REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (Civil) No. 20860 of 2019)

SATISH CHANDRA YADAV ....APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. ....RESPONDENT(S)

With

CIVIL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (Civil) No. 5170 of 2021)

J U D G M E N T

J.B. Pardiwala, J. :

1. Leave granted.

2. Since the issues raised in both the captioned matters are almost the same and the principles of law applicable are also common, those were taken up for hearing analogously and are

being disposed of by this common judgment and order.

3. We first take up the Appeal arising out of the Special Leave Petition (Civil) No. 20860 of 2019.

Special Leave Petition (Civil) No. 20860 of 2019

4. This appeal is at the instance of an unsuccessful writ applicant of a writ application being the Writ Petition (C) No. 1167 of 2018 filed in the High Court of Delhi and is directed against the judgment and order dated 15.04.2019 by which a Division Bench of the High Court rejected the writ application filed by the writ applicant (appellant herein) thereby affirming the dismissal of the appellant herein from service as a Constable (General Duty) with the CRPF.

5. The facts giving rise to this appeal may be summarised as under:

5.1 The appellant herein was serving as a Constable (General Duty) with the CRPF. He was recruited as a temporary employee of the post of Constable (GD) in the CRPF on 28.07.2014. After undergoing the basic training, he reported at the 179th Battalion on 17.12.2015.

5.2 While filling up the requisite verification Form–25 at the time of his recruitment in the CRPF in Column 12 in response to the question whether any case was pending against him, the appellant answered in the negative.

5.3 Thereafter, under Rule 14 of the CRPF Rules, the Character and Antecedents verification Form of the appellant was sent to the Collector, District Sant Kabir Nagar, Uttar Pradesh. The Collector, vide his letter dated 25.02.2015, informed the Deputy Inspector General of Police (DIGP), Group Centre, CRPF Rampur that the Criminal Case No. 1015 of 2008 had been registered against the appellant herein at the P.S. Khalilabad Sant Kabir Nagar, Police Station for the offences punishable under Sections 147, 323, 324, 504 and 506 resply of the Indian Penal Code (for short, "IPC"). Upon receipt of the information as aforesaid, the services of the appellant herein came to be terminated in exercise of the powers conferred under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 vide the order dated 11.03.2016 on the ground that he had concealed the information as aforesaid while filling up the Form–25.

5.4 The further appeal addressed by the appellant herein to the

Inspector General (IG) was also dismissed.

5.5 The appellant herein challenged his dismissal from service by filing the Writ Petition (C) No. 10558 of 2016 in the High Court of Delhi. The said Writ Petition was disposed of by a Division Bench of the High Court on 25.09.2017 remitting the matter to the Revisionary Authority for fresh consideration within a period of six weeks from the date the appellant herein would make a representation.

5.6 The representation filed by the appellant herein ultimately came to be rejected and a fresh order dated 05.01.2018 reiterating the termination of the appellant's services was passed.

5.7 The appellant herein once again preferred a fresh Writ Petition (C) No. 1167 of 2018 challenging the impugned order dated 05.01.2018 terminating his services.

5.8 The High Court rejected the writ petition vide order dated 15.04.2019 holding as under:

> *"9. The fact remains that FIR No. 1015/2008 was registered at P.S. Khalilabad against the Petitioner and placed under Sections 147/323/324/504/506 IPC. Admittedly, the Petitioner got bail in the above Criminal case which was for cognizable offences. It is not therefore the case where the time of filing up of the verification form-25 the Petitioner was not aware of the pendency of the Criminal case against him.*

x *x* *x*

> *11. In the present case, on the date of filling up of the verification form the criminal case against the Petitioner was very much pending. The fact that the charge sheet had been filed after the filling up the form will not make any difference to the fact that the Petitioner deliberately gave a wrong answer to the question whether any case was pending against the Petitioner. This could not be termed as innocent. The Petitioner is applying for the post of Constable in a para military organization and is expected to be truthful in all responses to the columns in the verification form. At the time of filling up of that form the Petitioner was very much aware of the pendency of the criminal case. Therefore, there could be no excuse for not filling up the correct answer in response to the question under Column 12.*
>
> *12. For the aforementioned reasons, the Court finds no reason to interfere with the impugned order of the DA which was confirmed by the AA."*

6. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

Submissions on behalf of the Appellant

7. Ms. Jyoti Dutt Sharma, the learned counsel appearing for the appellant vehemently submitted that the High Court committed a serious error in passing the impugned order. She would submit that the prosecution against the appellant was of a very trivial

nature. It did not involve any moral turpitude. The suppression, if at all believed, by itself, cannot be a ground to deny public employment. It was argued that the appellant had no knowledge of the pendency of the criminal case on the date when the verification Form was filled up. She submitted that for the purpose of determining whether the suppression was with a guilty mind, the attestation/verification Form should be very specific and not vague so as to confuse the person filling up such Forms. It was further argued that at the relevant point of time, the appellant was 19 years of age. The criminal prosecution against him along with the others was on account of a family dispute. The appellant had been falsely arrayed as an accused in the said case. There was a settlement between the parties before the local village panchayat. Ultimately, the appellant herein along with the other co-accused came to be acquitted by the trial court.

8. The learned counsel placed strong reliance on the decision of this Court in the case of ***Avatar Singh v. Union of India***, (2016) 8 SCC 471 to fortify her submission that while passing the order of termination of services for giving false information, the employer must take notice of the special circumstances of the case, if any.

The High Court, in the first round of litigation, had taken notice of such non-application of mind and thought fit to remit the case for fresh consideration. It was argued that even upon fresh consideration, the Authority committed the very same mistake while reiterating the termination.

9. In the last, the learned counsel submitted that the High Court failed to consider an important question of fact that the Form CRP–25 was quite vague and not specific about the information in regard to the criminal antecedents. It is on account of such vagueness that the appellant was not able to understand the question in a proper manner and answered the same accordingly which is now being treated as false information.

10. In such circumstances referred to above, the learned counsel prays that there being merit in her appeal, the same may be allowed and the impugned order passed by the High Court may be set aside and the appellant may be ordered to be reinstated in service with full back wages.

Submissions on behalf of the Respondent

11. On the other hand, this appeal has been vehemently opposed by Ms. Madhavi Divan, the Additional Solicitor General (ASG)

submitting that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order. She would submit that the appellant is guilty of "suppression" of material facts which, by itself, was sufficient to terminate his services. It was argued that the services of the appellant herein were terminated because he was found guilty of submitting false information or to put in other words, guilty of suppression of material facts. The learned ASG vehemently submitted that the appellant herein not only suppressed information about his arrest but also suppressed the information about the criminal case which was pending against him at the time he filled up the verification Form.

12. The learned ASG further submitted that the appellant herein and the other co-accused were not honourably acquitted. They all came to be acquitted as the prosecution witnesses turned hostile. The learned ASG, while relying on the decision of this Court in the case of ***Avtar Singh*** (supra), more particularly, the para 38.4 therein submitted that the Authority concerned is duty bound to take into account the gravity of the offence in a situation where acquittal is not recorded at the time of filling up of the verification

Form.

13. It was argued that in a disciplined force which seeks to maintain high standards of integrity the suppression of material facts cannot be countenanced.

14. In the last, the learned ASG submitted that the judicial review under Article 136 of the Constitution in matters pertaining to the suitability of a candidate is limited to the extent of determining if the Authority concerned had acted with malice, mindlessness or gross illegality. She placed strong reliance on the decision of this Court in the case of ***Commissioner of Police v. Raj Kumar***, (2021) 8 SCC 347 to fortify her submission that the scope of judicial review in the matters of the present type is very limited. She placed reliance on the following observations made by this Court:

> *"28. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasised by this Court in M.V. Thimmaiah v. UPSC [M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119 : (2008) 1 SCC (L&S) 409] which held as follows : (SCC pp. 131, 135-36, paras 21 & 30)*
>
> > *"21. Now, comes the question with regard to the selection of the candidates. Normally, the*

recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion. …

x *x* *x* *x*

31. Public service — like any other, presupposes that the State employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision-making is neither illegal, unfair, or lacking in bona fides."

15. The learned ASG also placed strong reliance on the decision of this Court in the case of ***Union of India and Others v. Methu Meda,*** (2022) 1 SCC 1, more particularly, in the following

observations as under:

> *"17. In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5 of Avtar Singh case [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] , it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate."*

16. In such circumstances referred to above, the learned ASG prayed that there being no merit in this appeal, the same may be dismissed.

Analysis

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order?

18. The following facts are not in dispute:

a) The verification Form was filled up by the appellant on

02.09.2014.

b) A First Information Report was registered against the appellant herein and others on 26.05.2008 for the offences punishable under Sections 147, 148, 323, 324, 504 and 506 resply of the IPC.

c) Upon registration of the FIR on 26.05.2008, the appellant herein filed two applications in the Court of the Chief Judicial Magistrate, Sant Kabir Nagar, one application seeking to surrender himself before the Court in connection with the FIR referred to above and the second application seeking for regular bail.

d) It appears that the appellant upon surrendering before the Chief Judicial Magistrate was taken in deemed judicial custody with effect from 06.06.2008 and was ordered to be released on bail on 10.06.2008. It appears that the appellant was not actually put behind bars as asserted by the appellant.

e) At the end of the investigation, the Investigating Officer filed chargesheet in the Court of the Chief Judicial Magistrate which culminated in the Criminal Case No. 1015 of 2008. The appellant herein and the other co-accused were put to trial and

vide the judgment and order dated 13.01.2016 passed by the Chief Judicial Magistrate District Sant Kabir Nagar came to be acquitted.

f) At the time when the services of the appellant came to be terminated, he was a probationer.

g) In the verification Form, more particularly in clause 12, the following questions are to be found:

"(a) Have you ever been arrested? Yes/No✓

(b) Have you ever been prosecuted? Yes/No✓

(c) Have you ever been kept under detention Yes/No✓

x x x x

(i) Is any case pending against you in any Court of Law at the time of filling up this Verification Roll?" Yes/No✓

19. Against all the aforesaid questions, the appellant put a tick on "NO", as above.

20. The Authority concerned reached to the conclusion that the appellant had not only suppressed the fact that an FIR was registered against him but also suppressed the fact that he had surrendered before the Chief Judicial Magistrate who, in turn, had released him on regular bail. He also suppressed the fact that there

was a Criminal Case No. 1015 of 2008 registered against him and pending in the court of Chief Judicial Magistrate for the offences enumerated above.

21. In such circumstances, a notice was issued to the appellant herein to show cause as to why his services should not be terminated. Upon conclusion of the enquiry the appellant ultimately came to be dismissed from service.

22. We now look into the connected Appeal arising out of the Special Leave Petition (Civil) No. 5170 of 2021.

Special Leave Petition (Civil) No. 5170 of 2021.

23. This appeal is at the instance of an unsuccessful writ applicant of a writ application being the Writ Petition (Civil) No. 9456 of 2018 filed in the High Court of Delhi and is directed against the judgment and order dated 04.02.2020 by which a Division Bench of the High Court rejected the writ application filed by the writ applicant (appellant herein) thereby affirming the dismissal of the appellant herein from service as a Sub-Inspector/GD, 45th Battalion, CRPF.

24. The facts giving rise to this appeal may be summarised as under:

24.1 The appellant herein was serving on the post of SI/GD with the CRPF.

24.2 In August, 2011, the appellant had applied for the post of SI in the CRPF pursuant to a call for applications by the Union Public Service Commission.

24.3 As part of the said application, the appellant was required to fill the CRP-25 verification Form. While filling up the form in August, 2011, in response to the question of whether any criminal proceeding is pending against him in any court of law, he answered in the negative.

24.4 The appellant came to be inducted in the CRPF as an SI.

24.5 The appellant received an order dated 19.11.2015 from the office of the Deputy Inspector General of Police (DIGP), Rampur, UP whereby he was informed that an inquiry would commence on the Article of Charge (AOC) under Section 11 of the CRPF Act r/w Rule 27 of the CRPF Rules, 1955 that had been framed against him. The translated version of the statement of the AOC reads as under:

> *"That No. 115213628 SI/GD Pushpendra Kumar Yadav, C/45 Battalion, CRPF, while working on the post of Sub Inspector / GD, being the member of force, has committed the misconduct and misbehaviour, in which at the time of recruitment, personnel gave false information in the Past Antecedents Verification Form*

(CRP Form – 25) at column No. 12 (a and b) that no case is pending against the personnel in any court, however before the recruitment of personnel, a case Crime No. 261/2002 under Section 147, 149, 323, 325, 504, 506, 307 IPC was registered against him at Police Station Khajni, District Gorakhpur (UP. Personnel, during his recruitment, has concealed the information regarding criminal case pending against him and misguided the department by giving wrong information, which is an offence punishable under Section 11 (1) of CRPF Act, 1949 and Rule 27 of the Central Reserve Police Force Rules, 1955."

24.6 By an order dated 23.09.2016, the office of the DIGP imposed a penalty of removal from service on the applicant.

24.7 Departmental inquiry came to be conducted in which the appellant submitted his defence statement. The Inquiry Officer submitted his report to the Commandant, 45th Battalion, who in turn submitted it to the DIG.

24.8 The appellant offered *inter alia* the following reasons in his defence:

(i) He was entirely unaware about the pendency of a case against him in Rampur as he "was studying outside the village."

(ii) When he met some of the co-accused, they "assured" him that a compromise had been reached in the criminal case.

(iii) He never received any summons nor appeared before any Court.

(iv) He could not understand the meaning of the contents of the 12(a) and (b) of the verification Form.

24.9 Upon considering the aforesaid reasons put forth by the appellant and his response to the questions in column 12 (a) and (b) of the verification Form, the DIGP, Rampur vide order dated 23.09.2016 imposed the penalty of removal of service on the appellant.

24.10 The appeal filed by the appellant in the office of the Inspector General of Police (IGP), Lucknow also came to be dismissed.

24.11 The revision petition filed by the appellant in the office of SDG also came to be rejected.

24.12 The appellant thereafter preferred the writ petition being the Writ Petition No. 9456 of 2018 in the High Court questioning the legality and validity of the action of removal from service.

24.13 The High Court adjudicated the Writ Petition and vide the impugned judgment and order dated 04.02.2020 rejected the same. The High Court while rejecting the writ application held as under:

"26. The Court has perused all the impugned orders, which have taken note of the facts surrounding the Petitioner's case, as noted in the foregoing paragraphs, and arrived at the decision to remove the Petitioner from service. The Petitioner's contention that the Respondents in accordance with the decision in ***Avtar Singh*** *(supra) were required to factor in the relevant facts as to his antecedents, is untenable. In order for the Petitioner to demand that the Respondents consider his antecedents before passing an order of termination from service, as per paragraph 34 (4) (c) of* ***Avtar Singh*** *(supra), the Petitioner's acquittal should have been before his appointment. Admittedly, the Petitioner's case is not one of acquittal before his appointment.*

27. In any event, the order of the DA has set out detailed reasons for rejecting every contention raised by the Petitioner in his representation against the findings in the inquiry report. The orders of the AA, RA as well as the DG, CRPF also do not merely reiterate the findings of each lower authority, but offer their reasons for affirming the penalty of removal of service, while having regard to the CRPF Act and Rules. The Court, therefore, is not convinced by the Petitioner's argument alleging "non-application of mind" on the part of the Respondents.

28. As regards the Petitioner's submission that the Respondents had not complied with the DoPT's instructions on the handling of anonymous/pseudonymous complaints as put forth in several OMs issued in this regard, it bears mentioning, firstly, that the OM dated 11th October, 2002 upon which the Petitioner relied, which stipulated that prior concurrence of the CVC was required to taken to look into the verifiable facts contained in such anonymous/pseudonymous complaints, has since been withdrawn by an OM dated 26th November, 2014.

29. Turning to OM dated 18th October 2013, paragraph 3 (iii) thereof reads as under:

"(iii) If a complaint contains verifiable allegations, the administrative Ministry/Department may take cognizance of such complaint with the approval of the competent authority to be designated by the Ministry/Department as per their distribution of work. In such cases, the complaint will be first sent to the complainant for owning/disowning, as the case may be. If no response is received from the complainant within 15 days of sending the complaint, a reminder will be sent. After waiting for 15 days after sending the reminder, if still nothing is heard, the said complaint may be filed as pseudonymous by the Ministry/Department."

30. It must be noticed, at this juncture, that it is not the Petitioner's case that the paragraph reproduced hereinabove was not complied with by the Respondents. In any event, the aforesaid paragraph 3 (iii) makes provision for the method of ascertaining the identity of the complainant before such a complaint may be filed as "pseudonymous." A bare perusal of the record of the case evinces that such an attempt was made by the Respondents by engaging in correspondence with the SP, Gorakhpur, through which the Petitioner's involvement in criminal proceedings was incontrovertibly established. Indeed, nowhere has the Petitioner denied his involvement in the case thereafter. Hence, the Respondents cannot be faulted for relying solely on an unsubstantiated pseudonymous complaint in proceeding against the Petitioner.

31. Learned counsel for the Petitioner then referred to a letter dated 1st February 2012 issued by the Ministry of Home Affairs announcing 'Policy Guidelines for considering cases of candidates for appointment in the CAPFs - pendency of criminal cases against candidates - the effect of:.' He referred in particular to para 2 (iii) of the said document which lists out instances where the candidate 'will not be considered for recruitment' and to the first proviso thereto which states "Provided further that the candidate shall not be debarred in the

above cases, if only an FIR has been registered/the case is under investigation and no charges have been framed either or FIR or on the complaint in any court of law." Learned counsel for the Petitioner submitted that in the instant case since at the time of his filling up the form in August 2011, only an FIR registered against him and charges were not yet framed, the above proviso would apply.

32. This Court is unable to accept the above submission. The said policy guidelines do not excuse the candidate from giving correct answers to the questions posed in the application/attestation form. In fact, it presupposes that the candidate has been truthful about the pending FIR. However, in the present case, it is not in dispute that the Petitioner did not give the correct answers to the critical questions about pendency of the criminal case against him. The proviso to para 2 (iii) above, therefore, does not help the Petitioner.

33. For all the aforementioned reasons, the Court finds no merit in the petition and dismisses it, as such."

25. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

Submissions on behalf of the appellant:

26. Mr. M. M. Singh, learned counsel appearing for the writ applicant vehemently submitted that the High Court committed a serious error in passing the impugned order. He would submit that the criminal prosecution did not involve any moral turpitude. He laid much stress on the fact that in the year 2002 when the criminal prosecution was instituted the appellant was just 19 years

of age and was not even residing in the village as he was pursuing his studies at some other place. He pointed out that as it was a family dispute, the same came to be resolved. The settlement was arrived at between the parties.

27. In the aforesaid context, the learned counsel invited the attention of this Court to page 163 of the paper book. The document at page 163 of the paper book is in the form of a settlement recorded before the local village panchayat in writing duly signed by the parties concerned. The same reads thus:

> *"**SETTLEMENT BY THE PANCHAYAT***
>
> *We, Ram Prit Yadav S/o Ishwari Yadav resident of village – Nakdah, police station-Khajani, District-Gorakhpur*
>
> *….First party*
>
> *And*
>
> *We, Paramhansh Yadav S/o late Ram Bali Yadav R/o village- Nakdah, police station-Khajani, District-Gorakhpur*
>
> *…..Second party*
>
> *We both parties are resident of same village and are Pattidar with each other. On the issue of land of khalihan near our house and on 'paimaish' a quarrel had occurred between us on 28.6.2002 and due to confusion and misunderstanding, me first party has submitted written complaint at police station. But now we both sides after sitting together is settling our dispute through panchayat on 7.7.2002. Now onwards all disputes have been mutually settled/over between*

us. I Ram Prit Yadav first party do station Khajani, regarding this Panchayati settlement tomorrow and will make written request that no further action is required to be taken regarding the incident occurred on 28.6.2002 because now we both sides do not want any further action in the matter in court. We both sides have settled the issue mutually.

Second party	*First party*
Sd/-Paramhansh	*Sd/-Ram Prit*
Paramhash Yadav	*Ram Prit Yadav*

Witnesses:

1. *Ramawati*
2. *Subhash Chandra Gupta*
3. *Anil Kumar Gupta*
4. *Chandra Bhan*
5. *Shyam Sunder*
6. *Ram Sagar*

Date: 07.07.2002"

28. The learned counsel further submitted that the form was filled up by the appellant almost after a period of nine years from the date of the registration of the FIR in the year 2002. As it was a family dispute which ultimately came to be compromised, the appellant all throughout remained under the impression that nothing further was required to be done in regard to the criminal case. He further pointed out that the charge was framed by the trial court in 2011 i.e. almost after nine years from the date of

registration of the FIR. The trial ultimately resulted in acquittal in view of the settlement arrived at between the parties.

29. The learned counsel would submit that the appellant *bona fide* believed that in view of the settlement arrived at between the parties, there was no criminal case thereafter pending against him and the others.

30. The learned counsel submitted that even filling up of the verification Form, the previous record of the appellant was got verified through the District Magistrate who in turn sent a report to the DIG, CRPF through the letter dated 28.11.2011 wherein it was stated that nothing adverse was found in the police records. He submitted that on 27.02.2015, one unknown person named Brijesh Yadav (who was later found to be not traceable) made a complaint with the respondent/department against the appellant regarding the pendency of the case. That the complaint was received by the Department, and a report was called for by the office of the DIG, CRPF from the office of the SSP, Gorakhpur. In pursuance of this, the SSP Gorakhpur got an investigation carried out by the Circle Officer, Khajani, Gorakhpur and the Circle Officer submitted his report to the SSP. In the report, it was mentioned

that no such person by name Brijesh Yadav was found and the Crime Case No. 261/2002 was at the stage of settlement but since charge sheet was filed, it was pending in the Court. The report was sent by the SSP Gorakhpur to the DIG CRPF. He further pointed out that on 28.07.2015, the appellant was acquitted from all the charges by the Ld. Additional Sessions Judge, Gorakhpur in the Crime Case No. 261/2002 on merits vide the judgment and order dated 28.07.2015.

31. The learned counsel further submitted that the appellant served for about 5 years in the CRPF with utmost sincerity and loyalty. Most of the time during his (appellant herein) service, i.e. about 4 years, he served in the region of Kashmir. His service record has been commendable and time and again he was rewarded for his service. He further pointed out that the appellant was also selected in the CISF as an ASI in 2010-11, but as he was already in service with the CRPF he could not join the CISF. He made a fervent appeal that one chance may be given to the appellant as the termination from service will come in his way in all future employments public or private.

32. In such circumstances, referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the appellant may be ordered to be reinstated in service by set asiding the impugned order passed by the High Court as well as by the Department.

Submissions on behalf of the Respondent:

33. On the other hand, this appeal has been vehemently opposed by Ms. Madhavi Divan, the learned ASG appearing for the respondent. She submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order. She reiterated the very same submissions as canvassed by her while opposing the connected appeal.

34. Ms. Divan, the learned ASG submitted that there being no merit in the present appeal, the same may be dismissed.

35. The following facts are not in dispute:

a) The FIR was registered against the appellant herein and others dated 28.06.2002 at the Khajani Police Station bearing Crime Case

No. 261/2002 for the offences punishable under Sections 147, 148, 323, 325, 307, 504 & 506 resply of the IPC;

b) The accused persons including the appellant herein were arrested & later ordered to be released on bail by the Sessions Court, Gorakhpur;

c) At the end of the investigation, chargesheet was filed in the court of the Judicial Magistrate, Gorakhpur. Upon filing of the chargesheet, the Criminal Case No. 3266 of 2009 came to be registered on the file of the court of the Judicial Magistrate, Gorakhpur;

d) The Judicial Magistrate Court No. 24, Gorakhpur vide order dated 02.08.2011 committed the case to the Court of Sessions in exercise of his powers under Section 207 of the CrPC;

e) The Sessions Court at Gorakhpur framed charge vide order dated 23.12.2011 for the offences punishable under Sections 147, 323, 325, 307, 504 and 506 resply r/w 149 of the IPC;

f) The trial court ultimately acquitted all the accused persons as the prosecution witnesses turned hostile;

g) The material on record would indicate that at the time of filling of verification Form on 20.08.2011, the appellant was on bail. On

09.07.2002 chargesheet was filed and on 02.08.2011, a copy of the chargesheet was also furnished to the appellant;

h) In the verification Form, more particularly in clause 12, the following questions are to be found:

"(a) Have you ever been arrested? Yes/No✓

(b) Have you ever been prosecuted? Yes/No✓

(c) Have you ever been kept under detention Yes/No✓

x x x x

(i) Is any case pending against you in any Court of Law at the time of filling up this Verification Roll?" Yes/No✓

36. Against all the aforesaid questions, the appellant put a tick on "NO", as above.

Position of Law

37. In ***Union of India and Others v. M. Bhaskaran***, AIR (1996) SC 686, this Court held that when an appointment is procured by a workman on the basis of a bogus and forged casual labourer service card, it would amount to misrepresentation and fraud on the employer. Therefore, it would create no equity in favour of the workman or any estoppel against the employer and for such misconduct, termination would be justified without any domestic

inquiry. This Court held:

> *"6. ... Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer service cards. ...*
>
> *... It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. ...*
>
> *... The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. ..."*

38. ***M. Bhaskaran*** (supra) was a case of fraud as forgery was committed.

39. In ***Delhi Administration, v. Sushil Kumar***, (1996) 11 SCC 605, this Court laid stress on the fact that the verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State.

40. In ***Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav***, (2003) 3 SCC 437, this Court held that:

> *"12. … In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents 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. …"*

41. In the aforesaid case, this Court held that the purpose of requiring an employee to furnish information regarding prosecution/conviction, etc. in the verification Form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information

and making a false statement in reply to queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. This Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

42. In ***Kamal Nayan Mishra v. State of Madhya Pradesh and Others***, (2010) 2 SCC 169, the *ratio decidendi* in ***Ram Ratan Yadav*** (supra) was discussed and clarified as follows:

> *"14. Therefore, the ratio decidendi of Ram Ratan Yadav (2003) 3 SCC 437 is, where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding*

any inquiry. The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him." [Emphasis supplied]

43. Thus, this Court in ***Kamal Nayan Mishra*** (supra) held that an employee who is found to have suppressed material facts at the time of appointment, must be given an opportunity to defend the charges against him and cannot be terminated without due notice.

44. In ***R. Radhakrishnan v. Director General of*** **Police and Others**, (2008) 1 SCC 660, this Court considered the case of a candidate for appointment as a Fireman who had furnished wrong information about his involvement in a criminal case, though he was acquitted. This Court held that the standards expected of a person intended to serve in such a service are different from the one of the persons who intended to serve in other services. It was also concluded that the candidate knew and understood the implications of the omission in his statement to disclose vital information. The candidate by not disclosing his involvement in a criminal case, prevented the Authority from verifying his character as a suitable appointment. This Court, therefore, declined to

exercise its equitable jurisdiction in favour of such a candidate who had suppressed such material facts.

45. Similarly, in the ***Union of India and Others v. Bipad Bhanjan Gayen***, (2008) 11 SCC 314, this Court dealt with the validity of the termination of the candidate, who had been selected for training as a constable in the Railway Protection Force. This Court recognised that different standards are to apply to the different services while determining the question of validity of the termination when material facts are suppressed. It was held as under:

> *"10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer pre-supposes a higher level of integrity as such a person is expected to uphold the law, and on the contrary, such a service born in deceit and subterfuge cannot be tolerated."* [Emphasis supplied]

46. In ***State of Haryana and Others v. Dinesh Kumar*** (2008) (3) SCC 222, this Court considered the case of an employee (constable driver for State Police) who had answered "No" to a query as to whether he was arrested. The employee had argued that as a

layman, his understanding of arrest did not match with the legal definition of arrest. The candidate said he had voluntarily appeared before the Magistrate, without being taken into formal custody, was granted bail and was ultimately acquitted. This Court held as under:

> *"12. One of the common questions which, therefore, need to be answered in both these appeals is whether the manner in which they had appeared before the Magistrate and had been released without being taken into formal custody, could amount to "arrest" for the purpose of the query in Column 13(A). …*
>
> *x x x x*
>
> *31. In our view, the reasoning given in Dinesh Kumar's case in that context is a possible view and does not call for interference under Article 136 of the Constitution. Conversely, the decision rendered in the writ petitions filed by Lalit Kumar and Bhupinder has to be reversed to be in line with the decision in Dinesh Kumar's case. 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."* [Emphasis supplied]

47. Thus, it was held that even if what transpired may technically amount to arrest, the benefit of a mistaken impression rather than the consequences of a deliberate and willful misrepresentation and concealment of facts, should be extended to the employee.

48. This Court in the case of ***Daya Shankar Yadav v. Union of India and Others***, (2010) 14 SCC 103 was faced with a similar issue wherein a CRPF officer upon suppression of material facts was terminated from the service. This Court while referring to its previous decisions, summarised the position as follows:

> *"14. … The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service."*
>
> *15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:*
>
> > *(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation,*

discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and

(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).

This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."

49. This Court in the aforesaid case while deliberating on the very same questions as were asked in the verification Form from the appellant in the present case, held that:

"24. We are satisfied that the appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for employment in a uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit."

50. In the case of ***Commissioner of Police and Others. v.***

Sandeep Kumar (2011) 4 SCC 644, the candidate after clearing the test, disclosed his involvement in a criminal case which was compromised and later on such compromise was acquitted. A Show-Cause notice was issued to him asking him to show cause as to why his candidature for the post should not be cancelled as he had concealed the fact of his involvement in the criminal case and had made a wrong statement in his application form. The authorities were not satisfied with the explanation offered and went on to terminate his employment. A challenge was made by him before the Administrative Tribunal which declined to interfere. However, the High Court granted the relief by setting aside the proposal for cancellation of his candidature. This Court upheld the order of the High Court by granting the relief and held as under:

> *"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."*

51. The Court in the aforesaid took into consideration the fact that the incident had happened when the respondent was 20 years of age. The Court held that young people are not expected to behave

in as mature a manner as the older people. The Court highlighted that the approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

52. In the case of ***Jainendra Singh v. State of U.P. Tr. Prinl. Sec. Home and Others***, (2012) 8 SCC 748, this Court, while referring to its previous precedents set on the issue of suppression of material facts being a ground for termination laid down certain principles to be considered. This Court also called for the constitution of a larger Bench to settle the issue. The yardsticks laid down by this Court are as below:

> "29. *As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two-Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:*
>
> *29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.*
>
> *29.2 Verification of the character and antecedents is*

one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged

from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable."

53. The Court while referring the issues to larger Bench observed in paras 30 and 31 resply as under:

"30. When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.

31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this Court for an authoritative

pronouncement so that there will be no conflict of views and which will enable the courts to apply the law uniformly while dealing with such issues."

54. This Court before settling the issues in the case of ***Avtar Singh v. Union of India and Others***, (2016) 8 SCC 471, discussed the said principles extensively in the matter of ***Commissioner of Police, New Delhi and Another v. Mehar Singh***, (2013) 7 SCC 685. In this case, a candidate for the post of constable in the Delhi Police had disclosed his involvement in a criminal case, wherein he was acquitted on technical grounds. The candidate had his candidature for the post rejected by the Standing Committee. The candidate argued that as he had been acquitted, the Standing Committee by rejecting his candidature had overreached the decision of the competent Authority. This Court, while deciding on the issue and whether the respondent was honourably acquitted, held as under:

"25. The expression "honourable acquittal" was considered by this Court in S. Samuthiram 2013 (1) SCC 598. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses.

There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541 where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

26. In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

x x x x

34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. 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. This decision, in our opinion, can only be taken by the Screening Committee *created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.*

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to

see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand."

[Emphasis supplied]

Precedent of Avtar Singh

55. In the case of ***Avtar Singh*** (supra), a three-Judge Bench of this Court looked into the conflict of opinion in the various decisions highlighted in ***Jainendra Singh*** (supra). The larger Bench considered plethora of decisions on the question of suppression of information or submitting false information in the verification Form, also as to the question of having been criminally prosecuted, arrested or as to the pendency of a criminal case. After

analysing all the previous decisions of this Court on the subject, the larger Bench held as follows:

> *"30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or*

ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service."

56. The larger Bench stated that an objective criterion must be applied while terminating an employee who had suppressed material facts. The Court held that mere suppression cannot be the sole reason for termination and due consideration must be paid to the facts of the case. The Court, while discussing the objective yardsticks that are to be applied held as under:

"34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature

of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects."

57. The Court proceeded to hold further that a chance of reformation should be afforded to the young offenders in suitable cases while exercising the power for cancelling candidature. The Court thereafter summarised the discussion on the issue by way of laying down certain guidelines as stated below:

"38. 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:

38.1. 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.

38.2. 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.

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

38.4. 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: -

38.4.1. 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.

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

38.4.3. 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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the

candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

Position of law post Avtar Singh

58. In ***Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Another***, (2018) 1 SCC 797 the issue of the respondent therein being honourably acquitted and entitled to being reinstated was raised. This Court, while relying upon ***Mehar Singh*** (supra) and holding that the nature of the offences must be looked into, held as follows:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh (2013) 7 SCC 685 and Parvez Khan (2015) 2 SCC 591 cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

x x x x

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post."

[Emphasis supplied]

59. In the case of ***State of Madhya Pradesh and Others v. Bunty***, (2020) 17 SCC 654, the candidate had not disclosed the fact that he had criminal proceedings pending against him at the time of verification. The criminal proceedings were based on the candidate impersonating a police officer and this Court treated it to be a case which involved moral turpitude. The candidate was granted benefit of doubt. The candidate had been acquitted on the technical ground of a witness being held hostile. This Court held that the perception formed by the Screening Committee, that he was unfit to be inducted in the disciplined police force, was appropriate. Further it was held that, the decision of the Scrutiny Committee could not be said to be such which warranted judicial interference unless there is a mala fide intent involved.

60. In the case of ***State of Rajasthan and Others v. Love Kush Meena***, (2021) 8 SCC 774, the respondent was charged under Sections 302, 323, 341/34 resply of the IPC and was acquitted as the prosecution failed to prove its case beyond reasonable doubt. The witnesses had turned hostile. The candidate had disclosed the said fact at the time of applying; however, his appointment was cancelled relying on ***Avtar Singh*** (supra). This Court held as

under:

> *"24. Examining the controversy in the present case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. …*
>
> *x x x x*
>
> *26. The judgment in Avtar Singh's case (2016) 8 SCC 471 on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible."* [Emphasis supplied]

61. In the case of ***Union of India and Others v. Methu Meda***, (2022) 1 SCC1, the respondent had applied for the post of constable in the CISF and was selected. The respondent had disclosed about the case in which he was acquitted. However, his selection was subsequently cancelled. The respondent challenged the same vide a writ petition, which the High Court allowed. This Court, however, set aside the High Court's order and discussed the consequence of

an acquittal on technical grounds. It was also reiterated that a person joining the police force must be of impeccable character and must not have any criminal antecedents. This Court held as under:

> *"17. In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5 of Avtar Singh case (supra) (2016) 8 SCC 471, it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate.*
>
> *x x x x*
>
> *20. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely* exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the

decision of the Committee would be final unless mala fide. …

21. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. ….”

[Emphasis supplied]

62. In the ***Union of India (UOI) v. Dilip Kumar Mallick***, (2022) 6 Scale 108, a CRPF officer had suppressed the fact that the proceedings under the IPC were pending against him. The Court, while referring to ***Avtar Singh*** (supra), held that the suppression can be a ground for an employer to cancel the candidature or to terminate the services. The respondent served in the organization since 2003 and continued to remain as an under trial accused without the knowledge of the organisation. The respondent received an honourable acquittal from the trial court. This Court held as under:

"13. Thus, it remains beyond the pale of doubt that the cases of non-disclosure of material information and of submitting false information have been treated as being of equal gravity by this Court and it is laid down in no uncertain terms that non-disclosure by itself may be a ground for an employer to cancel the candidature or to terminate services. Even in the summation above-quoted, this Court has emphasized that information given to the employer by a candidate as to criminal case including the factors of arrest or pendency of the case, whether before or after entering into service, must be true and there should be no suppression or false mention of the required information.

14. In case of suppression, when the facts later come to the knowledge of employer, different courses of action may be adopted by the employer depending on the nature of fault as also the nature of default; and this Court has indicated that if the case is of trivial nature, like that of shouting slogans at a young age etc., the employer may ignore such suppression of fact or false information depending on the factors as to whether the information, if disclosed, would have rendered incumbent unfit for the post in question.

14.1. However, the aforesaid observations do not lead to the corollary that in a case of the present nature where a criminal case was indeed pending against the respondent and the facts were altogether omitted from being mentioned, the employer would be obliged to ignore such defaults and shortcomings. …

x x x x

16. In the given set of facts and circumstances, where

suppression of relevant information is not a matter of dispute, there cannot be any legal basis for the Court to interfere in the manner that the employer be directed to impose 'any lesser punishment', as directed by the Division Bench of the High Court. The submissions seeking to evoke sympathy and calling for leniency cannot lead to any relief in favour of the respondent."

[Emphasis supplied]

63. In the case of ***Pawan Kumar v. Union of India***, (2022) SCC OnLine SC 532, a case was registered against the appellant for the offences punishable under Sections 148, 149, 323, 356 and 506 resply of the IPC. The appellant was honourably acquitted. However, the fact of the said criminal prosecution was not disclosed in the attestation form filled by the petitioner. On such ground, the appellant was discharged from service. The High Court upheld the discharge. While allowing the appeal, this Court held as follows:

"13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service

rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.

x *x* *x* *x*

18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into consideration the exposition expressed by this Court in Avtar Singh (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside." [Emphasis supplied]

64. In the case of ***Rajasthan Rajya Vidyut Prasaran Nigam Limited and another v. Anil Kanwariya***, (2021) 10 SCC 136, this Court gave altogether a different dimension to the issue in question. In the said case, the respondent had applied for the post of Technical Helper on the establishment of the appellant Nigam. The respondent was appointed as a Technical Helper on probation

for a period of two years w.e.f. 06.05.2015. The appointment of the respondent was subjected to the production of a character certificate/verification report to be issued by the Superintendent of Police of the native district of the respondent. The Superintendent, Sawai Madhopur vide his report dated 05.06.2015 informed the appellant that a criminal case bearing No. 13 of 2011 for the offences punishable under Sections 143, 341 and 323 resply of the IPC was registered against the respondent and the respondent came to be convicted vide the judgment and order dated 05.08.2013 passed by the trial court. The report of Superintendent of Police further stated that the respondent was given the benefit under the Probation of Offenders Act, 1958. In other words, although the respondent stood convicted for the alleged offence yet the trial court thought fit to release him on probation. This fact was supressed by the respondent at the time of his appointment. In such circumstances, action was taken and ultimately the respondent's services came to be terminated. The respondent challenged the order of termination in the High Court. The learned Single Judge of the High Court set aside the order of termination and directed the appellant to reinstate the respondent. The

appellant Nigam preferred an intra-court appeal before the Division Bench. The appeal came to be dismissed. The appellant Nigam ultimately came to this Court and challenged the orders passed by the High Court. This Court while allowing the appeal filed by the Nigam held in Para 14 as under:

> *"14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or*

continue to be in service as a matter of right."

[Emphasis Supplied]

65. Thus, this Court took the view that irrespective of the fact whether the dispute is of a trivial nature or not, it is the credibility/ trustworthiness of a particular employee which matters the most when it comes to public employment. This Court took the view that if a particular employee supresses something important or makes any false declaration with a view to secure public employment then such employee could be said to have exhibited a tendency which is likely to shake the confidence of the employer. In such circumstances, it would be within the discretion of the employer whether to continue or not to continue such an employee who has exhibited a tendency which reflects on his overall character or credibility.

66. We now proceed to look into the decision of this Court in the case of ***Mohammed Imran v. State of Maharashtra and Others*** (2019) 17 SCC 696, upon which strong reliance has been placed on behalf of the appellant herein. In the said case, the appellant Mohammed Imran was denied appointment in judicial service on the ground of moral turpitude as he had to face criminal

prosecution for the offences punishable under Sections 363 and 366 resply r/w 34 of the IPC. The appellant had been acquitted of the charge under Sections 363 and 366 r/w 34 of the IPC much before he cleared the examination for appointment in the judicial service in the year 2009. Thus, it was a case wherein the criminal prosecution came in the way of the appellant. Although he stood acquitted by the trial court yet he was denied appointment on the ground of "Moral Turpitude". The appellant lost before the High Court of Bombay. This Court while allowing his appeal observed as under:

> *"5. Employment opportunities are a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simplicitor. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.*

6. That the expression "moral turpitude" is not capable of precise definition was considered in Pawan Kumar v. State of Haryana, [(1996) 4 SCC 17 : 1996 SCC (Cri) 583] , opining : (SCC p. 21, para 12)

> *"12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."*

7. The appellant by dint of hard academic labour was successful at the competitive examination held on 16-8-2009 and after viva voce was selected and recommended for appointment by the Maharashtra Public Service Commission on 14-10-2009. In his attestation form, he had duly disclosed his prosecution and acquittal. Mere disclosure in an appropriate case may not be sufficient to hold for suitability in employment. Nonetheless the nature of allegations and the conduct in the facts of a case would certainly be a relevant factor. While others so recommended came to be appointed, the selection of the appellant was annulled on 4-6-2010 in view of the character verification report of the police.

8. It is an undisputed fact that one Shri Sudhir Gulabrao Barde, who had been acquitted on 24-11-2009 in Case No. 3022 of 2007 under Sections 294, 504 and 34 IPC, has been appointed. We are not convinced, that in the facts and circumstances of the present case, the appellant could be discriminated and denied appointment arbitrarily when both the appointments were in judicial service, by the same selection procedure, of persons who faced criminal prosecutions and were acquitted. The distinction sought to be drawn by the respondents, that the former was not involved in a case of moral turpitude does not leave us convinced. In Joginder Singh [Joginder Singh v. State (UT of Chandigarh), (2015) 2 SCC 377: (2015) 1 SCC (L&S)

490], it was observed as follows: (SCC pp. 383-84, para 25)

> *"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."*

9. In the present proceedings, on 23-3-2018 [Mohd. Imran v. State of Maharashtra, (2019) 17 SCC 700], this Court had called for a confidential report of the character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The law is well settled in this regard in Avtar Singh v. Union of India [(2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] . If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.

10. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described

as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand.

11. We, therefore, consider the present a fit case to set aside the order dated 4-6-2010 and the impugned order [Mohd. Imran v. State of Maharashtra, 2017 SCC OnLine Bom 9939] dismissing the writ petition, and direct the respondents to reconsider the candidature of the appellant. Let such fresh consideration be done and an appropriate decision be taken in the light of the present discussion, preferably within a maximum period of eight weeks from the date of receipt and production of the copy of the present order. In order to avoid any future litigation on seniority or otherwise, we make it clear that in the event of appointment, the appellant shall not be entitled to any other reliefs."

67. Thus, this Court took the view that although employment opportunity is a scarce commodity in the present times being circumscribed within a limited vacancies yet by itself may not suffice to invoke sympathy for grant of relief where the credentials of a candidate may raise any question regarding his suitability, irrespective of eligibility. However, at the same time, this Court observed that there should not be any mechanical or rhetorical incantation of moral turpitude to deny appointment in a government service simplicitor which would depend on the facts of each case. The judicial philosophy flowing through the mind of the

judges is that every individual deserves an opportunity to improve, learn from the past and move ahead in life for self-improvement. To make past conduct, irrespective of all considerations, may not always constitute justice. It would all depend on the fact situation of the given case.

68. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after, the larger Bench decision in the case of ***Avtar Singh*** (supra) different courts have enunciated different principles.

69. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials–more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to

inspire public confidence is a bulwark to society's security. [See ***Raj Kumar*** (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders'

conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted *mala fide.*

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?

Scope of Appeal under Article 136 of the Constitution

70. Article 136 of the Constitution empowers the Supreme Court to grant special leave in its discretion against any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal except by any court or tribunal constituted by or under any law relating to the armed forces. It reads as under:

> *"136. Special leave to appeal by the Supreme Court.— (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.*
>
> *(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."*

71. The jurisdiction conferred by Article 136 is divisible into two stages: the first stage is upto the disposal of prayer for the special leave to file an appeal and the second stage commences, if and when, the leave to appeal is granted and the special leave petition is converted into an appeal. The legal position as summarised by this Court in ***Kunhayammed v. State of Kerala***, (2000) 6 SCC 359; affirmed in ***Khoday Distilleries Ltd. v. Mahadeshwara Sahakara Sakkare Karkhane Ltd***., (2019) 4 SCC 376, regarding the scope of two stages reads as under:

> *"(1) While hearing the petition for special leave to appeal, the Court is called upon to see whether the petitioner should be granted such leave or not. While hearing such petition, the Court is not exercising its appellate jurisdiction; it is merely exercising its discretionary jurisdiction to grant or not to grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of the Supreme Court. Whether he enters or not would depend on the fate of his petition for special leave;*
>
> *(2) If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the Court that a case for invoking appellate jurisdiction of the Court was not made out.*
>
> *(3) If leave to appeal is granted, the appellate jurisdiction of the Court stands invoked; the gate for entry in the appellate arena is opened. The petitioner is in and the respondent may also be called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the Court may dismiss the*

appeal without noticing the respondent.

(4) In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge."

72. In ***Pritam Singh v. State***, AIR 1950 SC 169, the Constitution Bench of this Court has explained the scope and powers of this Court under Article 136 of the Constitution in detail:

"9. On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those cases where special circumstances are shown to exist. The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases, which were reviewed by the Federal Court in Kapildeo v. King. It is sufficient for our purpose

to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Since the present case does not in our opinion fulfil any of these conditions, we cannot interfere with the decision of the High Court, and the appeal must be dismissed." [Emphasis supplied]

73. A three-Judge Bench of this Court in the case of ***Hem Raj, Son of Devilal Mahajan of Bijainagar, Condemned Prisoner, at Present Confined in the Central Jail, Ajmer v. State of Ajmer*****,** AIR 1954 SC 462, held as under:

"2. Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers under Article 136(1) of the Constitution and the circumstance that because the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for. The question for consideration is

whether this test is satisfied in either of these two appeals. After hearing the learned counsel in both the appeals we are satisfied that none of them raise any questions which fall within the rule enunciated above."

[Emphasis supplied]

74. The Constitution Bench of this Court in the case of ***P.S.R. Sadhanantham v. Arunachalam and Another***, (1980) 3 SCC 141, has explained the Article 136 of the Constitution as under:

> *"7. .....In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the court. The question is whether it spells by implication, fair a procedure as contemplated by Article 21. In our view, it does. Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136. Is it merely a power in the court to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Article 136, either in the matter of grant of leave or, after such grant, in the final disposal of the appeal? We have hardly any doubt that here is a procedure necessarily implicit in the power vested in the summit court. It must be remembered that Article 136 confers jurisdiction on the highest court. The founding fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to*

judicial principles well established by precedents in our jurisprudence. Judicial discretion is canalised authority, not arbitrary eccentricity. Cardozo, with elegant accuracy, has observed: [Benjamin Cardozo : The Nature Of The Judicial Process, Yale University Press (1921)]

> *"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. It is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains."*

8. It is manifest that Article 136 is of composite structure, is power-cum-procedure — power in that it vests jurisdiction in the Supreme Court, and procedure in that it spells a mode of hearing. It obligates the exercise of judicial discretion and the mode of hearing so characteristic of the court process. In short, there is an in-built prescription of power and procedure in terms of Article 136 which meets the demand of Article 21.

9. We may eye the issue slightly differently. If Article 21 is telescoped into Article 136, the conclusion follows that fair procedure is imprinted on the special leave that the court may grant or refuse. When a motion is made for leave to appeal against an acquittal, this Court appreciates the gravity of the peril to personal liberty involved in that proceeding. <u>It is fair to assume that while considering the petition under Article 136 the court</u>

will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave. When this conspectus of processual circumstances and criteria play upon the jurisdiction of the court under Article 136, it is reasonable to conclude that the desideratum of fair procedure implied in Article 21 is adequately answered.

xxx *xxx* *xxx*

11. The wider the discretionary power the more sparing its exercise. Times out of number this Court has stressed that though parties promiscuously "provoke" this jurisdiction, the court parsimoniously invokes the power. Moreover, the court may not, save in special situations, grant leave to one who is not eo nomine a party on the record. Thus, procedural limitations exist and are governed by well worn rules of guidance."

[Emphasis supplied]

75. Thus, the principles of law discernible from the aforesaid are that unless, it is shown that exceptional and special circumstances exist; that substantial and grave injustice have been done and the case and question present features of sufficient gravity to warrant a review of the decision appealed against, this Court would not exercise its overriding powers under Article 136(1) of the Constitution. The wide discretionary power with which this Court is invested under Article 136 is to be exercised sparingly and in exceptional cases only.

76. In so far as the Appeal arising out of the Special Leave Petition (C) No. 20860 of 2019 filed by Satish Chandra Yadav is concerned, the same should fail. We are not at all convinced with the case put forward by Satish Chandra Yadav for informing the respondent herein that there was no criminal case pending against him on the date he filled up the verification form. The explanation offered by Satish Chandra Yadav is nothing but his own understanding of what is prosecution and pendency of a criminal case. If he knows that trial is deemed to have commenced with the framing of charge, then we are sure he knows and understands what is criminal prosecution.

77. Indisputably, Satish Chandra Yadav was still under probation at the time, his services had been terminated. It is also apparent from the record that Satish Chandra Yadav had been given appointment on probation subject to the verification of facts given in the verification Form. To our mind, therefore, if an enquiry revealed that the facts given were wrong, the respondent herein was at liberty to dispense with the services of the appellant Satish Chandra Yadav as the question of any stigma and penal consequences at this stage would not arise. It bears repetition that

what has led to the termination of the services of the appellant Satish Chandra Yadav is not his involvement in the criminal case which was then pending, and in which he had been acquitted subsequently but the fact that he had withheld relevant information while filling in the verification Form. He could be said to have exhibited or displayed such a tendency which shook the confidence of the respondent.

78. Administrative law has traditionally approached the review of decisions classified as discretionary separately from those seen as involving the interpretation of rules of law. The rule has been that the decisions classified as discretionary may only be reviewed on limited grounds such as the bad faith of decision-makers, the exercise of discretion for an improper purpose, and the use of irrelevant considerations. A general doctrine of "unreasonableness" has also sometimes been applied to the discretionary decisions. In our opinion, these doctrines incorporate two central ideas – those discretionary decisions, like all other administrative decisions, must be made within the bounds of the jurisdiction conferred by the statutory rules, but that considerable deference will be given to the decision-

makers by the courts in reviewing the exercise of that discretion and determining the scope of the decision-makers' jurisdiction. These doctrines recognise that it is the intention of a legislature, when using statutory language that confers broad choices on the administrative agencies, that courts should not lightly interfere with such decisions, and should give considerable respect to the decision-makers when reviewing the manner in which discretion was exercised. However, discretion must still be exercised in a manner that is within a reasonable interpretation of the margin of manoeuvre contemplated by the legislature, in accordance with the principles of the rule of law.

79. Ms. Madhavi Divan, the learned ASG has rightly relied on ***Kendriya Vidyalaya Sangathan*** (supra) in which this Court held that the purpose of requiring an employee to furnish information regarding prosecution/conviction, etc. in the verification Form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information and making a false statement in reply to the queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and

that where it is found that the employee had suppressed or given false information in regard to the matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. This Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

80. We find that the observations in the aforesaid case are fully applicable to the appeal filed by Satish Chandra Yadav. We are of the opinion that it was a deliberate attempt on the part of the appellant Satish Chandra Yadav to withhold the relevant information and it is this omission which has led to the termination of his service during the probation period.

81. In view of the aforesaid, the Appeal arising out of the Special Leave Petition (C) No. 20860 of 2019 filed by Satish Chandra Yadav fails and is hereby dismissed.

82. So far as the connected Appeal arising out of the Special Leave Petition (C) No. 5170 of 2021 filed by Pushpendra Kumar Yadav is

concerned, the same also fails on the very same line of reasoning adopted by us. The only difference in the case of the appellant Pushpendra Kumar Yadav is that he had put in about four years of service before he came to be terminated.

83. In the result, both the appeals fail and are hereby dismissed with no order as to costs.

84. Pending application, if any, stands disposed of.

.....J.
(SURYA KANT)

.....J.
(J.B. PARDIWALA)

NEW DELHI;
SEPTEMBER 26, 2022.