



2026:AHC:38302

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 2556 of 2026

Abhishek Kumar

.....Petitioner(s)

Versus

State Of Up And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Harish Kumar Tripathi
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Harish Kumar Tripathi, learned counsel for the petitioner and Sri R.S. Umrao, learned Additional Chief Standing Counsel, who appears for State-respondents.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that an advertisement stood published in the year 2023 for recruitment on the post of Police Constable, the petitioner submitted an application form on 14.01.2024, written examination was conducted on 30.08.2024, the petitioner was called for DV(PST) test on 06.01.2025. An admit card was also issued and thereafter according to the petitioner, he was selected, however, owing to a lodging of a case being case crime No. 25 of 2022, under Sections 147, 148, 323, 149, 504, 506, 352, 452, 427 and 307 IPC, a charge-sheet was submitted against the petitioner on 01.12.2022, under Sections 147, 323, 504, 506, 352, 452, 427 IPC thereafter now the order impugned has been passed on 17.07.2025 cancelling the selection and candidature of the petitioner by Superintendent of Police, District Jaunpur.

4. Questioning the said order, the present writ petition has been preferred.

5. Learned counsel for the writ petitioner has sought to argue that the order impugned cannot be sustained for the simple reason that though the candidature of the petitioner has been rejected on the ground that a criminal case is pending against the petitioner and there happens to be a report of the

District Magistrate, Gorakhpur refusing to grant character certificate but there is no consideration of the appointing authority as to whether the petitioner is entitled for appointment or not. Submission is that the appointing authority is under legal obligation to consider each and every aspect of the matter, particularly, when mere conviction is not a ground to *ipso facto* denude the benefits as in view of the government order dated 28.04.1958. Learned counsel for the petitioner seeks to rely upon the mandate of the Hon'ble Apex Court in ***Avtar Singh Vs. Union of India and Others (2016) 8 SCC 471*** and ***Civil Appeal No.5902 of 2012, Ravindra Kumar vs. State of U.P.*** decided on 22.02.2024.

6. Countering the submissions, so made by the learned counsel for the writ petitioner, Sri R.S. Umrao, learned Standing Counsel submits that the petitioner is possessed with a criminal case and he does not have a fundamental right to be accorded appointment as the only right which he possessed is right for consideration for appointment. According to him, though there happens to be a circular dated 28.04.1958 in that regard but according to him, the matter needs to be revisited.

7. I have heard the submissions so made across the Bar and perused the records carefully.

8. Apparently, the writ petitioner applied for recruitment on the post of Police Constable, there happens to be a criminal case pending against the petitioner and an FIR came to be lodged against the petitioner under Sections 147, 148, 323, 149, 504, 506, 352, 452, 427 and 307 IPC and post investigation, a charge-sheet was submitted under Sections 147, 323, 504, 506, 352, 452, 427 IPC and Sections 148, 149 and 307 IPC. However, the said Sections 148, 149 and 307 IPC stands deleted as per the petitioner.

9. Be that as it may be, mere conviction is not a ground to *ipso facto* denude the claim for appointment.

10. In ***Avatar Singh vs. Union of India (2016) 8 SCC 471***, the following was observed:

"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."

11. Further the said issue also came up for consideration in **Civil Appeal No.5902 of 2012, Ravindra Kumar vs. State of U.P.** decided on 22.02.2024, wherein the following was observed: -

"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."

12. The order impugned reads as under:

"आदेश

उत्तर प्रदेश पुलिस आरक्षी तथा मुख्य आरक्षी सेवा नियमावली-2015 एवं प्रथम संशोधन नियमावली-2017 के अनुसार पुलिस महानिदेशक, उ०प्र०, लखनऊ द्वारा अध्याचित रिक्तियों के सापेक्ष चयनित अभ्यर्थी अभिषेक कुमार पुत्र श्री राजेश कुमार, अनुक्रमांक 1788677, ग्राम बुदहट, पोस्ट हरपुर बुदहट, थाना हरपुर बुदहट, तहसील- सहजनवां, जनपद गोरखपुर पिन कोड 273209 राज्य उत्तर प्रदेश को आरक्षी पद पर नियुक्ति हेतु अपर पुलिस अधीक्षक, स्थापना, मुख्यालय पुलिस महानिदेशक, उ०प्र०, लखनऊ के पत्रांक: डीजी-चार स्था० (आरक्षी भर्ती 2023) 2025/1990, दिनांक: 30.05.2025 के द्वारा जनपद-जौनपुर आवंटित किये जाने के फलस्वरूप अभ्यर्थी की मूल पत्रावली पुलिस अधीक्षक, गोरखपुर द्वारा उपलब्ध करायी गयी है। पत्रावली के अवलोकन से पाया गया कि उक्त अभ्यर्थी को गठित जनपदीय चिकित्सा परिषद के द्वारा दिनांक 30.04.2025 जनपदीय चिकित्सा परीक्षण में उपयुक्त घोषित किया गया, तदोपरान्त दिनांक-30.04.2025 को उक्त अभ्यर्थी के चरित्र सत्यापन हेतु पुलिस प्रपत्र संख्या-92 भराया गया, जिसके क्रम में अभ्यर्थी उपरोक्त के चरित्र सत्यापन जाँच आख्या द्वारा प्रभारी निरीक्षक, थाना- हरपुर बुदहट, जनपद गोरखपुर में अंकित है कि उसके विरुद्ध थाना- हरपुर बुदहट, जनपद गोरखपुर पर मु०अ०सं० 25/20222 धारा 147, 148, 323, 149, 504, 506, 352, 452, 427, 307 आईपीसी थाना हरपुर बुदहट, गो० हदारा आरोप पत्र ए-158/01.10.2022 को मा० न्यायालय प्रेषित किया जा चुका है। आवदेक उपरोक्त के सत्यापन, अर्हता एवं उपयुक्तता अनुपयुक्तता के सम्बन्ध में पुलिस अधीक्षक, गोरखपुर के पत्र संख्या भ-127/2023 दिनांक 23.05.2025 द्वारा जिलाधिकारी, गोरखपुर से अभिमत हेतु पत्राचार किया गया तो जिलाधिकारी गोरखपुर द्वारा अपने पत्र संख्या: 858/आशुलि०-नगर/चरित्र-25 दिनांक 15.06.2025 के द्वारा अपना अभिमत उपलब्ध कराया गया, जिसमें मुख्यतः अंश है कि:-

प्रकरण में अभ्यर्थी के विरुद्ध धारा 323, 504, 506, 147, 148, 352, 452, 427, 307 के तहत आरोपपत्र मा० न्यायालय में प्रेषित है इन धाराओं की प्रकृति गैरजमानती व अत्यन्त ही गम्भीर अपराध की प्रकृति की है। अपराध बलवा, मारपीट, घर में घुसकर हत्या के प्रयास से सम्बन्धित है। अभ्यर्थी के विरुद्ध जो अभियोग पंजीकृत है उसकी प्रकृति विध्वंसक/ हिंसक गतिविधि /शासन तंत्र को विनष्ट करने वाला है अभ्यर्थी जिन धाराओं में चार्जशीट है उसकी प्रकृति हिंसक व शासनतंत्र को विनष्ट करने से सम्बन्धित होने के कारण चरित्र सत्यापन की संस्तुति किया जाना विधि सम्मत नहीं है।

अतएव वर्णित शासनादेश व अवतार सिंह बनाम यूनियन ऑफ इण्डिया में परित निर्णय के पैरा 86 के तहत अभ्यर्थी के अभ्यर्थन (चरित्र सत्यापन) के सम्बन्ध में चरित्र सत्यापन किये जाने के दृष्टिगत कोई विधिक आधार मौजूद नहीं है।

इन परिस्थितियों में अभिषेक कुमार उर्फ भोलू पुत्र राजेश कुमार, निवासी-ग्राम बुदहट, थाना हरपुर बुदहट जनपद गोरखपुर का चरित्र सत्यापन की संस्तुति नहीं की जाती है।

अतः जिलाधिकारी गोरखपुर द्वारा दिये गये अभिमत दिनांकित 15.06.2025 के आधार पर पुलिस अधीक्षक, गोरखपुर द्वारा निर्गत अनापत्ति प्रमाण पत्र में जिलाधिकारी गोरखपुर द्वारा उपलब्ध कराया गया अभिमत के आधार पर नियुक्त पत्र निर्गत किये जाने हेतु अनुपयुक्त पाये जाने के कारण अभ्यर्थी अभिषेक कुमार पुत्र श्री राजेश कुमार, अनुक्रमांक 1788677, ग्राम बुदहट, पोस्ट- हरपुर बुदहट, थाना-हरपूर बुदहट, तहसील- सहजनवां, जनपद गोरखपुर पिन कोड 273209 राज्य उत्तर प्रदेश का चयन/अभ्यर्थन निरस्त किया जाता है।"

13. A bare look of the order impugned would reveal that the same does not depict any independent application of mind at the instance by the appointing authority as the appointing authority got swayed with the inputs provided by the District Magistrate. Since the appointing authority has to take a conscious decision whether in the wake of tendency of the criminal case, the petitioner is entitled to appointment or not and the said aspect has been considered, thus, the order impugned cannot be sustained.

14. Accordingly, the writ petition is being decided in the following manner:

(a). The impugned order dated 17.07.2025 passed by the respondent no.7, Superintendent of Police, District Jaunpur is set aside.

(b). The matter stands remitted back to pass fresh order strictly in accordance with law within a period of three months from the date of presentation of the certified copy of the order.

15. By saying so, this Court has not accorded appointment and joining to the petitioner forthwith automatically as the joining of the petitioner would be post outcome of the order passed by the authority in that regard.

16. Accordingly, the writ petition stands **disposed of**.

February 20, 2026
Ashu

(Vikas Budhwar,J.)