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RAM KUMAR

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 7106 of 2011)

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AUGUST 19, 2011

**[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]**

*Service Law:*

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*Appointment/selection – To the post of police constable – Cancellation of the order of selection of the appellant – On the ground of his failure to disclose in the affidavit submitted to the recruiting authority, in the proforma of verification roll about his involvement in a criminal case – Challenged by the appellant – Writ petition as also appeal dismissed by the High Court – On appeal held: Though a criminal case u/ss. 324/323/504 IPC was registered against the appellant but in absence of any other witness against the appellant, he was acquitted of the charges in the case, four years prior to the furnishing of the affidavit – On these facts, it was not possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable – Appointing Authority instead of considering whether the appellant was suitable for appointment to the post of constable, mechanically held that his selection was irregular and illegal because the appellant furnished an affidavit stating the facts incorrectly at the time of recruitment – Thus, the order of the High Court is set aside and the order of the Appointing Authority is quashed.*

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*Kendriya Vidyalaya Sangathan and Ors. v Ram Ratan Yadav (2003) 3 SCC 437: 2003 (2) SCR 361–distinguished.*

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*Commissioner of Police and Ors. v Sandeep Kumar 2011 (3) SCALE 606 – referred to.*

**Case Law Reference:**

**2011 (3) SCALE 606** Referred to **Para 4**  
**2003 (2) SCR 361** Distinguished **Para 10**

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7106 of 2011.**

From the Judgment & Order dated 31.08.2009 of the High Court of Judicature at Allahabad in Special Appeal No. 924 of 2009.

V.K. Shukla, K.K. Mohan for the Appellant.

Aarohi Bhalla, Ajay Singh, Gunnam Venkateswara Rao for the Respondents.

The Order of the Court was delivered by

**A. K. PATNAIK, J.** 1. Leave granted.

2. This is an appeal against the order dated 31.08.2009 of the Division Bench of the Allahabad High Court in Special Appeal No.924 of 2009 dismissing the appeal of the appellant against the order of the learned Single Judge in Writ Petition (C) No.40674 of 2007.

3. The facts very briefly are that pursuant to an advertisement issued by the State Government of U.P. on 19.11.2006, the appellant applied for the post of constable and he submitted an affidavit dated 12.06.2006 to the recruiting authority in the proforma of verification roll. In the affidavit dated 12.06.2006, he made various statements required for the purpose of recruitment and in para 4 of the affidavit he stated that no criminal case was registered against him. He was selected and appointed as a male constable and deputed for training. Thereafter, the Jaswant Nagar Police Station, District Etawah, submitted a report dated 15.01.2007 stating that Criminal Case No.275/2001 under Sections 324/323/504 IPC

A was registered against the appellant and thereafter the criminal case was disposed of by the Additional Chief Judicial Magistrate, Etawah, on 18.07.2002 and the appellant was acquitted by the Court. Along with this report, a copy of the order dated 18.07.2002 of the Additional Chief Judicial  
 B Magistrate was also enclosed. The report dated 15.01.2007 of the Jaswant Nagar Police Station, District Etawah, was sent to the Senior Superintendent of Police, Ghaziabad. By order dated 08.08.2007, the Senior Superintendent of Police, Ghaziabad, cancelled the order of selection of the appellant on  
 C the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and his selection was irregular and illegal.

4. Aggrieved, the appellant filed Writ Petition No.40674 of 2007 under Article 226 of the Constitution before the Allahabad  
 D High Court but the learned Single Judge dismissed the writ petition by his order dated 30.08.2007. The learned Single Judge held that since the appellant had furnished false information in his affidavit in the proforma verification roll, his case is squarely covered by the judgment rendered by this  
 E Court in *Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav* [(2003) 3 SCC 437] and that he was rightly terminated from service without any inquiry. The appellant challenged the order of the learned Single Judge in Special Appeal No.924 of 2009 but the Division Bench of the High  
 F Court did not find any merit in the appeal and dismissed the same by the impugned order dated 31.08.2009.

5. Learned counsel for the appellant submitted that the appellant had been acquitted by the order dated 18.07.2002 of the Additional Chief Judicial Magistrate in Criminal Case  
 G No.275 of 2001 and for this reason when the appellant furnished the affidavit dated 12.06.2006 in the prescribed verification roll, four years after the order of the acquittal, he did not think it necessary to state in the affidavit about this criminal case. He submitted that in any case, a copy of the order of the Additional  
 H Chief Judicial Magistrate in Criminal Case No.275 of 2001

would show that the crime related to a minor incident which took place on 02.12.2000 and as there was no evidence against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 324/34/504 IPC. He submitted that therefore this is not a fit case in which the selection of the appellant should have been cancelled. He cited *Commissioner of Police and Others v. Sandeep Kumar* [2011(3) SCALE 606] in which this Court has taken a view that cancellation of candidature to the post of temporary Head Constable for the suppression and failure to disclose in the verification roll/application about his involvement in an incident resulting in a criminal case under Sections 325/34 of the IPC when the candidate was a young man, was not justified.

6. Learned counsel for the respondents, on the other hand, supported the judgment of the learned Single Judge as well as the impugned order of the Division Bench of the High Court. Besides relying on the judgment of this Court in *Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav* (supra), he also relied on the counter affidavit filed on behalf of the respondent Nos. 2 to 4 and in particular the Government Order dated 28.04.1958 under which a verification had to be carried out with regard to the character of the candidate who was being considered for appointment. He submitted that in accordance with the Government instructions in the Government Order dated 28.04.1958, candidates desiring appointment to various posts in Government service were required to submit a detailed affidavit furnishing details of their character and antecedents.

7. We have carefully read the Government Order dated 28.04.1958 on the subject '*Verification of the character and antecedents of government servants before their first appointment*' and it is stated in the Government order that the Governor has been pleased to lay down the following instructions in supercession of all the previous orders:

"The rule regarding character of candidate for appointment

A under the State Government shall continue to be as follows:

B The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be duty of the appointing authority to satisfy itself on this point."

C It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of government servants before their first appointment is to ensure that the character of a government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.

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

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to take a view that the appellant was not suitable for appointment to the post of a police constable. A

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, 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 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. B C D E

10. In *Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav* (supra) relied on by the respondents, a criminal case had been registered under Sections 323, 341, 294, 506-B read with Section 34 IPC and was pending against the respondent in that case and the respondent had suppressed this material in the attestation form. The respondent, however, contended that the criminal case was subsequently withdrawn and the offences in which the respondent was alleged to have been involved were also not of serious nature. On these facts, this Court held that the respondent was to serve as a Physical F G H

A Education Teacher in Kendriya Vidyalaya and he could not be  
suitable for appointment as the character, conduct and  
B antecedents of a teacher will have some impact on the minds  
of the students of impressionable age and if the authorities had  
dismissed him from service for suppressing material  
information in the attestation form, the decision of the authorities  
C could not be interfered with by the High Court. The facts of the  
case in *Kendriya Vidyalaya Sangathan and Others v. Ram  
Ratan Yadav* (supra) are therefore materially different from the  
facts of the present case and the decision does not squarely  
cover the case of the appellant as has been held by the High  
Court.

11. For the aforesaid reasons, we allow the appeal, set  
aside the order of the learned Single Judge and the impugned  
D order of the Division Bench and allow the writ petition of the  
appellant and quash the order dated 08.08.2007 of the Senior  
Superintendent of Police, Ghaziabad. The appellant will be  
taken back in service within a period of two months from today  
but he will not be entitled to any back wages for the period he  
has remained out of service. There shall be no order as to costs.

E N.J. Appeal allowed.