

(2016) 12 AHC CK 0168
In the Allahabad High Court
Case No : Special Appeal No. 1845 of 2011

Virendra Kumar Yadav

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Citation : (2017) 4 ADJ 439 : (2017) 2 AllWC 1760 : (2017) 121 ALR 389

Hon'ble Judges : Tarun Agarwala and Siddhartha Varma, JJ.

Bench : Division Bench

Advocate : A.K. Malviya, R.P.L. Srivastava, S.C. Srivastava and Surendra Mohan Mishra, Advocates, for the Appellant; C.S.C, for the Respondents

Final Decision : Allowed

Judgement

Siddhartha Varma, J.—The appellant upon his selection as a constable was required to submit an affidavit mentioning therein, among other things, that no criminal case was registered against him. He was also required to mention in the affidavit that if any criminal case was registered, then how it had ended. When the character verification took place it transpired that in fact he was tried by a court of sessions in S.T. No. 57 of 2002 and was acquitted therein. But as the appellant had not given the mandatory information in his affidavit it had resulted in the impugned order dated 06.08.2006 by which the Senior Superintendent of Police, Gorakhpur, had cancelled the selection of the appellant. Against the order dated 06.08.2006, the appellant filed a writ petition No. 61215 of 2006 which was dismissed on 09.11.2006.

2. Aggrieved by the order dated 09.11.2006, the present Special Appeal has been filed.

3. The contention of the appellant is that when he was tried, he was only 16 years of age and thus was a minor and that the allegations against him were also very trivial. He, along with a few others, was tried under Sections 308/34, 323/34, 504 and 506 of the Indian Penal Code and was honourably acquitted.

Further contention of the appellant is that the non-mentioning of the criminal trial occurred chiefly because of the fact that he was under a mistaken impression that as he was acquitted in the trial there was no necessity to mention about it in the affidavit. Further more, it was argued that besides the above mentioned criminal case he was never involved in any other crime.

4. To impress upon us that his employers should have exercised their discretion in his favour even if he had not mentioned about the criminal trial, the petitioner has cited a decision of the Hon"ble Supreme Court in Avtar Singh v. Union of India and Ors. reported in 2016 SC AIR 3598, wherein the Supreme Court was of the view that if some inadvertent mistake in the affidavit had occurred then the employer could exercise his discretion sagaciously in favour of the candidate. Paragraph no. 30 on which the petitioner has relied is being reproduced hereunder:-.

"We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee."

5. In reply, the learned Standing Counsel contended that since there was a concealment and a wrong affidavit had been sworn, the appellant was not fit to be employed as a constable in the police force.

6. We have considered the arguments of the learned counsel for the appellant and the learned Standing Counsel and are of the view that the appellant though was required to give the information about the criminal trial in the affidavit, the order of cancelling the selection of the petitioner should not have been passed. It appears from the appraisal of the overall circumstances that the petitioner had inadvertently not mentioned the criminal trial as it had resulted in an acquittal as he felt it was not necessary to mention about the same. The lapse which was there appears to be an inadvertent one. Further more, the appellant was involved in a criminal case at a tender age of 16 and was tried for such offences like marpeet etc. which normally young boys in our villages in their bravado tend to commit.

7. For the reasons stated aforesaid, the impugned judgment of the learned Single Judge cannot be sustained and is set aside and the appeal is allowed. The writ petition is also allowed. The impugned order dated 06.08.2006 passed by the Senior Superintendent of Police, Gorakhpur is set aside. The matter is remitted to the Senior Superintendent of Police, Gorakhpur for a reconsideration of the case of the petitioner in the light of the decision of the Supreme Court in Avtar Singh v. Union of India and Ors. (supra). The Senior Superintendent of Police, Gorakhpur shall pass a reasoned and a speaking order within 4 weeks from the date of production of a certified copy of this order.