
(2015) 04 DEL CK 0333
In the Delhi High Court
Case No : LPA No. 272 of 2014

Vakil Kumar Meena

APPELLANT

Vs

Director, Export Inspection Council of India

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 144, 147, 148, 149, 294
Probation of Offenders Act, 1958 — Section 12, 3

Citation : (2015) 04 DEL CK 0333

Hon'ble Judges : Gita Mittal, J;J.R. Midha, J

Bench : Division Bench

Advocate : S.N. Sharma, for the Appellant; L.R. Khatana, Advocates for the Respondent

Final Decision : Disposed off

Judgement

J.R. Midha, J.

C.M. Appl. 5726/2014

The application is allowed and the delay in re-filing the appeal is condoned.

LPA No. 272 Of 2014 and C.M. Appl. 5724/2014

1. The appellant has challenged the judgment dated 19th November, 2013 whereby the learned Single Judge dismissed his writ petition seeking appointment to the post of Technical Officer in the Export Inspection Council of India.

2. The appellant, B. Tech. (Food Technology) from College of Dairy and Food Science Technology, Udaipur, applied for the post of Technical Officer in Export Inspection Council of India in the Scheduled Tribe category. The appellant was selected on the basis of the written test and interview.

3. Vide letter dated 8th February, 2011, the respondent called upon the appellant to submit the attestation form whereupon the appellant submitted the attestation

form on 14th February, 2011. However, the appellant did not disclose his involvement in a criminal case in para 12 of the attestation form.

4. Vide letters dated 08th August, 2011 and 15th September, 2011, the appellant voluntarily disclosed that he inadvertently ticked "No" in para 12 of the attestation form. The appellant further disclosed that he was involved in a minor scuffle between two groups of students during his stay at D.T. Boys Hostel in March, 2001 while studying at Udaipur, Rajasthan in respect of which an FIR was registered under Section 147/323 IPC against 14 students including the appellant. Vide judgment dated 12th December, 2005, all the students were acquitted under Section 323 IPC. However, the students were convicted under Section 147 IPC and fine of Rs. 100/- was imposed on each student but benefit of Section 12 of Probation of Offenders Act, 1958 was given and therefore, the conviction would not adversely affect their future studies and government service. The relevant portion of the said judgment of the ACJM, Udaipur, Rajasthan is reproduced hereunder:

"JUDGMENT

1. On 18.03.01 Sh. Narotam Complainant given a written complaint to P.S. Partap Nagar against warden Dairy Technology Hostel regarding that he is staying in Hostel Room No. 108 on 17.03.01 he came to meet warden regarding beating with Dheeraj Chaudhary after that he left Tarun at his room, and when he came back to his room then above said accused started beating me regarding gave along with Dheeraj and I ran away from there but caught at gate and beaten there, they were having cricket Bat, wicket and stick in this hand then Shankar Lal Ram Avtar, Hansh Ankur Chaturvedi came to you by running there for action may be taken.

2. On the basis of this report P.S. Partap Nagar lodged FIR No. 75/01 during this site plan was made and witness statement of Narotom, Shankar Lal, Harish, Ramvtan was recorded.

3. After investigation on 19.05.01 chalan was filed in Court against the accused u/s 147; 323/149 of IPC.

4. On 19.05.01 the accused were told about them crime and they have asked for trial.

5. During trial prosecution witness namely Narotam, statement was recorded and documents were presented.

6. On 12.12.2005, u/s 323 of IPC Raji Nama (compromise) was Pat and only u/s 144 of IPC case was left for trial.

7. Accused with own will accepted the crime of u/s 147 of IPC in written and APP closed the prosecution witness. Therefore accused statement was recorded and defence witnesses were not recorded.

8. I have heard the arguments and gone through the case as the accused

accepted the crime with own will hence need not to be proved, therefore re-examination of witnesses not to done on the basis of acceptance of crime, u/s 147 of IPC is proved against then as guilty.

9. On the quantum and punishment the defence counsel was heard, case was examined, as the compromise taken lace between the parties running charge so accepted by accused and value of Lok Adalat concept up. Accused by going student are facing the trial since last four year's, therefore under the facts and circumstances of the case and fed correct to given benefit of provision of law/ Rule.

ORDER

Therefore, accused Thanedar, Hari Parsad, Satish Anand, Kamlesh, Rubraj, Dhan Singh, Laxman, Suresh, Vishram, Laxmikant Vakeel Meena, Sandip, Manoj Solanki all are presently R/o Diary Technology, Hostel, Udaipur all u/s 147 of IPC are guilty and punished under Section 3. Each accused is put Rs. 100 Total Rs. 1400 for prosecution charge.

Abovesaid accused are acquitted from the charge of IPC 323. Presence of accused bail Muchalke are cancelled.

Accused are given benefit of Section 12 of the PO act which it will not effect adversely in the future study and in Govt. service."

(Emphasis supplied)

5. In November 2011, the appellant came to know that the appointments to the post of Technical Officer have been made by the respondent whereupon he visited the respondent's office and thereafter, issued a legal notice dated 3rd December, 2011 to which no reply was received by him.

6. In January 2012, the appellant filed an application before the Central Administrative Tribunal which was withdrawn by him on 4th May, 2012 with liberty to file the writ petition.

7. On 30th May, 2012, the appellant filed the writ petition before this Court seeking appointment to the post of Technical Officer with the respondent on the ground that the non-disclosure of the criminal case by him in the attestation form was inadvertent; the appellant voluntarily disclosed the same to the respondent while the process of appointment was still going on; and the appellant has been given the benefit of Section 12 of Probation of Offenders Act, 1958 in the judgment dated 12th December, 2005 and therefore, the imposition of fine would not adversely affect his future study as well as government service prospects. It was further pleaded that the appellant belongs to ST category.

8. The respondent contested the writ petition on the sole ground that the appellant having concealed the relevant information in the attestation form, cannot be trusted for employment at a responsible position.

9. The learned Single Judge dismissed the writ petition holding that it was not believable that the appellant answered para 12 in haste and he realised the mistake after seven months because by that time police verification would have been in progress and the appellant would have realized the futility of suppression of his conviction. The learned Single Judge referred to and relied upon *Arun v. District and Sessions Judge*, W.P. (C) No. 5880/2012 decided on 26th July, 2013 and *Ms. Nidhi Kaushik Vs. Union of India and Others*, (2014) 2 AD 340 : (2013) 203 DLT 722 .

10. Learned counsel for the appellant urged at the time of hearing that the appellant voluntarily disclosed to the respondent before completion of the employment process that the appellant was involved in a minor scuffle between the college students while staying in the hostel on 17th March, 2001 whereupon FIR was registered against all the students under Sections 323 and 147 IPC. The appellant was aged of less than 19 years at that time and was pursuing B. Tech. in College of Dairy and Food Science Technology, Udaipur. The learned ACJM acquitted all the accused persons under Section 323 IPC. With respect to Section 147 IPC, the learned Court imposed a fine of Rs. 100/- on each student. However, the Court granted benefit of Section 12 of Probation of Offenders Act, 1958 and recorded that it will not affect adversely in their future studies and government service. The non-disclosure of the aforesaid information by the appellant in the attestation form is an inadvertent mistake. Since the appellant has been granted the benefit of Section 12 of the Probation of Offenders Act, 1958, there was no reason for the appellant to conceal the information.

11. Learned counsel for the respondent urged at the time of hearing that the appellant's contention that the non-disclosure of the relevant information relating to the involvement of the appellant in a criminal case was inadvertent, does not inspire confidence for the reason that by that time the police authorities, during the course of their verification, must have unearthed the involvement of the appellant in a criminal case. Since the appellant suppressed the material fact relating to his involvement in a criminal case, he cannot be trusted for employment at a responsible position in a sensitive organisation having intensive public dealing. During the course of hearing dated 5th December, 2014, the learned counsel for the respondent stated on instructions that in case the appellant eventually succeeds, the respondent would be bound to accommodate the appellant and the non-availability of vacancies would not come in the way of entitlement of the appellant to the relief granted to him.

12. Vide order dated 30th September, 2014, the respondent was directed to produce the original record which was later produced and retained by this Court. The original record produced by the respondent reveals that the respondent did not consider the nature of offence in which the appellant was involved. The respondent also did not consider that the appellant was acquitted for offence under Section 323 IPC and the learned Magistrate had observed that this case would not affect his future studies and employment. The only ground on which

the appointment was denied to the appellant was that the appellant had initially concealed the information in the attestation form and therefore, was not fit to be appointed. The relevant portion of the note sheets of the respondent file are reproduced hereinbelow:

"Export Inspection Council New Delhi

EIC/D/(Q/C) 6(a) -DR/2011-12

Dated- 18/08/11

Sub:

Request for correction in attestation form submitted by Sh. Hari Prasad Meena and Sh. Vakeel Kr. Meena candidates for the post of Technical Officer.

Placed below are two letters dated 08/8/2011 from Shri Hari Prasad Meena and Sh. Vakeel Kumar Meena in which they have informed that by mistake they could not give necessary information in page No. 4 of the attestation form regarding the complaint which was lodged under Section 147/323 against "14" other students including their names.

In the above case trial was conducted and all the charged students were acquitted from charges vide judgment dated 12/12/2005 (Flag X). In view of this they have requested to allow them to make necessary entry in the attestation form and be allowed to join the job in which they have been selected by the selection committee.

Submitted please.

Sd/- SK II

AD (NR)

It is submitted that S/Shri Hari Prasad Meena and Vakeel Kumar Meena the candidate recommended for the post of Technical Officer have preferred requests dated 08/8/2011 (PUC) to allow them to make necessary entry in the attestation form and/or given clarifications for filling the attestation form towards the facts of the case against them while they were studying in Udaipur (Rajasthan), which they could not mention earlier. Along with the request, they have enclosed copy of the judgment dated 12.12.2005(F/X) in which all the 14 students including the applicants were acquitted and each were fined Rs. 100/- by the Court. It is submitted that this fact has been hidden by the applicants while furnishing the information to this office.

Submitted please

Sd/- 18.08.2011

DD(RS)

- Although the material facts have been suppressed by both the candidates

regarding their involved in a case.

- We may seek view of legal retainer EIC in the matter. So as to be legally secured decision could be proposed.

- Submitted please.

Sd/-

Addl. Director

- Material facts relating to a criminal case were not disclosed by these two candidates while furnishing their particulars.

- They have now approached this office most probably as these facts have come out during the police verification of their antecedents.

- In the opinion of u/s, as they suppressed the material fact while submitting their personal information for verification of antecedents, they cannot be trusted for employment at such responsible position. They should not be, therefore, offered any appointment in EIC/EIA.

In any case, we may also seek legal opinion from the RA.

Sd/- 24.08.2011

Director - "Agreed" Addl. Director (RR) DD (RS)

I agree with the views expressed on previous page. The employer is entitled to take such a view if this kind of situation of deficit of trust and unreliability is created by the candidate by not coming clean in the beginning itself.

Sd/- 25.08.2011

EIC

- Legal Retainer - Legal opinion in the matter is mentioned at X above.

- May take for approval the same for further orders.

Sd/- 25.08.2011

Director - "Agreed" Addl. Director (RR) DD (RS)

Addl. Director

- For approval please.

- In case these are wait listed candidates, the next in merit will be called to give details for medical/police verification. Otherwise, the posts will be advertised again.

Director

Sd/- 25.08.2011

(Emphasis supplied)

13. The original record produced by the respondent contain the following relevant documents:-

(i) Letter dated 08th March, 2011 from the respondent to the District Magistrate, Jaipur for verification of the particulars of the appellant mentioned in the attestation form and to certify whether he is suitable for the government service.

(ii) Letter dated 23rd May, 2011 from the office of District Magistrate to the Superintendent of Police, Jaipur requisitioning the character verification report of the appellant on priority.

(iii) Reminder dated 03rd June, 2011 by the Office of District Magistrate to the Superintendent of Police, Jaipur reminding the Police authorities to submit the character verification report of the appellant on priority.

(iv) Reminder dated 16th June, 2011 from the respondent to the Commissioner of Police, Jaipur.

(v) Letter dated 11th July, 2011 from Upper District Magistrate Jaipur to the respondent certifying that upon the inquiry by the office of Superintendent of Police, Jaipur, nothing adverse was found against the appellant and therefore, he was fit for service.

(vi) Letter dated 18th July, 2011 from the respondent to District Magistrate, Udaipur for verification of the particulars mentioned in the attestation form.

(vii) Letter dated 06th September, 2011 from District Magistrate, Udaipur to the respondent certifying that upon inquiry by the Superintendent of Police, Udaipur, nothing adverse has been reported against the appellant and therefore, the character of the appellant was satisfactory.

Effect of Voluntary Disclosure

14. The first question arising for consideration is - what is the effect of the voluntary disclosure made by the appellant on 8th August, 2011 with respect to his involvement in a criminal case. The appellant claims the initial non-disclosure as inadvertent whereas the respondent claims the initial non-disclosure as wilful and deliberate.

15. This issue came up for consideration before the Supreme Court in Commissioner of Police, Delhi and Another Vs. Dhaval Singh, AIR 1999 SC 2326 : (1999) 9 JT 429 : (1999) 1 SCC 246 : (1999) AIRSCW 2407 , in which the candidate seeking public appointment failed to disclose the material fact relating to pendency of criminal case against him. However, the candidate voluntarily disclosed the same before the issuance of order of appointment. The Supreme Court held the disclosure by candidate before the order of appointment as voluntary. The relevant observations of the Court are reproduced hereunder:-

"5. That there was an omission on the part of the respondent to give information

against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court " it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

(Emphasis supplied)

16. In *State of Haryana and Others Vs. Dinesh Kumar*, AIR 2008 SC 1083 : (2009) 238 ELT 545 : (2008) 1 JT 390 : (2008) 1 SCALE 268 : (2008) 3 SCC 222 : (2008) AIRSCW 696 : (2008) 1 Supreme 296 , the candidate did not disclose his arrest in the attestation form because of which he was denied appointment. The candidate explained that since he was granted bail, he was under the bonafide impression that there was no arrest. The Supreme Court gave the benefit of mistaken impression to the candidate and set aside the finding of deliberate and wilful misrepresentation and concealment of facts. Relevant portion of the said judgment is reproduced hereunder:

"31... When the question as to what constitutes "arrest" has for long engaged the attention of different High Courts as also this Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before the court and being granted bail immediately. The position would have been different, had the person concerned not been released on bail. We would, in the facts of these cases, give the benefit of a mistaken impression, rather than that of deliberate and wilful misrepresentation and concealment of facts, to the appellants in the second of the two appeals as well, while affirming

the view taken by the High Court in Dinesh Kumar's case.

xxx xxx xxx

33. In the result, the civil appeal arising out of SLP (C) No. 1840 of 2007 is dismissed, while the civil appeal arising out of SLP (C) No. 14939 of 2007 is allowed. The judgment of the High Court dated 22-9-2005, impugned in the said appeal, is set aside and the respondents concerned are directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfilment of other conditions by them. It is also made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment, they will be entitled to salary only from the date of this judgment on the basis of such notional benefits."

(Emphasis supplied)

Duty of the appointing authority to consider the nature of offence against the candidate to decide whether he is suitable for appointment

17. The next question arising for consideration is - whether the appellant is suitable for appointment considering that the offence committed by him is very trivial and he has been given the benefit of Section 12 of Probation of Offenders Act, 1958.

18. Every brush with criminal law is not a disqualification in appointment. It is only when a person stands convicted for a very serious act which shocks the moral conscience of the society and evidences that a person is of depraved character and suffers from the tag of moral turpitude, the conviction results in denial of public employment.

19. In *Commr. of Police and Others Vs. Sandeep Kumar*, (2011) 129 FLR 491 : (2011) 3 JT 484 : (2011) 3 SCALE 606 : (2011) 4 SCC 644 : (2011) 2 SCC(Cri) 426 : (2011) 1 SCC(L&S) 734 : (2011) 3 SCR 964 : (2011) AIRSCW 499 : (2011) 4 Supreme 262, the respondent therein applied for the post of Head Constable in Delhi Police but did not disclose the involvement in a trivial criminal case under Section 325 and 34 IPC which was compromised resulting in his acquittal. However, he voluntarily disclosed the same in the attestation form whereupon his candidature was cancelled. The High Court allowed his writ petition which was challenged before the Supreme Court. The Supreme Court held that the respondent was not involved in a serious offence like murder, dacoity or rape and hence a lenient view was warranted. The Supreme Court observed that the incident had happened when the respondent was about 20 years of age and the young people at that stage often commit indiscretions which can be condoned. The relevant portion of the said judgment is reproduced hereunder:

"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.

9. In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel *Les Misérables*, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book *Due Process of Law*. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the Judge to show "and to show to all students everywhere" that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land "and I speak both for England and Wales" they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards "of the poets and the singers" more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They

have done wrong "very wrong" in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." (Vide *Morris v. Crown Office* [(1970) 2 QB 114])

In our opinion, we should display the same wisdom as displayed by Lord Denning.

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."

Other relevant judgments:

20. In *Pawan Kumar Vs. State of Haryana and another*, (1996) 5 AD 1 : AIR 1996 SC 3300 : (1996) 73 FLR 1501 : (1996) 5 JT 155 : (1996) LabIC 1740 : (1996) 2 LLJ 703 : (1996) 4 SCALE 480 : (1996) 4 SCC 17 : (1996) 2 SCR 392 Supp : (1996) 2 SLJ 9 : (1996) 2 UJ 184 , the petitioner's service was terminated on the ground of conviction under Section 294 IPC resulting in fine of Rs. 20/-. The Supreme Court setting aside the termination observed that the conviction for petty offences upon payment of paltry fine on plea bargaining should not affect the government service. Relevant portion of the said judgment is reproduced hereunder:

"13....Mere payment of fine of Rs 20 does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

14. Before concluding this judgment we hereby draw the attention of 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 the 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 2000 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."

(Emphasis Supplied)

21. In *Ram Kumar Vs. State of U.P. and Others*, AIR 2011 SC 2903 : (2011) 6 CTC 440 : (2011) 131 FLR 17 : (2011) 9 JT 200 : (2011) 9 SCALE 75 : (2011) 10 SCR 506 : (2011) AIRSCW 4807 : (2011) 6 Supreme 23 , the Supreme Court held that it was the duty of the appointing authority to satisfy whether the appellant was suitable for appointment. However, instead of considering the same, the appointing authority has mechanically held that the selection was irregular and illegal merely because the appellant had furnished an affidavit stating incorrect facts at the time of recruitment. The relevant portion of the said judgment is reproduced hereunder:

"13.... 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."

(Emphasis supplied)

22. In *Commissioner of Police, New Delhi and Another Vs. Mehar Singh*, (2013) 7 AD 352 : AIR 2013 SC 2861 : (2013) 9 JT 470 : (2013) LabIC 3207 : (2013) 4 LLN 461 : (2013) 9 SCALE 444 : (2013) 7 SCC 685 : (2013) 2 SCC(L&S) 910 : (2013) 4 SCT 311 , the Supreme Court held that the nature of the offence and

the extent of involvement of a person is relevant for deciding whether a person should be appointed. The observations of the Supreme Court are reproduced hereunder:

"34. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future..."

(Emphasis supplied)

23. In *Joginder Singh Vs. Union Territory of Chandigarh*, (2014) 4 ESC 622 : (2015) 144 FLR 183 , the candidate was selected for the post of Constable. On police verification, the appellant was found to be involved in a criminal case under Sections 148, 149, 323, 325 and 307 of Indian Penal Code in which he was acquitted by the Court. The candidate challenged his cancellation before the Central Administrative Tribunal which application was allowed. The Supreme Court held that the appellant cannot be held unsuitable to the post considering the honourable acquittal in the criminal case. The relevant portion of the said judgment is as under:

"25. Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the appellant was not up to the mark to appoint him to the post. The appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post..."

26. Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind."

(Emphasis supplied)

Judgments relied upon by the appellant

24. The appellant referred to and relied upon *Commissioner of Police v. Sandeep Kumar* (supra); *State of Haryana v. Dinesh Kumar*, (supra) and *Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinna Naidu*, (2005) 2 ESC 170 : (2005) 104 FLR 1063 : (2005) 2 JT 358 : (2005) 2 SCC 746 : (2005) SCC(L&S) 323 : (2005) 2 SCR 1147 : (2005) 2 SLJ 233 . *Sandeep Kumar* (supra) and *Dinesh*

Kumar (supra) are relevant and have been discussed in para 19 and 16 above respectively whereas the third judgment namely Secy. Deptt. of Home Secy. A.P. v. B. Chinnam Naidu (supra) is not relevant to the issues involved in the present case. This case is squarely covered by the principles laid down by the Supreme Court in Dhaval Singh (supra) and Sandeep Kumar (supra).

Judgments relied upon by the respondent

25. The respondent has referred to and relied upon Devendra Kumar Vs. State of Uttaranchal and Others, AIR 2013 SC 3325 : (2013) 139 FLR 284 : (2013) 10 JT 566 : (2013) LabIC 4279 : (2013) 4 LLN 450 : (2013) 9 SCALE 703 : (2013) 9 SCC 363 : (2014) 1 SCC(L&S) 270 : (2013) 4 SCT 482 : (2013) AIRSCW 4938 and Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank, (2010) 127 FLR 16 : (2010) 8 JT 233 : (2010) 4 LLJ 297 : (2010) 8 SCC 573 : (2010) 9 SCR 796 : (2010) 5 SLR 352 .

26. In Devendra Kumar v. State of Uttaranchal (supra), the petitioner therein obtained appointment as constable by concealing his involvement in a criminal case and also submitted a false affidavit. The department discovered the involvement of the petitioner in the criminal case by police verification whereupon he was discharged from service. The Supreme Court held that suppression of material information amounts to moral turpitude and, therefore, upheld his discharge from service. In the present case, the appellant has voluntarily disclosed the relevant information relating to his involvement in a criminal case prior to the completion of the selection process and this Court is satisfied that the non-disclosure at the first instance was inadvertent and not deliberate/wilful. In that view of the matter, the principles laid down in Devendra Kumar (supra) do not support the respondent's case.

27. In Sushil Kumar Singhal (supra), a peon working with Punjab National Bank since 1971, was convicted for an offence of criminal misappropriation of Rs. 5,000/- handed over to him by the bank for deposit of the telephone bill in 1982, whereupon the bank dismissed him from service in 1988. The petitioner therein challenged the dismissal on the ground that he has been given the benefit of probation under the Probation of Offenders Act. The Supreme Court held that an employee cannot claim a right to continue in service merely on the ground that he has been given benefit of probation and the employer has to consider the gravity of the offence. The dismissal of the petitioner therein was upheld on the ground that the petitioner was convicted for an offence involving moral turpitude. Sushil Kumar Singhal (supra) does not deal with the case of non-disclosure of the criminal case at the time of appointment. That apart, the accused in Sushil Kumar Singhal (supra) was involved in an offence of criminal misappropriation affecting his moral turpitude whereas the appellant in the present case is involved in a trivial offence which does not involve moral turpitude and, therefore, the case of Sushil Kumar Singhal (supra) does not support the respondent's case.

Judgments relied upon by the learned Single Judge

28. The learned Single Judge has referred to and relied upon *Ms. Nidhi Kaushik Vs. Union of India and Others*, (2014) 2 AD 340 : (2013) 203 DLT 722 and *Arun v. District and Sessions Judge*, W.P. (C) No. 5880/2012 decided on 26th July, 2013. In *Nidhi Kaushik (supra)*, there was no concealment of a criminal case by the candidate and, therefore, *Nidhi Kaushik (supra)* was set aside by Division Bench in appeal vide judgment dated 26th May, 2014 reported as (2014) 212 DLT 5. In *Arun (supra)*, the appellant had procured the appointment by concealment of a criminal case which was discovered upon verification by the employer. That apart, the employee had also submitted a false affidavit before the appointing authority. *Arun (supra)* would not apply to the present case as the appellant has voluntarily disclosed the relevant information relating to the involvement in a criminal case before the completion of selection process. In *Arun (supra)* as well as *Nidhi Kaushik (supra)*, the learned Single judge has relied upon *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, AIR 2003 SC 1709 : (2003) 97 FLR 117 : (2003) 2 JT 256 : (2003) 2 LLJ 523 : (2003) 2 SCALE 444 : (2003) 3 SCC 437 : (2003) SCC(L&S) 306 : (2003) 2 SCR 361 : (2003) 2 SLJ 370 : (2003) AIRSCW 1126 : (2003) 2 Supreme 219 and *A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others*, AIR 2005 SC 4292 : (2005) 107 FLR 157 : (2005) 8 JT 23 : (2005) 7 SCC 177 : (2005) SCC(L&S) 924 : (2005) 2 SCR 1050 Supp : (2005) 3 SLJ 407 : (2005) AIRSCW 5175 : (2005) 6 Supreme 73 in which the candidates had secured the appointment by concealing the involvement in criminal cases and therefore, the Supreme Court held that a person who obtains employment by suppression of fact does not deserve public employment. In *Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others*, (2012) 134 FLR 1054 : (2012) 7 JT 307 : (2012) 7 SCALE 22 : (2012) 8 SCC 748 : (2012) 3 SLJ 289 : (2012) AIRSCW 4347 : (2012) 5 Supreme 215 , the Supreme Court while dealing with the issue of deliberate suppression of facts by candidates/appointees in disciplined forces, laid down principles relating to the consequences of concealment of a criminal offence by a candidate. The Supreme Court held that information with respect to the involvement of a candidate in a criminal case affects the character and antecedents of the candidate which is one of the most important criteria in deciding whether the selected candidate is suitable for the post.

29. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases. In *Bharat Petroleum*

Corporation Ltd. and Another Vs. N.R. Vairamani and Another, (2004) 5 CTC 74 : (2004) 8 JT 171 : (2004) 8 SCALE 376 : (2004) 8 SCC 579 , the Supreme Court held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed:

(All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge"

10. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said, "Lord Atkin's speech is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide

cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

30. In Arun(supra), Kendriya Vidyalaya Sangathan (supra) and A.P. Public Service Commission (supra), the candidates had secured the employment by concealing the involvement in a criminal case whereas the appellant, in the present case, had voluntarily disclosed the relevant information relating to his involvement in the criminal case before the completion of the selection process and we have accepted that there was no deliberate concealment by the appellant. In that view of the matter, Kendriya Vidyalaya Sangathan (supra) and A.P. Public Service Commission (supra) and Jainendra Singh (supra) would not apply to the present case. This case is squarely covered by the principles laid down by the Supreme Court in Dhaval Singh(supra) and Sandeep Kumar (supra) and other judgments mentioned above.

Findings

31. Although there was an omission on the part of the appellant to give information about the criminal case in the relevant column in the attestation form, the appellant voluntarily conveyed to the respondent on 8th August, 2011 that he had inadvertently failed to mention the criminal case. It is not as if information was given by the appellant after he had been appointed - it was much before that. It is obvious that the information was conveyed voluntarily.

32. The respondent has rejected the appellant's contention of the inadvertent mistake on the ground that by that time, the police authorities "must have" unearthed the involvement of the appellant in the criminal case during the course of the verification. However, there is nothing on record to warrant the respondent's inference that the disclosure was made since the police authorities had discovered the involvement of the appellant in the criminal case. The respondent admittedly did not have any knowledge of the same when the appellant disclosed it.

33. The respondent has not produced any material whatsoever to show the status of the police verification process. Before drawing such a presumption, the respondent ought to have referred to the status report/comments from the police authorities. The presumption drawn by the respondent in the absence of any such material is not justified.

34. The fact remains that the appellant on his own volition voluntarily approached the respondent and disclosed the relevant information with respect

to his involvement in the criminal case. This Court does not see any reason to disbelieve the appellant that he voluntarily disclosed the relevant information on his volition to the respondent considering that the appellant was not involved in a serious offence and he had been acquitted under Section 323 IPC and fine of Rs. 100/- was imposed under Section 147 IPC and further he was given the benefit under Section 12 of the Probation of Offenders Act, 1958.

35. Since the appellant had voluntarily given the correct information relating to his involvement in a criminal case, he cannot be said to have suppressed any material fact before entry into service. Non-disclosure of the involvement in a criminal case being an inadvertent error, is not wilful concealment.

36. We see no reason for the deliberate concealment of the relevant information by the appellant because if the appellant would have disclosed the relevant information in the first instance, he could not have been denied the employment. This aspect has not been taken into consideration by the respondent.

37. The respondent have not taken into consideration the nature of offence in which the appellant was involved and whether the same is of such a nature to deny him the public employment.

38. The respondent has also not taken note of the fact that the appellant has been given the benefit under Section 12 of the Probation of Offenders Act which would not adversely affect his future studies or employment.

39. It is well settled that every brush with criminal law is not a disqualification in appointment. The offences which are grave, serious and involve moral turpitude would not justify public employment. Since the appellant is neither involved in a grave serious offence nor involved in moral turpitude, denial of public employment to him is not justified. The appellant was involved in a minor scuffle between two groups of students in the DT Boys Hostel, Udaipur in March, 2001 when the appellant was hardly 19 years of age whereupon the case was registered against 14 students including the appellant. All the students were acquitted by the court under Section 323 IPC as back as on 12th December, 2005. However, the students were convicted under Section 147 IPC and fine of Rs. 100/- was imposed on each student but they were given benefit of Section 12 of the Probation of Offenders Act and it was specifically recorded that the conviction would not adversely affect their future studies and government service. Admittedly, the appellant was involved in a trivial offence. It did not involve any moral turpitude or serious offence. It was not indicative of any propensity to crime. It was a solitary incident emanating from a sudden quarrel between students in the hostel.

40. No satisfaction has been recorded by the appointing authority that the petitioner was not suitable to be appointed with reference to the nature of alleged suppression and the nature of criminal case.

41. Since the respondent has not applied their mind as to whether the appellant

was fit for appointment considering the trivial offence which had already come to an end and the appellant had been given benefit of Section 12 of the Probation of Offenders Act which would not disqualify him to seek government service, the impugned cancellation of his appointment cannot be said to be justified. The decision taken by the respondent is not cogent and lacks proper application of mind.

42. In the peculiar facts of this case and following the principles laid down in the above said decisions, we are of the view that since the offence committed by the appellant is a petty one, and the petitioner made voluntary disclosure thereof to the respondent, the appellant cannot be denied the job in the question. The observations made by the Supreme Court in para 5 of Dhaval Singh, (supra) squarely apply to the present case.

43. The alleged offence was committed by the petitioner in his prime youth which is also a mitigating factor tilting equity in his favour. Therefore, applying the principles laid down by the Supreme Court in Sandeep Kumar (supra) and other judgments referred to above, denial of relief to the petitioner, may result in travesty of justice. In the present era of rampant unemployment, depriving an individual from valuable right on certain technical pretext is bound to result in inequality jeopardizing his entire future career. A welfare State, as a model employer, cannot be allowed to jettison legitimate aspirations of a selected incumbent by creating a situation where hopes end in despair.

44. The respondent's contention that the police authorities must have unearthed the involvement of the appellant in the criminal case during the course of verification is contrary to the original record produced by the respondent at the time of the hearing. The original record produced by the respondent reveals that the District Collector, Jaipur vide letter dated 11th July, 2011 certified that the Superintendent of Police, on inquiry, has not found anything adverse against the respondent and the appellant's character was satisfactory. The District Magistrate, Udaipur vide letter dated 06th September, 2011 also certified that the Superintendent of Police, Udaipur has not found anything adverse against the respondent upon inquiry and the appellant's character was satisfactory. In view of the aforesaid two documents on record, it was highly inappropriate for the respondent to take a false plea that the police authorities must have unearthed the appellants involvement in the criminal case before the learned Single Judge as well as before this Court.

45. In *Nidhi Kaushik v. Union of India* (supra), the officers of BHEL had misled the Division Bench of this Court and had made false statements on oath whereupon show cause notice was issued to officers who tendered unconditional apology. Reference may be made to the orders dated 30th May, 2014, 11th July, 2014 and 18th July, 2014 passed in LPA 736/2013.

46. We would like to mention that the nation and the society owe a duty to rehabilitate those who might have fallen on bad ways at some weak moment of

their lives. If reformed, the stigma of conviction, particularly when it may be for an offence which is petty, should not continue unabated for the rest of the life of a person. It is not unknown that when reformed, either because of reformatory measures that may be taken or when one's own conscience may guide one to completely change his ways, some people not only follow the ordinary guidelines or principles as settled by the society, but become totally pious and excel in all walks of life. It would be a travesty of justice if the law and the society may not give any chance to such people to come into main stream.

Conclusion

47. In the facts and circumstances of this case, the appeal is allowed and the impugned judgment dated 19th November, 2013 is set aside. The appellant is entitled to the appointment as Technical Officer with the respondent and subject to the appellant fulfilling all other requirements, the respondent shall issue the necessary letter of appointment to the appellant within three weeks.

48. The next question arises as to what action should be taken against the respondent for the concealment of relevant facts and documents, namely verification reports dated 11th July, 2011 and 6th September, 2011 of Jaipur and Udaipur Police authorities certifying that nothing adverse has been reported against appellant and his conduct was satisfactory. The respondent misled the learned Single Judge as well as this Division Bench and made false statement that the Police authorities must have discovered the involvement of the appellant in a criminal case, knowingly well that the police had given clean chit to the appellant. The respondent had a positive duty to disclose all relevant and material facts which they failed. This cannot be said to be a mere lapse.

49. It is very shocking to note that in resisting a simple case of delay in disclosure of a criminal case by the appellant, the respondent resorted to concealment and misled the Court. It is a fit case for ordering enquiry or initiating proceedings for contempt of Court. However, before initiating action in this matter, this Court would like to give an opportunity to the respondent to respond.

50. List on 1st May, 2015. The officers of the respondent responsible for concealment of the relevant documents and making false statement shall remain present in Court.

51. Copy of this judgment be given dasti to the parties under the signature of the Court Master.

52. The original record of respondent be returned back to the respondent after retaining a photocopy of the same on record.

53. C.M. Appl. 5724/2014 is disposed of as infructuous.