DEVENDRA KUMAR

v.

STATE OF UTTARANCHAL & ORS.

(Civil Appeal No. 1155 of 2006)

JULY 29, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Service Law – Termination of service – On account of suppression of the fact of pendency of criminal case – Held: Where an applicant gets an office by misrepresenting the facts by playing fraud upon competent authority, such order cannot be sustained in the eye of law – Material Information sought by the employer, if not disclosed, would amount to moral turpitude and is separate and distinct from the involvement in a Criminal case – The services of the appellant rightly terminated.

Maxims:

'fraus et jus nunguam cohabitant' – Applicability of.

'Subla fundamento cedit opus' – Applicability of.

'Nullus Commodum Capere Petest De Injuria Sua Propria' – Applicability of.

The appellant, who at the time of his appointment as a constable, submitted on affidavit that he had never been involved in a criminal case. The respondent-authorities in pursuance of the process of character verification found that the appellant was involved in a criminal case, in respect whereof, a closure report was submitted by the police and accepted by the Magistrate. Respondent-authority terminated his services. Single judge as well as Division Bench of High Court upheld the termination of service. Hence the present appeal.

A **Dismissing the appeal, the Court**

HELD: 1. A writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law." [Para 12] [480-G-H; 481-A]

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2.1. Where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." "Fraud and justice never dwell together" *(fraus et jus nunquam cohabitant).* "Misrepresentation itself amounts to fraud", and further "fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. Dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances, the Court should not perpetuate the fraud by entertaining petitions on their behalf. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service. [Paras 11, 14, 15, 16 and 18] [480-E-F; 481-C, D-G; 483-D]

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S.P. Chengalvaraya Naidu (Dead) by LRs. vs. Jagannath (Dead) by LRs. and Ors. **AIR 1994 SC 853: 1993 (3) Suppl. SCR 422;** *Andhra Pradesh State Financial Corporation vs. M/s. GAR Re-Rolling Mills and Anr.* **AIR 1994 SC 2151: 1994 (2) SCC 647;** *State of Maharashtra and Ors. vs. Prabhu*

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(1994) 2 SCC 481; *Smt. Shrisht Dhawan vs. M/s. Shaw Bros.* AIR 1992 SC 1555: 1991 (3) Suppl. SCR 446; *United India Insurance Company Ltd. vs. Rajendra Singh and Ors.* AIR 2000 SC 1165: *M.P. Mittal vs. State of Haryana and Ors.* AIR 1984 SC 1888: 1985 (1) SCR 940; *Ram Chandra Singh vs. Savitri Devi and Ors.* AIR 2004 SC 4096: 2004 (12) SCC 713; *Vice-Chairman, Kendriya Vidyalaya Sangathan and Anr. vs. GirdharilalYadav* (2004) 6 SCC 325; *Union of India and Ors. vs. M. Bhaskaran* AIR 1996 SC 686: 1995 (4) Suppl. SCR 526; *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi* (1990) 3 SCC 655: 1990 (2) SCR 559 – relied on.

Lazarus Estate Ltd. vs. Besalay 1956 All E.R. 349 – referred to.

2.2. In the present case, an FIR was registered against the appellant and others under Sections 402/465/ 471 and 120-B IPC. In respect of the same, a closure report was submitted which was accepted by the Magistrate. [Para 6] [479-A-B]

2.3.The High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. [Para 22] [484-B-D]

2.4. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and

A antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case. [Para 22] [484-
B D-F]

2.5. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not
C involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been
D no further trial or the person concerned stood acquitted/ discharged. [Para 10] [480-C-E]

2.6. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot
E sanctify the same. "*Subla Fundamento cedit opus*"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim
F *Nullus Commodum Capere Potest De Injuria Sua Propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. Nor can a person claim any right arising out of his own wrong doing. *(Juri Ex*
G *Injuria Non Oritur).* [Para 23] [484-F-H; 485-A]

Union of India vs. Maj. Gen. Madan Lal Yadav AIR 1996 SC 1340: 1996 (3) SCR 785; *Lily Thomas vs. Union of India and Ors.*AIR 2000 SC 1650: 2000 (3) SCR 1081 – relied on.

H 2.7. Clause 4 of proforma affidavit deals with a

situation, where a case has been registered, an investigation is conducted and the police have filed a final report. Though, the person concerned must have knowledge of the pendency of such an FIR/criminal complaint. Further, clause 7 requires, in case, a person has faced criminal prosecution, he has to furnish the information about the result of that trial as to whether the person has been punished/convicted or acquitted/ discharged. Therefore, it cannot be said that the clauses have to be read together and such information was required to be furnished only and only if the person faced the trial and not otherwise. [Paras 7 and 8] [479-E-H]

State of Haryana and Ors. vs. Dinesh Kumar **AIR 2008 SC 1083: 2008 (1) SCR 281;** *Secretary, Department of Home, 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.* **AIR 2008 SC 578: 2007 (11) SCR 456;** *Delhi Administration through its Chief Secretary and Ors. vs. Sushil Kumar* **(1996) 11 SCC 605: 1996 (7) Suppl. SCR 199;** *Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav* **AIR 2003 SC 1709: 2003 (2) SCR 361;** *A.P. Public Service Commission vs. Koneti Venkateswarulu* **AIR 2005 SC 4292: 2005 (2) Suppl. SCR 1050 – referred to.**

Case Law Reference:

1993 (3) Suppl. SCR 422	**relied on**	**Para 11**
1956 All E.R. 349	**referred to**	**Para 11**
1994 (2) SCC 647	**relied on**	**Para 12**
(1994) 2 SCC 481	**relied on**	**Para 12**
1991 (3) Suppl. SCR 446	**relied on**	**Para 13**
AIR 2000 SC 1165	**relied on**	**Para 14**
1985 (1) SCR 940	**relied on**	**Para 14**

A	**2004 (12) SCC 713**	**relied on**	**Para 15**
	(2004) 6 SCC 325	**relied on**	**Para 15**
	1995 (4) Suppl. SCR 526	**relied on**	**Para 16**
B	**1990 (2) SCR 559**	**relied on**	**Para 16**
	1996 (7) Suppl. SCR 199	**referred to**	**Para 17**
	2003 (2) SCR 361	**referred to**	**Para 18**
	2005 (2) Suppl. SCR 1050	**referred to**	**Para 18**
C	**2008 (1) SCR 281**	**referred to**	**Para 19**
	2005 (1) SCR 1147	**referred to**	**Para 20**
	2007 (11) SCR 456	**referred to**	**Para 21**
D	**1996 (3) SCR 785**	**relied on**	**Para 23**
	2000 (3) SCR 1081	**relied on**	**Para 23**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1155 of 2006..

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From the Judgment and Order dated 28.05.2004 of the High Court of Uttaranchal at Nainital in Special Appeal No. 16 of 2003.

F Nanita Sharma, Vivek Sharma, for the Appellant.

Pankaj K. Singh, Mukesh Verma, Jatinder Kumar Bhatia, for the Respondents.

The Judgment of the Court was delivered by

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DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and order dated 28.5.2004 in Special Appeal No. 16 of 2003 passed by the High Court of Uttaranchal. The order affirmed the judgment and order of the learned Single Judge dismissing the Writ Petition No. 278 (S/

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B) of 2002 vide impugned judgment and order dated 1.8.2003 by which and wherein, the order of termination of service of the appellant by the respondent authorities had been upheld. A

2. Facts and circumstances giving rise to this appeal are that: B

A. An advertisement was published in September 2001 inviting applications from candidates eligible for the 250 posts of Constables in the State of Uttaranchal. The appellant applied in response to the same vide application dated 7.9.2001. He appeared for the physical test and qualified on 28.9.2001. C Subsequently, upon passing the written test, the appellant faced an interview in September, 2001 and, ultimately his name was mentioned in the list of selected candidates published on 30.9.2001. The appellant was called for medical examination on 4/5.10.2001, by which he was found fit. Thus, he was sent D for training of six months on 18.10.2001.

B. While joining the training, the appellant was asked to submit an affidavit giving certain information particularly, whether he had ever been involved in any criminal case. The E appellant submitted an affidavit stating that he had never been involved in a criminal case. The appellant completed his training satisfactorily and it was at this time in January 2002, that the respondent authorities in pursuance of the process of character verification came to know that the appellant was in fact involved F in a criminal case. The final report in that case had been submitted by the prosecution and accepted by the learned Magistrate.

C. On the basis of the same, the appellant was discharged abruptly on 8.4.2002 on the ground that since he was a G temporary government servant, he could be removed from service without holding any inquiry.

D. The appellant challenged the said order by filing a writ petition and since he was not favoured by the learned single H

A Judge, he challenged the same before the Division Bench but to no avail.

Hence, this appeal.

3. Ms. Nanita Sharma, learned counsel appearing on
B behalf of the appellant, has submitted that the appellant was not aware of any FIR/criminal complaint against him, nor had he been interrogated by the police at any stage. Thus, as it was not in his knowledge he had not suppressed any information regarding the registration of a criminal case against him. Even
C otherwise, he had not concealed any material fact while giving information in regard to clause 4 and clause 7 of Proforma of Affidavit, which have to be read together. The appellant was simply supposed to furnish the said information in 'Nil' with respect to whether he had been punished/convicted/discharged
D in any criminal case.

As in the instant case, only a final report had been submitted in case of the appellant under Section 173 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'the
E Cr.P.C.'). So, the question of suppression of material fact could not arise as the appellant had neither been punished, nor convicted, nor discharged. The matter did not reach the stage of trial, hence, the appeal deserves to be allowed.

4. On the contrary, Shri Pankaj Kumar Singh, learned
F counsel appearing on behalf of the respondent State, has submitted that the appellant suppressed the material fact of registration of a criminal case against him. Thus, the appointment had been obtained by misrepresentation and had become void/voidable. Thus, the courts below have correctly
G held the termination as valid. In view thereof, this Court should not grant any indulgence to the appellant and, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the
H learned counsel for the parties and perused the records.

6. Facts involved herein remain undisputed. An FIR was registered against the appellant and others under Sections 402/ 465/471 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') on 10.2.2001. In respect of the same a closure report was submitted on 16.2.2001, which was accepted by the learned Magistrate on 18.8.2001.

7. Further, clauses 4 and 7 of the Proforma affidavit to be filled up by every appointee, read as under:

> "4. That no cognizable or non-cognizable criminal case or proceeding has been registered against me to my knowledge and neither have I been fined by the police in any such case and neither is any (police investigation) pending against me.
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> xx xx xx xx
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> 7. That the details of such criminal cases, which were instituted against me in the Court and in which I was punished/convicted/discharged, is as given below. If such information is nil, then word 'NIL' should be entered."

8. The reading of the aforesaid clauses of the said affidavit makes it clear that both the clauses have to be read in isolation. Clause 4 deals with a situation, where a case has been registered, an investigation is conducted and the police have filed a final report. Though, the person concerned must have knowledge of the pendency of such an FIR/criminal complaint.

Further, clause 7 requires, in case, a person has faced criminal prosecution, he has to furnish the information about the result of that trial as to whether the person has been punished/ convicted or acquitted/discharged. Thus, we do not find any force in the submission made by Ms. Nanita Sharma, learned counsel for the appellant, that the clauses have to be read together and such information was required to be furnished only and only if the person faced the trial and not otherwise.

A 9. We have examined the judgments of the Division Bench as well as of the learned Single Judge, that are based on pleadings and evidence placed before them, recording the finding that the fact of involvement in the criminal case had been suppressed. No material has been placed before this B Court on the basis of which we can take a contrary view.

10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from C suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but *suppressing of this information itself amounts to moral turpitude.* In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression D of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

11. It is a settled proposition of law that where an applicant E gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide: *S.P. Chengalvaraya Naidu* (Dead) by LRs. *v. Jagannath* (Dead) by LRs. *& Ors.*, AIR 1994 F SC 853. In *Lazarus Estate Ltd. v. Besalay,* 1956 All E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

12. In *Andhra Pradesh State Financial Corporation v. M/* G *s. GAR Re-Rolling Mills & Anr.*, AIR 1994 SC 2151; and *State of Maharashtra & Ors. v. Prabhu,* (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion H of good faith. "Equity is, also, known to prevent the law from

the crafty evasions and subtleties invented to evade law." A

13. In *Smt. Shrisht Dhawan v. M/s. Shaw Bros.*, AIR 1992 SC 1555, it has been held as under:–

> *"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."* B

14. In *United India Insurance Company Ltd. v. Rajendra Singh & Ors.*, AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" *(fraus et jus nunquam cohabitant)* and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in *M.P. Mittal v. State of Haryana & Ors.*, AIR 1984 SC 1888. C

15. In *Ram Chandra Singh v. Savitri Devi & Ors.*, AIR 2004 SC 4096, this Court held that "misrepresentation itself amounts to fraud", and further held "fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad." The said judgment was re-considered and approved by this Court in *Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav,* (2004) 6 SCC 325). D E F

16. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In *Union of India & Ors. v. M. Bhaskaran,* AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in *District Collector & Chairman, Vizianagaram* G H

A *Social Welfare Residential School Society v. M. Tripura Sundari Devi,* (1990) 3 SCC 655, observed as under:–

> *"If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court*
B *of Law as the employment secured by fraud renders it voidable at the option of the employer."*

17. In *Delhi Administration* through its *Chief Secretary & Ors. v. Sushil Kumar,* (1996) 11 SCC 605, this Court examined the similar case where the appointment was refused
C on the post of Police Constable and the Court observed as under:

> *"It is seen that verification of the character and antecedents is one of the important criteria to test whether*
D *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**
E **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*
F *criminal offence, 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*
G *of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."*
(Emphasis added)

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18. In *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav,* AIR 2003 SC 1709; and *A.P. Public Service Commission v. Koneti Venkateswarulu,* AIR 2005 SC 4292, this Court examined a similar case, wherein, employment had been obtained by suppressing a material fact at the time of appointment. The Court rejected the plea taken by the employee that the Form was printed in English and he did not know the language, and therefore, could not understand what information was sought. This Court held that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. "The requirement of filling column Nos. 12 and 13 of the Attestation Form" was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing *on the character and antecedent of the employee in relation to his continuation in service.*

19. In *State of Haryana & Ors. v. Dinesh Kumar,* AIR 2008 SC 1083, this Court held that there has to be a deliberate and wilful misrepresentation and in case the applicant was not aware of his involvement in any criminal case or pendency of any criminal prosecution against him, the situation would be different.

20. In *Secretary, Department of Home, A.P. & Ors., v. B. Chinnam Naidu,* (2005) 2 SCC 746, this Court held that facts are to be examined in each individual case and the candidate is not supposed to furnish information which is not specifically required in a case where information sought dealt with prior convictions by a criminal Court. The candidate answered it in the negative, the court held that it would not amount to misrepresentation merely because on that date a criminal case was pending against him. The question specifically required information only about prior convictions.

A 21. In *R. Radhakrishnan v. Director General of Police & Ors.*, AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/ termination if he furnished wrong information when the said B information is specifically sought by the appointing authority.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish C information about criminal antecedents of the new appointees and if the *incumbent is found to have made a false statement in this regard,* he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

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The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or E suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

23. More so, if the initial action is not in consonance with F law, the subsequent conduct of a party cannot sanctify the same. "*Subla Fundamento cedit opus*"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case G the legal maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: *Union of India v. Maj. Gen. Madan Lal Yadav,* AIR 1996 SC 1340; and *Lily Thomas v.* H *Union of India & Ors.,* AIR 2000 SC 1650).

Nor can a person claim any right arising out of his own wrong doing. *(Juri Ex Injuria Non Oritur).* A

24. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case. B

In view of the above, the appeal is devoid of any merit and is accordingly dismissed. C

K.K.T. Appeal dismissed.