JAINENDRA SINGH

*v.*

STATE OF U.P. TR. PRINL. SEC. HOME & ORS.

(Civil Appeal No. 5671 of 2012)

JULY 30, 2012

**[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]**

*Service Law:*

*Termination – Constable in police department – Concealing certain relevant facts which he was called upon to disclose – At the time of his selection – Termination of his service after selection finalized and appointment made – Whether the termination on the ground of concealment justified – Conflicting views on the issue by various judgments passed by Division Bench of Supreme Court – Matter referred to Larger Bench for authoritative pronouncement on the issue.*

*Delhi Administration Through its Chief Secretary and Ors. vs. Sushil Kumar* **1996 (11) SCC 605: 1996 (7) Suppl. SCR 199;** *Union of India and Ors. vs. M. Bhaskaran* **1995 Supp. (4) SCC 100: 1995 (4) Suppl. SCR 526;** *Regional Manager, Bank of Baroda vs. Presiding Officer, Central Govt. Industrial Tribunal and Anr.* **1999 (2) SCC 247;** *Kendriya Vidyalaya Sangathan and Ors. vs. Ram Ratan Yadav* **(2003) 3 SCC 437: 2003 (2) SCR 361;** *Secy., Deptt. of Home Secy. A.P. and Ors. vs. B. Chinnam Naidu* **2005 (2) SCC 746: 2005 (1) SCR 1147;** *R. Radhakrishnan vs. Director General of Police and Ors.* **(2008) 1 SCC 660: 2007 (11) SCR 456;** *Union of India and Ors. vs. Bipad Bhanjan Gayen* **(2008) 11 SCC 314: 2008 (8) SCR 99;** *Daya Shankar Yadav vs. Union of India and Ors.* **(2010) 14 SCC 103: 2010 (13) SCR 1076;** *State of West Bengal and Ors. vs. SK. Nazrul Islam* **2011 (10) SCC 184: 2011 (12) SCR 1033;** *Commissioner of Police and*

A *Ors. vs. Sandeep Kumar* **(2011) 4 SCC 644:2011 (3) SCR 964:** *Commissioner of Police, Delhi and Anr. vs. Dhaval Singh* **1999 (1) SCC 246;** *Kamal Nayan Mishra vs. State of Madhya Pradesh and Ors.* **2010 (2) SCC 169: 2009 (16) SCR 237;** *Ram Kumar vs. State of U.P. and Ors.* **Civil Appeal No.**
B **7106/2011 decided by Supreme Court on 19.8.2011 – referred to.**

**Case Law Reference:**

| | | |
|---|---|---|
| **1996 (7) Suppl. SCR 199** | **Referred to.** | **Para 17** |
| C **1995 (4) Suppl. SCR 526** | **Referred to.** | **Para 18** |
| **1999 (2) SCC 247** | **Referred to.** | **Para 19** |
| **2003 (2) SCR 361** | **Referred to.** | **Para 20** |
| D **2005 (1) SCR 1147** | **Referred to.** | **Para 21** |
| **2007 (11) SCR 456** | **Referred to.** | **Para 22** |
| **2008 (8) SCR 99** | **Referred to.** | **Para 23** |
| E **2010 (13) SCR 1076** | **Referred to.** | **Para 24** |
| **2011 (12) SCR 1033** | **Referred to.** | **Para 25** |
| **2011 (3) SCR 964** | **Referred to.** | **Para 26** |
| **1999 (1) SCC 246** | **Referred to.** | **Para 26** |
| F **2009 (16) SCR 237** | **Referred to.** | **Para 26** |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5671 of 2012.

G From the Judgment & Order dated 01.12.2010 of the High Court of Judicatute at Allahabad Writ Petition (C) No. 21900 of 2008.

Vineet Dhanda, Puneet Dhanda, JP Dhanda, Raj Rani
H Dhanda, Amrendra Kumar Singh, Abhijeet Shah for the Appellant.

Shobha Dikshit, Malvika Trivedi, Anuvrat Sharma, Alka Sinha, Gunnam Venkateswara Rao for the Respondents. A

The Order of the Court was delivered

**ORDER**

B

**FAKKIR MOHAMED IBRAHIM KALIFULLA,J.** 1. Leave granted.

At the very threshold, we are confronted with a question as to which of the judgments which have taken conflicting views C have to be followed in the matter of termination of a Constable in the Police Department, who concealed certain relevant facts which he was called upon to disclose after his selection was finalized and after order of appointment was issued by placing him on probation.

D

2. The brief facts of the case are; the appellant applied for the post of Constable pursuant to which he participated in the physical test held in the month of October, 2006. He having cleared the physical test was permitted to appear in the written examination which was held on 5.11.2006. Having come out E successful in the written test also, he participated in the interview held in the month of November, 2006. After a subsequent medical examination, the appellant, along with others was declared fit and was sent for training.

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3. At the time of consideration of the appellant's claim, a Declaration Form in the form of an Affidavit was called for in order to ascertain his conduct and involvement in any criminal or civil case. The appellant submitted the Declaration Form on 10.11.2006 by swearing to an affidavit.

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4. In the said affidavit the appellant declared that he has not been convicted by any Court; that no criminal case was registered against him; that no criminal case was pending against him in any Court; that no criminal case was under investigation against him; that he had never been arrested by H

police in connection with any criminal case; that he was never challaned in any criminal case and that his character was clean and bright. At the end of the declaration, in paragraphs 15-16 he declared that all the information/averments which he made in the affidavit were true and correct and if any information/ averment was found to be false or incorrect after his selection on the said post then his selection could be cancelled immediately without giving any notice and he could be removed from the training course.

5. He also fully understood the position that if any of the information/averment in that affidavit was found to be wrong or concealed then he would agree for all the legal proceedings that would be initiated against him.

6. However, it came to light that the appellant was involved in a criminal case for an offence falling under Sections 147,323,336, I.P.C. which was pending in the Court at the time of his selection though subsequently he was acquitted by the competent Court on 04.01.2007.

7. Since the appellant concealed his involvement in a criminal case, the Senior Superintendent of Police passed orders on 27.10.2007 terminating his appointment/ services on that ground.

8. Aggrieved by the said termination order, the appellant approached the High Court by filing a Writ Petition (C) No. 21900/2008 and by the impugned order the High Court declined to interfere with the order of termination holding that the appellant deliberately concealed the vital information in order to secure employment and subsequent acquittal would not enure to his benefit. The High Court while reaching upon the above conclusion, relied upon a decision of this Court in *Kendriya Vidyalaya Sangathan and Ors. Vs. Ram Ratan Yadav* – (2003) 3 SCC 437.

9. Besides the above decision, the learned counsel for the

appellant while seeking leave to challenge the order impugned placed reliance upon the three other decisions of this Court, namely, *Kamal Nayan Mishra Vs. State of Madhya Pradesh & Ors.*- 2010 (2) SCC 169; order dated 19.8.2011 in *Ram Kumar Vs. State of U.P. & Ors.* – Civil Appeal No. 7106/2011 and *Commissioner of Police and Ors. Vs. Sandeep Kumar* – (2011) 4 SCC 644.

10. Relying upon the above referred decisions, the learned counsel contended that a different view than what has been expressed by this Court in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) in the matter of employment in Police services has been stated and the appellant being identically placed, he is entitled for the same relief as was granted in the above referred to decisions.

11. Learned counsel for the State, however, contended that the decision reported in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) having laid down the principle after referring to the earlier decisions on this issue and that in a series of subsequent decisions, the said view having been followed consistently, no interference is called for to the order of the High Court impugned in this appeal.

12. While appreciating the respective contentions of the learned counsel for the parties and on perusing the decisions relied upon by the learned counsel for the appellant as well as the decision reported in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra), we feel that a detailed analysis is required to be made in order to find out whether the issue calls for further deliberations so as to arrive at an authoritative pronouncement.

13. We have come across the following decisions in which this Court has taken a similar view which has been propounded in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra). The said decisions are reported in *Union of India & Ors. Vs. M. Bhaskaran* - 1995 Supp. (4) SCC 100, Delhi

A *Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar* -1996(11) SCC 605, *Regional Manager, Bank of Baroda Vs. Presiding Officer, Central Govt. Industrial Tribunal & Another* - 1999(2) SCC 247, Secy., *Deptt. of Home Secy., A.P. & Ors. Vs. B. Chinnam Naidu* - 2005 (2) SCC 746, *R.* B *Radhakrishnan Vs. Director General of Police & Ors* - (2008) 1 SCC 660, *Union of India & Ors. Vs. Bipad Bhanjan Gayen* – (2008) 11 SCC 314, *Daya Shankar Yadav Vs. Union of India & Ors.*- (2010) 14 SCC 103, *State of West Bengal & Ors. Vs. SK. Nazrul Islam* - 2011 (10) SCC 184.

C 14. We also find that the following decisions have taken a different view than what has been expressed in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) i.e., *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* - 1999 (1) SCC 246, *Kamal Nayan Mishra Vs. State of Madhya* D *Pradesh & Ors.* (supra), *Commissioner of Police & Ors. Vs. Sandeep Kumar* (supra) and the unreported judgment relied upon by the learned counsel for the appellant in *Ram Kumar Vs. State of U.P. & Ors.* (supra).

E 15. One common feature which we noted in all these cases is that all the above decisions were rendered by a Division Bench consisting of two- Judges alone. Though in the decisions in which the principle laid down in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) has been either F followed or similar view has been taken, we find a common thread in all those decisions in having laid down as a preposition of law that suppression of material information which a candidate was called upon to furnish and which he failed to do, such concealment would result in serious consequences and also not befitting the nature of service for which such G recruitment was made, the State would be well within its powers to resort to cancellation of such appointment when the appointee was under-going probation in order to ensure cleanliness in the service.

H 16. We feel it appropriate to make a brief reference to the

principles laid down in the various decisions pro and cons in order to pass appropriate orders in this appeal. A

17. In Delhi Administration through its *Chief Secretary and Ors. v. Sushil Kumar* (supra); this Court held:

> "3. It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. *The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.* If the actual result happened to be in a particular way, the law will take care of the consequences. *The consideration relevant to the case is of the antecedents of the candidate.* Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service.
>
> (Emphasis added)

B C D E F

18. In *Union of India & Ors. Vs. M. Bhaskaran* (supra), this Court held: G

> *"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* H

A *employment which would not have been made available to them* if they were not armed with such bogus and forged labourer service cards.

xxx xxx xxx xxx xxx xxx xxx

B 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* C *the option of the employer concerned.* This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their D say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of E natural justice.

xxx xxx xxx xxx xxx xxx xxx

The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who F 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* G *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

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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 not 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.* Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits."

(Emphasis added)

19. In *Regional Manager, Bank of Baroda Vs. Presiding Officer, Central Govt. Industrial Tribunal and Anr.* (supra), this Court held:

"6.Learned counsel for the appellant submitted that once the Labour Court has found that the respondent was guilty of suppression of relevant facts and had also snatched an order of appointment which would not have been given to him had he not deliberately concealed the fact about the aforesaid prosecution against him for an offence under Section 307 of the Indian Penal Code, there was no question of awarding him any lesser punishment save and except confirming the order of termination. In this connection, he invited our attention to a decision of this Court in the case of *Union of India v. M. Bhaskaran* [1995 Supp (4) SCC 100] wherein it has been clearly held that when appointment is procured by a workman on the basis of bogus and forged casual labourer's service card, it would amount to misrepresentation and fraud on the employer and, 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 and there was no question of holding any domestic enquiry.

A 7. There could be no dispute on this settled legal position....."

In this decision, the employee had already completed his probation and, however, having regard to the peculiar facts involved therein, this Court interfered with the order of termination. This Court at the end of the judgment has made it clear that the said order was rendered on the peculiar facts and circumstances of the case and would not be treated as a precedent in future.

C 20. In *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra), this Court laid down the law in no uncertain terms in para 12:

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

teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open.

Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service.

In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

(Emphasis added)

21. In *Secy. Deptt. Of Home Secy. A.P. & Ors. Vs. B.Chinnam Naidu* (supra), this Court held:

"7. xxx xxx xxx xxx xxx xxx

As is noted in Kendriya Vidyalaya Sangathan Case the object of requiring information in various columns like

A column 12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he B cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law. But on the facts of the case it cannot be said that the respondent had made false declaration or had suppressed material information."

C (Emphasis added)

Here again in the peculiar facts of the case, this Court thought it fit to interfere with the order of termination.

D 22. In *R. Radhakrishnan Vs. Director General of Police and Ors.* (supra), this Court held:

"10. *Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different* E *from the one of a person who intended to serve in other services.* Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a F disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

G 13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."

H (Emphasis added)

23. In *Union of India and Ors. Vs. Bipad Bhanjan Gayen-* (supra), this Court held: A

> "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 high 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." B C

(Emphasis added)

24. In *Daya Shankar Yadav Vs. Union of India & Ors.* (supra), all the earlier decisions right from *Delhi Administration through its Chief Secretary and Ors. Vs. Sushil Kumar* (supra) ending with *Union of India & Ors. Vs. Bipad Bhanjan Gayen* (supra) including *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) were considered in detail and the preposition of law was laid down as under: D E

> "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* F G H

*current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."*

(Emphasis added)

25. In *State of West Bengal and Ors. Vs. Sk. Nazrul Islam* (supra), this Court held:

"3. On 28.09.2007, the respondent was supplied a verification roll for verification of his antecedents and the respondent filled the verification roll and submitted the same to the Reserve Officer, Howrah, on 29.09.2007. The verification roll of the respondent was sent to the District Intelligence Branch, Howrah, on 08.10.2007. In the course of enquiry, it came to light that he was involved in a criminal case involving offences under Sections 148/323/380/427/596, IPC in Bagnan PS Case No.97 of 2007 and after investigation, the charge-sheet had already been filed in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, and that the respondent had surrendered before the Court and had been granted bail. All these facts, however, had been concealed in Column 13 of the verification roll submitted by the respondent in which he was required to state whether he was ever arrested, detained or convicted. The authorities, therefore, did not appoint the respondent as a constable.

5. We have heard the learned counsel for the parties and we fail to appreciate how when a criminal case under Sections 148/323/380/427/596, IPC, against the respondent was pending in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, any mandamus could have been issued by the High Court to the authorities to appoint the respondent as a constable. *Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is*

*suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/427/596 IPC, he cannot possibly be held to be suitable for appointment to the post of constable."*

(Emphasis added)

26. As against the above decisions, a contrary view has been expressed by this Court in *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* (supra), *Kamal Nayan Mishra Vs. State of Madhya Pradesh and Ors.* (supra), *Commissioner of Police and Ors. Vs. Sandeep Kumar* (supra) and in an unreported decision in *Ram Kumar Vs. State of U.P. and Ors.* (supra).

27. In *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* (supra), the factum of concealment of relevant information, namely, pendency of a criminal case against the concerned applicant was not in dispute. This Court, however, distinguished the said case by stating that after the provisional selection as well as the interview and before the order of appointment was issued, he voluntarily disclosed the pending criminal case by stating that by inadvertence he omitted to mention the same in the appropriate column and that he was subsequently acquitted. The said criminal case was also noted while granting the relief in favour of the candidate. The ratio laid down in the decision in Delhi Administration Through its *Chief Secretary & Ors. Vs. Sushil Kumar* (supra) was distinguished by stating that no such corrective measure was initiated by the candidate in *Delhi Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar* (supra) case. In *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* (supra) decision it was held:

"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal

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

(Emphasis added)

28. In the decision in, *Kamal Nayan Mishra Vs. State of*
H *Madhra Pradesh & Ors.* (supra), the ratio decidendi in

*Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) has been set out in para 14:

> "14. Therefore, the ratio decidendi of Ram Ratan Yadav 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 added)

In the said case, the appellant was appointed much earlier and that while he was in service he was prosecuted for involvement in a criminal case for an offence u/s 148,324/149,326/149 and 506 IPC in which he was acquitted by the Criminal Court on 9.9.2004. The information furnished by him after more than a decade of his employment and the procedure followed while taking a decision in passing the ultimate order, this Court held that the appellant therein was entitled for the relief of reinstatement.

29. In *Commissioner of Police and Ors. Vs. Sandeep Kumar* (supra), the order of termination was interfered with holding 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

A 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 take in the matter."

B This was also a case where the candidate after qualifying in all the tests, for the first time in the attestation form, disclosed his involvement in a criminal case which was compromised and subsequently based on such compromise he was acquitted. A Show-Cause notice was also issued to him asking him to show cause why his candidature for the post should not be cancelled C because he had concealed the fact of his involvement in the criminal case and had made a wrong statement in his application form. A challenge was made by him before the Administrative Tribunal which declined to interfere. However, the High Court granted the relief, set aside the proposal for D cancellation of his candidature. This Court also upheld the order of the High Court by granting the relief as quoted in para 12 above.

30. In the unreported decision in *Ram Kumar Vs. State* E *of U.P. & Ors.*(supra), while suppression of the registration of a criminal case against the appellant therein was not in dispute; it was held that what was required to be considered by the appointing authority was to satisfy himself as to the suitability of the applicant to the post based on the nature of crime alleged F against the applicant. It was held:

"9. The order dated 18.07.2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15.01.2007 of the Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, G but it appears from the order dated 08.08.2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held H that the selection of the appellant was illegal and irregular

because he did not furnish in his affidavit in the proforma of verification roll that a criminal case has been registered against him. As has been stated in the instructions in the Government Order dated 28.04.1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment.

Ultimately the appointing authority was directed to take back the applicant without grant of any back wages.

31. 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:

(i) 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.

(ii) 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 not desirable to

A appoint a person to a disciplined force can it be said to be unwarranted.

(iii) 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.

(iv) 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.

(v) 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.

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

(vii) 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.

(viii) 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. A

(ix) An employee in the uniformed service 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. B

(x) 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. C

32. When we consider the above principles laid down in majority of the decisions, the question that looms large before us is when consideration of 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. D

33. 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 above mentioned 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. E F

34. With that view, we feel it appropriate to refer this matter to be considered by a larger Bench of this Court. Registry is directed to place all the relevant documents before the Hon'ble the Chief Justice for constitution of a larger Bench. G

K.K.T. Referred to larger Bench.

H