending therein that to the best of his knowledge at no point of time any criminal case has been registered against him nor any criminal case is pending in any criminal Court. After said affidavit was filed, verification proceedings were undertaken and in the said and in the same verification report was submitted that general reputation of the petitioner was good but from village criminal register it is reflected that against the petitioner, Case Crime No.338 of 2002 under Sections 147/148/149/336/323/504 and 506 IPC has been registered but during the course of investigation implication of the petitioner was found to be wrong. Based on the said report for furnishing false affidavit, show cause notice was issued to the petitioner to show cause as why his appointment be not cancelled for furnishing wrong information. After receiving said show cause notice, reply

was submitted by the petitioner on 13.5.2007 and therein details were furnished that at the said point of time he was minor and in the said investigation he has been found innocent and his name has been expunged, as such truthful affidavit has been given. Not satisfied with the said reply the Superintendent of Police, Ambedkarnagar passed order impugned which is subject matter of challenge before this Court.

3. This Court on 17.3.2008 asked the Superintendent of Police, Ambedkarnagar to be present in person on 4.4.2008. Today on the matter being taken up, Superintendent of Police, Ambedkarnagar is present in person alongwith the relevant record based on which proceedings were undertaken.

4. Record in question reflects that in the affidavit filed by the petitioner categorical mention has been made by him that at no point of time any criminal case has been registered against him to the best of his knowledge. On the face value said averments are incorrect as admittedly against the petitioner Case Crime No.338 of 2002 under Sections 147/148/149/336/323/504 and 506 IPC has been registered. This is equally true that in the said criminal case complicity of the petitioner has not been found and his name has been expunged and in the said criminal case persons who were put up for trial subsequently they have been exonerated.

5. Prime question is as to whether affidavit, which was given by the petitioner, contains rightful declaration or same contains wrongful declaration. In the matter of appointment wrongful declaration has its own consequence as has been held by the Hon''ble Apex Court in the case of Delhi Administration v. Sushil Kumar, reported in 1997 SCC (L&S) 492 wherein Hon''ble Apex Court has taken the view that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post. Para3 of the aforesaid judgment is being quoted below:

?Verification of the character and antecedents is one of the important criteria to test whether the selected candidates is suitable to a post under the State. Though the respondent 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 is not desirable to appoint a person of such record as a Constable in the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct of character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way the law will take care of the consequences.?

6. Thereafter Hon''ble Apex Court in the case of Kendriya Vidyalaya Sangathan and others v. Ram Ratan Yadav, reported in JT 2003 (2) SC 256, has reiterated

similar view by mentioning that whether the fact that the criminal case was subsequently withdrawn or that the offence charged with was not serious was material. Issue was as to whether material has been suppressed and false statement has been made bearing character and antecedent of respondent. Paragraphs 6, 7 and 8 are being quoted below:

?6. In order to appreciate the respective contentions advanced on behalf of either side, it is necessary and useful to notice the terms of offer of appointment and useful to notice the terms of offer of appointment and the columns contained in the attestation from Paragraph 8 of the memorandum containing offer to the extent relevant reads.

?If he/she accepts the offer on the terms and conditions stipulated, he/she would send her acceptance immediately to this office on receipt of this memorandum and join the Kendriya Vidyalaya mentioned overleaf. Necessary proforma for the purpose of Annexure I to VI and attestation forms are enclosed wherewith which should be submitted to the concerned Principal, after getting the same duly completed in all respects.?

Para9 of the same memorandum is to the following effect:

?Suppression of any information will be considered a major offence for which the punishment may extend to dismissal from the service.?

The attestation form dated 26.6.1998 duly filed by the respondent and attestation show that the respondent has taken B.A. degree from St. Alysius College, JBP and B.Ed and M.Ed degrees from R. Durgavati Vishwavidyalaya, JBP Column Nos.12 and 13 as filled up read thus:

12. Have you ever been arrested prosecuted/kept under detention or bound down/fined, convicted by a court of law of any offence?

13. Is any case pending against you in any court of law at the time of filing up this attestation form???.No.?

The respondents has also certified the information given in the said attestation form as under:

?I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government.?

The memorandum dated 7/8.4.1999 terminating the services of the respondent refers to column Nos.12 and 13 of the attestation form the criminal case registered against the respondent on the basis of the report given to the appellants by IGI Police, suppression of material information by the respondent while submitting attestation form and violating the clause stipulated under para9 of the offer of appointment issued to him. O.M. dated 1.7.1971 of Cabinet Secretary, Department of Personnel, New Delhi in which it is clearly mentioned furnishing of false information or suppression of factual information in the

attestation form would be disqualification and is likely to render the candidate unfit for employment under the Government and that as per clause 4 of offer of appointment the respondent was on probation for a period of two years and that his services were liable to be terminated by one month's notice.

7. It is not in dispute that criminal case registered under Sections 323, 341, 294 and 506B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against column Nos.12 and 13 as 'No' is plainly suppression of material information and it is also a false statement. Admittedly the respondent is holder of B.A. B.Ed and M.Ed degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of respondent that he did not study English at all. If he could understand column Nos.111 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of column Nos.12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken help of somebody. This being the position the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instructions of respondent was Hindi, he could not understand the contents of column Nos.12 and 13. It is not the case of column Nos.12 and 13 are left blank. The respondent could not have said 'no' as against column Nos.12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling column Nos.12 and 13 of the attestation form was for the purpose of verification of character and antecedent of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

8. The object requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify (sic verify) the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved,

were also not of serious nature. In the present case the respondent was to serve as physical education teacher in Kandriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief if he could not understand the contents of column Nos.12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 8 of the memorandum, the termination of service was not automatic, cannot be accepted.?

7. The Division Bench of this Court in the case of Ramesh Prasad Patel v. Union of India and others, reported in [2006 (3) ESC 1669 (All) (DB)] has taken the view that antecedent, conduct/character of candidate to be appointed to service is of paramount consideration, and not the result of criminal case, in which he has been involved and as petitioner had not furnished information sought at the time of enrolment, as such dispensation of service cannot be said to be illegal. Relevant paragraphs 6 to 26 of the aforesaid judgment is being quoted below:

¶6. The application form had been filled up by the appellant in 1986 wherein column No.8 requires the applicant to furnish the information as to whether the applicant had ever been imprisoned or had been put under trial for any offence or any complaint or report had ever been made against the applicant to the Magistrate or Police for any offence. The petitionerappellant filed up the said column by writing the word 'no'. Therefore, there is no dispute that he had not furnished the correct information sought for in this regard. The application form had been filled up by someone else in English but has been signed by the appellant himself. The appellant had been tried in a criminal case which has subsequently been decided vide judgment and order dated 12.7.1995 (Annexure4), wherein he stood convicted for the offence punishable under Section 379 IPC, however, he has been given the benefit of the provisions of Act 1958. It has further been observed that the conviction would not adversely affect his civil rights in view of the provisions of Section 12 of the Act, 1958.

It is settled proposition of law where an applicant gets an order of office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. 'Fraud vitiates all judicial acts ecclesiastical or temporal.' (Vide *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.*, AIR 1994 SC 853. In *Lazarus Estate Ltd. v. Besalay*, 1956 All. E.R. 349, the Court observed without equivocation that 'no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.'

In *Andhra Pradesh State Financial Corporation v. M/s. GAR Rolling Mills & Anr.*, AIR 1994 SC 2151, and *State of Maharashtra & Ors. v. Prabhu*, (1994) 2 SCC 481, the Hon'ble Apex Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. 'Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.'

In *Smt. Shrisht Dhawan v. M/s. Shaw Bros.*, AIR 1992 SC 1555, it has been held as under:

'Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.'

In *United India Insurance Company Ltd. v. Rajendra Singh & Ors.*, AIR 2000 SC 1165, the Apex Court observed that 'Fraud and justice never dwell together' (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries. Similar view has been reiterated by the Hon'ble Supreme Court in *M.P. Mittal v. State of Haryana & Ors.*, AIR 1984 SC 1888.

The ratio laid down by the Hon'ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf. In *Union of India & Ors. v. M. Bhaskaran*, 1995 Supl. (4) SCC 100, the Apex Court, after placing reliance upon and approving its earlier judgment in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*, (1990) 3 SCC 655, observed as under:

'If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.'

Similar view has been reiterated by the Apex Court in *S. Partap Singh v. State of Punjab*, AIR 1964 SC 72; *Ram Chandra Singh v. Savitri Devi & Ors.*, (2003) 8 SCC 319; and *Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav*, (2004) 4 SCC 325.

The Common Law doctrine of public policy can be enforced wherever an action

affects/offends public interest or where harmful result of permitting the injury to the public at large is evident.

More so, if initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Subla Fundamento cedit opus? a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case legal maxim Nullus Commodum Capere Potest De Injuria Sua Propria applies. (Vide Union of India v. Maj. Gen. Madan Lal Yadav, AIR 1996 SC 1340). The violators of law cannot be permitted to urge that their offence cannot be subject matter of inquiry, trial or investigation. (Vide Lily Thomas v. Union of India & Ors., AIR 2000 SC 1650). Nor a person can claim any right arising out of his wrong doing. (Juri Ex Injuria Non Oritur).

In Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar, (1996) 11 SCC 605, the Hon"ble Supreme Court examined the similar case where the appointment was refused on the post of Police Constable and the Court observed as under:

?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 appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service.?

In Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, AIR 2003 SC 1709; and A.P. Public Service Commisison v. Koneti Venkateswarulu, AIR 2005 SC 4292, the Hon"ble Supreme Court examined a similar case, wherein, the employment had been obtained by suppressing the material fact that criminal proceedings were pending against him at the time of appointment. The Court rejected the plea taken by the employee that the form was printed in English and he did not have good knowledge of that, and therefore, could not understand as what information was sought. The Apex Court held that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. ?

The requirement of filling column Nos.12 and 13 of the Attestation Form? was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuance in service.

The submission made by the learned counsel for the appellant to the effect that the impugned orders could not have been passed without giving him an opportunity is also preposterous for the reason that in such case where an order is obtained by misrepresentation or fraud, the principles of natural justice are not attracted to rectify the mistake which the Authority had committed because of the fraud played by the applicant. In such eventualities, termination is automatic. In *State of U.P. v. Om Prakash Gupta*, AIR 1970 SC 679, the Hon''ble Apex Court had observed that Courts have to examine whether the nonobservance of any statutory provision or principle of natural justice have resulted in deflecting the course of justice. In *S.L. Kapoor v. Jagmohan & ors.*, AIR 1981 SC 136, the Hon''ble Supreme Court has held that where from admitted or undisputed fact, only one conclusion is possible and under the law only one course is permissible to be adopted, the Court should not enforce the observance of principles of natural justice for the reason that it would amount to issuing a futile writ.

In *A.K. Kraipak & Ors. v. Union of India & Ors.*, AIR 1970 SC 150, the Hon''ble Supreme Court observed as under:

?The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in the areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it?.. Whenever a complaint is made before the Court that some principles of natural justice had been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.?

Therefore, whether the principles of natural justice should be applied in a given case, depends upon the facts and circumstances of that case. In case the principles have not been applied but if even after their observation result could have been the same, enforcing the observance of such principles would be a futile exercise. (Vide *Khem Chand v. Union of India & Ors.*, AIR 1958 SC 300; and *Laxmi Shankar Pandey v. Union of India & Ors.*, AIR 1991 SC 1070. In the instant case, as it remained undisputed and undeniable that petitioner had not furnished the information sought at the time of enrolment correctly, we are unable to imagine as how the application of principles of natural justice would materially alter the result of the case.

In *U.P. Junior Doctors Action Committee v. Dr. B. Sheetal Nandwani & Ors.*, AIR 1991 SC 909, the students had got admission in M.B.B.S Course by making misrepresentation. The Hon''ble Supreme Court rejected the plea of applicability of the Rules of Natural Justice observing that under the circumstances in which

such benefit had been taken by the candidates concerned, do not justify attraction of the Rules of Natural Justice by providing them an opportunity of hearing. Even in a case where an applicant may not be responsible for playing fraud, his appointment can, also, be cancelled without affording an opportunity of hearing to him in case the Authority comes to the conclusion that the appointment had been made by playing fraud by the Members of the Selection Committee though the candidate had not played any part/mischief in the said selection in *Krishan Yadav v. State of Haryana & Ors.*, AIR 1994 SC 2166, the Hon"ble Apex Court observed that when the entire selection was stinking ? conceived in fraud and delivered in deceit?, individual"s innocence has no place as fraud unravels everything.

The ratio laid down by the Hon"ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf.

Thus, it is the antecedent, conduct or character of the candidate to be appointed to the services which is of paramount consideration, not of the result of the criminal case in which he has been involved.

In view of the above, the appellant has obtained the employment by misrepresentation, i.e., suppressing the material information sought by the appointing authority. The information was required to verify his character and antecedents. Thus, neither the result of the prosecution nor the nature of the offence, in which he had been involved, has any bearing on the case.?

8. The Division Bench of this Court in the case of *Ashok v. DIR CRPF*, decided on 16.12.2005 in Special Appeal No.335 of 2005 has taken the view that whenever person is appointed in government service he is required to give declaration regarding character and antecedent and the same is one of the most important criteria to test whether selected candidature is entitled for post under State. It has been held that when incorrect declaration has been made then incumbent disqualifies himself for being appointed specially when appointment is in respect of force.

9. Hon"ble Apex Court in the case of *Shiv Kant Yadav v. Indian Oil Corporation*, 2007 AIR SCW 2154 has considered in extensor, the fact of making wrong statement and the effect of the same. The requirement is to disclose true and correct fact which has not been done. In view of the undertaking that if any factual misstatement or declaration is made, allotment may be cancelled, the order of High Court warrants no interference.

10. In the present case, learned counsel for the petitioner Sri Amit Bose, contended with vehemence that petitioner had no knowledge or notice of his complicity in Case Crime No.338 of 2002 under Sections 147/148/149/336/323/504 and 506 IPC as at said point of time he was minor

and at no point of time he has ever been detained in the aforesaid case and nor he has ever been investigated by the Investigating Officer on the basis of which it could be said that petitioner had knowledge of the aforesaid case. Petitioner further submits that as such once petitioner had no knowledge of the said criminal case then declaration which has been made by him cannot be said to be incorrect declaration warranting such stringent action.

11. From the said of the respondents it has been sought to be contended that petitioner has got full knowledge of the said criminal case and there is willful wrong declaration on his part, as such, action taken can not be faulted.

12. As to whether petitioner had knowledge of the lodging of FIR against him and in spite of the same has willfully filed false affidavit, is essentially question of fact which cannot be adjudicated in writ jurisdiction. The reply, dated 13.5.2007 which has been filed by the petitioner to the show cause notice, copy of which has been filed as Annexure No.3 to the writ petition therein petitioner has accepted this fact that his name was mentioned in the First Information Report and he was minor at said point of time, but due to animosity his name had been mentioned, subsequently name of the petitioner was expunged and also mentioned that he is innocent. Nothing has been said in the said reply that he had no knowledge of the aforesaid criminal case being registered against him. As before this Court grievance has been raised for the first time that petitioner has no knowledge of his name being figured in the said criminal case and the affidavit filed contained truthful declaration, and in support of this contention petitioner has contended that he was neither taken into custody nor he has investigated by the police, as such liberty is given to petitioner represent before Superintendent of Police, Ambedkarnagar pointing out the facts and circumstances that he had no knowledge nor any notice of the aforesaid Case Crime No.338 of 2002 under Sections 147/148/149/336/323/504 and 506 IPC, as such declaration which was made by petitioner is truthful declaration, as such said order could not be passed. In the event of such representation being made, the Superintendent of Police, Ambedkarnagar on the basis of material placed by the petitioner and on the basis of material available in the office of Superintendent of Police, Ambedkarnagar shall proceed to take decision by means of reasoned speaking order within next eight weeks from the date of presentation of certified copy of this order.

13. Earlier order which has been passed shall abide by fresh order which would be passed by Superintendent of Police, Ambedkarnagar.

14. With the above direction and observation present writ petition is disposed of.

(Ordered accordingly)