
(2015) 03 AHC CK 0050
In the Allahabad High Court
Case No : Special Appeal No. 181 of 2015

Veer Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 323, 324, 34, 452, 504

Citation : (2015) 4 ADJ 65 : (2015) 5 ALJ 321 : (2015) 111 ALR 45 : (2015) 147 FLR 34 : (2015) LabIC 3617 : (2015) 3 UPLBEC 2176

Hon'ble Judges : D.Y. Chandrachud, C.J.;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Adarsh Singh and Indra Raj Singh, for the Appellant

Final Decision : Dismissed

Judgement

1. The appeal arises from a judgment of the learned Single Judge dated 12 February 2015 dismissing a writ petition filed by the appellant for challenging the validity of an order dated 17 August 2007 terminating his services as a Constable in the Provincial Armed Constabulary PAC on the ground of suppression of material facts.

2. A criminal case was registered against the appellant in 2004 under Sections 323, 452, 504 and 506 of the Indian Penal Code IPC at Police Station Chhibramau, District Kannauj. The criminal case was registered as Case Crime No. 136 of 2004 and a charge sheet was submitted on 10 August 2004. An advertisement was issued for the recruitment of Constables to the PAC on 2 May 2006. In response to the advertisement, the appellant applied for selection. In the affidavit, which the appellant filed in support of his application, he stated that there was no criminal case pending against him; there was no criminal case against him in the past (Item No. 3) and that no criminal case was pending against him before any Court (Item No. 7). The appellant stated that if any part of his declaration was found to be incorrect or if there was a suppression of

material facts, his selection would be liable to be cancelled without notice and that he would be terminated from service. The appellant was selected on 28 August 2006. On 31 August 2006, the appellant was granted bail by the Chief Judicial Magistrate. On 17 August 2007, an order of termination was passed by the Commandant of the 11 Battalion in the PAC at Sitapur, terminating the selection of the appellant on the ground that he had made a false disclosure that no criminal case was pending against him when he applied for selection. On the contrary, it was found on the basis of a report submitted on 17 July 2007 by the Police Station concerned that a criminal case had been registered against the appellant and that the appellant was charge sheeted on 10 August 2004. The appellant filed a writ petition to challenge his termination from service.

3. The learned Single Judge by a judgment and order dated 12 February 2015 held that the statements made by the appellant on oath were false to his knowledge and it was not the case of the appellant that he was unaware of the pendency of a criminal case or that he had not been put to notice by the Court concerned upon the submission of the charge sheet. The learned Single Judge emphasized that when he made the declaration, the appellant knew of the criminal case which was lodged against him and that he was acquitted in the criminal case only on 27 August 2007. The conclusion which has been arrived at by the learned Single Judge is as follows:

"This Court is of the opinion that the cancellation of appointment/selection on account of suppression of material fact or deliberate misstatement is liable to be seriously viewed. A deliberate concealment or omission of vital information cannot clothe the selected with equitable considerations. A deliberate misstatement or omission of vital information made knowingly cannot fault the decision taken by the appointing Authority to annul the selection/appointment. The suppression of material information clearly speaks about the character and the moral fibre of the selected. Suppression of pendency of a criminal case, if it be a deliberate omission, would clearly justify the action of the employer in canceling the selection. This aspect assumes additional importance in case the selectee/appointee is seeking entry to a uniformed and disciplined force. A member of a disciplined force is liable to be judged on a higher pedestal. Viewed in light of the above this Court is of the opinion that the respondent No. 3 was clearly justified in passing the impugned order."

4. Before the learned Single Judge, reliance was sought to be placed on a decision of the Supreme Court 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 learned Single Judge has distinguished the judgment of the Supreme Court on two counts. First, in the case before the Supreme Court, the acquittal in the criminal case was even before the applicant had applied for recruitment in pursuance of an advertisement issued by the State Government as a Constable. Second, the verification of character and antecedents was for the

purpose of assessing the suitability of the appellant. The Supreme Court having due regard to the judgment of acquittal rendered by the Chief Judicial Magistrate came to the conclusion that on the facts as found, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of PAC Constable.

5. In the present case, the learned Single Judge held that the judgment of acquittal dated 27 August 2007 shows that the main prosecution witness had turned hostile and the accused including the appellant were acquitted on the ground that the charge was not established beyond reasonable doubt. The learned Single Judge held that this was not an honourable acquittal as explained in the decision of the Supreme Court in the case of State of MP and others Vs. Parvez Khan Civil Appeal No. 10613 of 2013 decided on 1 December 2014. The learned Single Judge has also made a reference to the order passed by a Bench of two learned Judges of the Supreme Court 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 , in which the matter has been referred to a larger Bench for reconsideration of certain earlier decisions of Benches consisting of two Hon"ble Judges of the Supreme Court.

6. The submission which has been urged before the Court by the learned counsel appearing on behalf of the appellant, is that in view of the decision of the Supreme Court in Ram Kumar (supra), the termination of the appellant from service would be unsustainable since the competent authority had proceeded on the basis that the pendency of the criminal case and the non disclosure thereof by the appellant in his affidavit filed while applying for recruitment would ipso facto result in invalidation of the appointment. Learned counsel submitted that this is not a correct position in law and the mere fact that the appellant had failed to make a disclosure of the pendency of a criminal case, would not preclude the authority from applying its mind to whether the appellant was suitable for recruitment as a Constable in the PAC. The second submission is that the impugned order was passed in violation of the principles of natural justice. The third submission is that the judgment of acquittal is similar to that before the Supreme Court in Ram Kumar (supra) and which would warrant the setting aside of the impugned order of termination.

7. These submissions fall for consideration.

8. The facts in the present case are not in dispute. The appellant applied for recruitment in pursuance of an advertisement dated 2 May 2006 as a Constable in the PAC. Admittedly, before he applied for selection, Case Crime No. 136 of 2004 had been registered against him under Sections 323, 452, 504 and 506 of the IPC and a charge sheet had been filed on 10 August 2004. Again, it is not in dispute that when he applied for recruitment, the appellant expressly stated that no criminal case had been registered against him and that no prosecution was pending against him in any Court. When he filed an affidavit, the appellant also

undertook that if his disclosures were found to be incorrect or, if he was found to have materially suppressed any true facts, his selection would stand cancelled and that he would be terminated from service without notice. The appellant was selected on 28 August 2006. It is his specific case in the submissions of Counsel that thereafter on 31 August 2006 he applied for and was granted bail by the Court of the Chief Judicial Magistrate. The judgment of acquittal was rendered by the Chief Judicial Magistrate on 27 August 2007. From these facts, it cannot not even be disputed that the disclosures which the appellant made when he sought appointment as a Constable were palpably false and that he had suppressed a material fact relating to the pendency of the criminal case against him. The appellant was clearly on notice that his appointment was liable to be terminated and the selection would be cancelled if his disclosures were found to be incorrect and if there was a suppression of material facts.

9. The foundation of the submission of the appellant proceeds on the decision of the Supreme Court in *Ram Kumar* (supra). Hence, it would be necessary to advert to the underlying facts and the principles of law laid down in that case. In *Ram Kumar* (supra), a criminal case had been registered against the appellant in 2001 under Sections 323, 324 and 504 of the IPC in which he was acquitted in 2002. The appellant applied for the post of Constable in 2006 and was selected. The police station submitted a report to the Senior Superintendent of Police specifically referring to the judgment of acquittal in spite of which an order was passed by the latter canceling the selection of the appellant on the ground of a concealment of facts. These facts indicate that first and foremost, there was a material distinction between the factual position in the present case. Before the Supreme Court, a criminal case had been registered in which the appellant had been acquitted nearly four years prior to his selection as a Constable. In this context, the Supreme Court adverted to the judgment of acquittal. Paragraph 8 of the decision of the Supreme Court which contains an evaluation of the judgment of acquittal, reads as follows:

"In the facts of the present case, we find that though Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18.07.2002 by the Additional Chief Judicial Magistrate, Etawah. On a reading of the order dated 18.07.2002 of the Additional Chief Judicial Magistrate would show that the sole witness examined before the Court, PW-1 Mr. Akhilesh Kumar, had deposed before the Court that on 02.12.2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the

appellant was not suitable for appointment to the post of a police constable."

(emphasis applied).

10. After considering the judgment of acquittal, the Supreme Court held that on the facts, as it appeared in that decision, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment on the post of Constable. Suitability for appointment as a Constable was part of the procedure of verifying the character and antecedents of a Government servant before appointment in terms of a Government Order dated 28 April 1958. Under that Government Order, the character of a candidate for direct appointment had to be such as to render him suitable in all respects for employment in service and it was the duty of the appointing authority to satisfy itself on this point. After having due regard to the facts of the case, the Supreme Court held that the appointing authority could not possibly have taken the view that the appellant was not suitable for appointment as a police constable on the basis of the judgment of acquittal.

11. In the present case, the judgment of acquittal has been duly considered by the learned Single Judge in the impugned judgment and order. We have also perused the judgment of the Chief Judicial Magistrate with the assistance of the learned counsel appearing on behalf of the appellant and the learned Standing Counsel. As we have noted, the appellant was arraigned as an accused on the charge of having committed offences under Sections 323, 452, 504 and 506 of the IPC. The Magistrate in the course of his judgment noted that PW 1, who was the complainant had, during the course of his examination in chief, supported the version of the prosecution. However, during the course of his cross-examination, the witness changed his story and adopted a diametrically contrary position. In this background, the Magistrate, while acquitting the appellant, observed as follows:

12. The Magistrate held that the complainant had, during the course of his examination in the court, adduced conflicting versions. While he had supported the case of the prosecution in examination in chief, he had resiled therefrom in the course of his cross examination. In these facts, the Magistrate gave to the appellant the benefit of doubt and acquitted him. These facts are, in our view, in contrast to those which were before the Supreme Court in the judgment of acquittal in Ram Kumar (supra).

13. Above all, as the learned Single Judge observed, the appellant had applied for recruitment to a disciplined force. He was clearly placed on notice that a suppression of material facts would invite serious consequences involving the termination of his services. Being conscious of that stipulation, the appellant chose to suppress the material fact that a criminal case had been registered against him and a chargesheet had been filed in 2004. The case was pending on the date when the appellant applied for selection in spite of which he suppressed this fact.

14. In a matter, such as the present, the appellant would be disentitled to relief both on the ground that on merits the order of cancellation cannot be faulted as well as for the additional reason that the equitable jurisdiction under Article 226 of the Constitution should not be exercised in favour of such a person.

15. learned Single Judge has referred to the order of a Bench of two learned Judges of the Supreme Court in Jainendra Singh (supra). For the purpose of these proceedings, we have considered the matter from the perspective of the submission of the learned counsel appearing on behalf of the appellant that the decision in Ram Kumar (supra), on which reliance has been placed by the appellant, holds the field. Unless a larger Bench of the Supreme Court comes to a different conclusion, the earlier decision would continue to bind the High Court. However, having assessed the merits of the submission even from that perspective, we see no reason to interfere in the judgment of the learned Single Judge dismissing the writ petition. The special appeal shall accordingly stand dismissed. There shall be no order as to costs.