

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 15th OF APRIL, 2024

WRIT APPEAL No. 857 of 2024

BETWEEN:-

**DR. MS POONAM NANWANI, W/O SATIVAN KHATRI, AGED
ABOUT 45 YEARS, OCCUPATION: SERVICE (ASSISTANT
PROFESSOR), R/O 27-A, SHIV SHAKTI NAGAR, KANADIYA
ROAD, INDORE (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI MANOJ MANAV, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH, THROUGH
PRINCIPAL SECRETARY, DEPARTMENT OF MEDICAL
1. EDUCATION, VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)**

**THE COMMISSIONER, MEDICAL EDUCATION SATPURA
2. BHAWAN, BHOPAL (MADHYA PRADESH)**

**THE COMMISSIONER (REVENUE) CHAIRMAN
GOVERNING BODY GOVERNMENT AUTONOMOUS
3. MGM MEDICAL COLLEGE INDORE DIVISION, INDORE
(MADHYA PRADESH)**

**4 THE DEAN AND CHIEF EXECUTIVE OFFICER
GOVERNMENT AUTONOMOUS MGM MEDICAL**

COLLEGE, A.B. ROAD INDORE (MADHYA PRADESH)

DR. MRS. PRIYANKA KIYAWAT W/O W/O DR. MAYANK JAIN, AGED ABOUT 36 YEARS, OCCUPATION: SERVICE ASSISTANT PROFESSOR IN PATHOLOGY MGM 5 MEDICAL COLLEGE, INDORE R/O DILPASAND TOWER, FLAT NO. 411 RACE COURSE ROAD, INDORE DIST. INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI L. C. PATNE, ADVOCATE)

This appeal coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:

ORDER

Heard on the question of admission.

2. In this writ appeal under **Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005** appellant assails the order dated 18.03.2024 passed in W.P. No. 18212/2023, whereby the learned Single Judge has allowed the writ petition filed by Respondent No. 5 setting aside the selection order of the present appellant and also directed the authorities to appoint the Respondent No. 5 as Associate Professor.

3. A writ petition was filed by the Respondent No. 5 under Article 226 of the Constitution of India praying for the following reliefs:-

(a) to call for the relevant records of the case;

(b) to command the Respondents to reject the candidature of Respondent No. 5 for appointment on the post of Associate Professor in Pathology in MGM Medical College, Indore by a writ of MANDAMUS or any other appropriate writ, direction or order;

(c) to command the respondents to consider the claim of the petitioner for grant of appointment on the post of Associate

Professor in Pathology Subject in Government Autonomous MGM Medical College, Indore by giving due credence to the experience earned by her in SAIIMS, Indore and also the 6 months' training undertaken by her with Unipath Specialty Laboratory, Indore and by declaring the result of selection process for appointment on the post of Associate Professor in Pathology and by granting him all consequential and monetary benefits including arrears of salary and allowances together with interest @ 12% p.a., by a Writ of CERTIORARI or any other appropriate writ, direction or order;

(d) to allow this petition with costs;

(e) to pass such other order(s) as this Hon'ble Court may deem fit in fact and circumstance of the case to grant relief to petitioner.

(f) to quash the impugned select list dated 21.09.2023 (Annexure P/20) issued by Respondent No.4 by a writ of CERTIORARI or any other appropriate writ, direction or order.”

4. The grievance of the Respondent No. 5 was that she had participated in the recruitment drive for the post of Associate Professor in Pathology. The present appellant was declared successful, whereas the Respondent No. 5 was placed at serial No.1 in the waiting list.

5. The writ petition was filed on the ground that the present appellant had suppressed the material information regarding a criminal case pending against her in the trial Court under the provisions of Prevention of Corruption Act, 1988 and also that she was not even eligible to participate in the aforesaid selection process again on the basis of pendency of a criminal case.

6. The learned Single Judge considering the terms and conditions of the advertisement, especially the *Mahatvapurna Teep (Important Point)* which clearly reveals that any person submitting his application in the requisite form is also required to submit the undertaking in the given format only because any police case registered against the applicant or any

enquiry pending against him or her, affects his or her appointment. The learned Single Judge while considering the submissions of both the sides allowed the writ petition by passing following order:-

Resultantly, the petition stands allowed for the reason that the petitioner has not submitted her application in the requisite Format, leading to its alteration, which cannot be allowed. Thus, the selection order dated 21.09.2023 depicting the respondent No.5 as the select candidate is hereby quashed, and in its place the petitioner is declared to be the successful candidate being the only person in the waiting list, w.e.f. the date on which the respondent no.5 was appointed.

The respondents are also directed to accord to the petitioner all the consequential benefits, except the monetary benefits as the petitioner is already in employment and has earned continuously since 21.09.2023.

With the aforesaid direction, the petition stands allowed and disposed of.

7. Learned counsel for the appellant contended that there is no suppression as alleged by Respondent No. 5 in the application form. Moreover, the details with regard to pendency of criminal case was submitted before the competent authority at a later stage, therefore, the case would not fall under the category of "*suppression of facts*". Secondly, there is no provision of waiting list from where the Respondent No. 5 could have been selected. Thirdly, the investigating agency has already filed the closure report which is yet to be produced before the Court, therefore, no criminal case was pending at the time of consideration against the appellant.

8. Learned counsel for the appellant relied on the judgment of Three Judges Bench of the Apex Court in the case of **Avtar Singh vs. Union of India and others reported in (2016) 8 SCC 471**, in support of his contentions.

9. Per contra, learned counsel for the respondent Shri L.C. Patne vehemently opposed the prayer and submitted that the order passed by the learned Single Judge does not require any interference, since the order is exhaustive and has taken into consideration the arguments advanced by the learned counsel for the appellant and, thereafter, came to the logical conclusion that the appellant herein has not submitted her application in the requisite format leading to its alteration which can not be countenanced and accordingly allowed the writ petition setting aside the appointment of appellant.

10. Heard learned counsel for the parties and perused the record.

11. The present controversy has already been settled by the Apex Court in catena of judgments. The law on this issue is settled by a three-Judge Bench of this Court in **Avtar Singh (Supra)**. Paras 34, 35, 36 & 38, which sets out the conclusions, are extracted herein below:-

“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.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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.”

(Emphasis supplied)

12. As would be clear from **Avtar Singh (Supra)**, it has been clearly laid down that though a person who has suppressed the material information cannot claim unfettered right for appointment, he or she has a right not to be dealt with arbitrarily. The exercise of power has to be in a reasonable manner with objectivity and having due regard to the facts. In

short, the ultimate action should be based upon objective criteria after due consideration of all relevant aspects.

13. Avtar Singh (Supra) also noticed the judgment in **Commissioner of Police and Others Vs. Sandeep Kumar, (2011) 4 SCC 644**. In **Sandeep Kumar (supra)**, the Apex Court set out the story of the character “*Jean Valjean*” in *Victor Hugo’s novel Les Miserables*, where the character was branded as a thief for stealing a loaf of bread for his hungry family. It also discussed the classic judgment of **Lord Denning in Morris v. Crown Office, (1970) 2 QB 114** and concluded as follows:-

“10. In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

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.”

Thereafter, in *Avtar Singh (supra)* dealing with *Sandeep Kumar (supra)*, this Court observed as under:

“24. This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In [*Morris v. Crown Office, (1970) 2 QB 114 : (1970) 2 WLR 792 (CA)*] , the observations made were

that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but we must show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course.”

14. In Ram Kumar vs. State of U.P. and Others, (2011) 14 SCC 709, another case noticed and discussed in **Avtar Singh (Supra)** arising out of near identical facts and construing a similar clause in the verification form, the Apex Court, while granting relief, held as follows:-

“9. We have carefully read the Government Order dated 28-4-1958 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 suppression of all the previous orders:

“The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

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 the duty of the appointing authority to satisfy itself on this point.

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12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the sole witness examined before the court, PW 1, Mr Akhilesh Kumar, had deposed before the court that on 2-12-2000 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 to take a view that the appellant was not suitable for appointment to the post of a police constable.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 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.

14. As has been stated in the instructions in the Government Order dated 28-4-1958, 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.

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17. For the aforesaid reasons, we allow the appeal, set aside the order of the learned Single Judge and the impugned order of the Division Bench and allow the writ petition of the appellant and quash the order dated 8-8-2007 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.”

Ram Kumar (supra) was also a case of cancellation of selection to the post of Constable.

15. More recently in **Pawan Kumar vs. Union of India and Another, (2022) SCC OnLine SC 532**, involving appointment to the post of Constable in Railway Protection Force and setting aside the order of discharge due to alleged suppression in the verification form, the Apex Court, after noticing **Avtar Singh (Supra)** held as under:-

“11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the

facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.

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.

19. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 17th November, 2015 and the order of discharge dated 24th April, 2015 and dated 23rd December, 2021 are hereby quashed and set aside. The Respondents are directed to reinstate the appellant in service on the post of Constable on which he was selected pursuant to his participation in reference to employment notice

no. 1/2011 dated 27th February, 2011. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force and at the same time he will be entitled for all notional benefits, including pay, seniority and other consequential benefits, etc. Necessary orders shall be passed within a period of one month from today. No costs.”

16. In Mohammed Imran vs. State of Maharashtra and Others, (2019) 17 SCC 696, no doubt, a case where a candidate made the disclosure of criminal case, the Apex Court speaking through Navin Sinha, J. made the following telling observation which resonates with the hard realities of everyday existence:-

“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 simpliciter. 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.”

17. We have also kept in mind the recent judgment of the Apex Court in

Satish Chandra Yadav vs. Union of India and Others (2023) 7 SCC 530 and the broad principles set out in para 93, especially, paras 93.1, 93.3 & 93.7. Even the broad principles set out therein recognize that each case should be scrutinized thoroughly by the public employer concerned and the Court is obliged to examine whether the procedure of enquiry adopted by the authority concerned was fair and reasonable. **Avtar Singh (Supra)** in para 38.2 has held that while passing the order of cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. Further, in para 38.4.3 of **Avtar Singh (Supra)** the principle that, in case of suppression or false information of involvement of criminal case, where acquittal has already been recorded, the employer can still consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee. We have read and understood the broad principles laid down in **Satish Chandra Yadav (supra)** with the following crucial para in **Avtar Singh (Supra)**:-

“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.”

18. We have also examined the judgment in **Director General of Police, Tamilnadu, Mylapore vs. J. Raghunees, (2023) SCC OnLine SC 1379**

and we find that the case of the appellant is more aligned with the facts in the judgment of the Apex Court in **Pawan Kumar (supra)**, **Sandeep (supra)** and **Ram Kumar (supra)**. Hence, we find that the judgment in **J. Raghunees (supra)** is clearly distinguishable.

19. In **Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav, (2003) 3 SCC 437**, the Apex 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. ...”

20. Upon the analysis of the ratio laid down by the Apex Court in the abovementioned cases, this Court while adjudicating over the issue of disclosure/ suppression has to consider the nature of the office, the timing and nature of the criminal case; the nature of the query in the application/verification form; the contents of the character verification reports; the socio-economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.

21. The integral part of the advertisement dealing with the suppression/ non-disclosure is reproduced below:-

महत्वपूर्ण टीप :- यह सुनिश्चित करने की जिम्मेदारी स्वयं आवेदक की होगी कि वे अपने आवेदित पद के लिये निर्धारित समस्त अर्हतायें और शर्तों को पूरा करते हैं। अतः आवेदन करने के पहले आवेदक अपनी अर्हता की जांच स्वयं करे ले और अर्हता की समस्त शर्तें पूरा करने पर ही आवेदन पत्र भरे। चयन के किसी भी स्तर पर आवेदक के अनर्ह पाये जाने पर उसका आवेदन पत्र निरस्त कर उसकी उम्मीदवारी समाप्त की जायेगी। आवेदक के विरुद्ध पुलिस प्रकरण अथवा किसी भी प्रकार की जांच न हो जिसके कारण आवेदक की नियुक्ति प्रभावित होती हो, इस आशय से संबंधित घोषणा पत्र जो की आवेदन के प्रारूप में दिया गया है। यह शर्त भी उसमें समाहित रहेगी।

22. In the present case, the appellant while filling up the application form had given an undertaking to the effect that neither any FIR has been registered against the appellant nor any police enquiry is pending against her. It was also declared that she was not involved in any offence of the nature of moral turpitude nor was convicted and no criminal case is pending against her in any Court of law.

23. In view of the aforesaid, it is crystal clear that a police enquiry and investigation was conducted against the appellant which was suppressed by the appellant. In the present case, the purpose of requiring an employee to furnish information regarding prosecution/ conviction etc. in the verification Form was to assess his/ her character and criminal antecedents for the purpose 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 as held in the case of **Kendriya Vidhyalaya Sangathan (Supra)** where an employee suppresses or gives false information in regard to the matters which had a bearing on his/ her

fitness or suitability to the post, he/ she could be terminated from the service.

24. From the material on record it can be very well seen that, the appellant had deliberately suppressed the material information. Thereby learned Single Judge has allowed the writ petition by a well reasoned order which does not call for any interference. No apparent error could be noticed in the order passed by the learned Single Judge. Therefore, this writ appeal being bereft of merit and substance, is hereby, dismissed. No order as to costs.

(S.A. DHARMADHIKARI)
JUDGE

(GAJENDRA SINGH)
JUDGE

Vatan