HIGH COURT OF MADHYA PRADESH: JABALPUR
(Larger Bench)

Writ Petition No. 5865/2016

Ashutosh Pawar ..... **Petitioner**

- V/s -

High Court of Madhya Pradesh & Another ..... **Respondents**

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Ravi Shankar Jha, Judge
Hon'ble Smt. Justice Nandita Dubey, Judge

Appearance:

Shri Ishan Soni, Advocate for the petitioner.

Shri Anoop Nair, Advocate for the respondent No.1.

Shri Samdarshi Tiwari, Additional Advocate General with Shri Brahmdatt Singh, Government Advocate for the respondent No.2/State.

Whether Approved for Reporting : **Yes**

Law Laid Down:

* Decision of Criminal Court on the basis of compromise or an acquittal cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters and therefore, acquittal in a criminal case is not a certificate of good conduct to a candidate. The competent Authority has to take a decision in respect of the suitability of candidate to discharge the functions of a civil post and that mere acquittal in a criminal case would not be sufficient to infer that the candidate possesses good character. Division Bench judgment of this Court in W.P.No.5887/2016 (**Arvind Gurjar vs. State of M.P.**) is overruled. Another Division Bench judgment in W.A. No.367/2015 **(Sandeep Pandey vs. State of M.P. and others**) is also overruled.

* Jurisdiction of the High Court in a writ petition under Art. 226 of the Constitution of India is to examine the decision-making process than to act as Court of appeal to substitute

its own decision. In appropriate case, if the Court finds decision-making process is arbitrary or illegal, the Court will direct the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own.

* The expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate who seeks appointment as Civil Judge. The personal conduct of a candidate to be appointed as Judicial Officer has to be free from any taint. The standard of conduct in the case of Judicial Officer is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well. The same must be in tune with the highest standard of propriety and probity.

Chronological list of cases cited / followed:

1. Civil Appeal No.67/2018 (*Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and another*) decided on 8.1.2018 (Supreme Court)
2. (2016) 8 SCC 471 (*Avtar Singh vs. Union of India and others*);
3. (2015) 2 SCC 591 (*State of Madhya Pradesh and others vs. Parvez Khan*);
4. (2014) 3 SCC 767 (*Ganapath Singh Gangaram Singh Rajput vs. Gulbarga University and others*);
5. (2013) 7 SCC 685 (*Commissioner of Police, New Delhi and another vs. Mehar Singh*);
6. (2011) 4 SCC 644 (*Commissioner of Police and others vs. Sandeep Kumar*);
7. (2008) 8 SCC 475 (*General Manager, State Bank of India and others vs. Anju Jain*);
8. (2008) 1 SCC 683 (*Aravali Golf Club vs. Chander Hass*);
9. (1995) 5 SCC 457 (*C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and others*);
10. (1994) 6 SCC 651 (*Tata Cellular vs. Union of India*);
11. (1994) 4 SCC 448 (*State of Haryana vs. Naresh Kumar Bali*);
12. (1993) 4 SCC 288 (*All India Judges' Association and others vs. Union of India and others*);
13. 1969 (3) SCC 489 (*Thakur Birendra Singh vs. The State of M.P. and others*);
14. AIR 1965 SC 532 (*State of Mysore and another vs. K.N. Chandrasekhara*);
15. AIR 1954 SC 440 (*T.C. Basappa vs. T. Nagappa and another);*
16. W.P. No.2848/2013 (*Mohammed Imran vs. State of Maharashtra and others*) decided on 14.12.2017 (Bombay High Court: DB);
17. W.A. No.581/2017 *(Nitin Pathak vs. State of M.P. and others)* decided on 4.9.2017 (M.P. High Court; Full Bench);
18. 2003 (1) MPHT 226 (FB) (*Jabalpur Bus Operators Association and others vs. State of M.P. and another*);

Significant Paragraph Nos.: 15, 16, 19, 21 to 23, 25 to 28, 30 to 32, 34 to 45 & 47

Order Reserved on : 04.01.2018

O R D E R

(12-01-2018)

Per: Hemant Gupta, Chief Justice:

A Division Bench of this Court while hearing the present writ petition on 23.10.2017 found conflict between the two Division Bench decisions of this Court in **W.P. No.5887/2016** (**Arvind Gurjar vs. State of M.P. and another**) decided on 27.10.2016 and **W.A. No.163/2009** (**Roop Narayan Sahu vs. State of M.P. and others**) decided on 11.08.2017. Therefore, the following questions were framed for the decision of the larger Bench:-

> **1.** Whether in all cases, where an FIR lodged against a person for minor offences has been quashed on the basis of a compromise arrived at between the parties or a person has been acquitted on account of a compromise between the parties, the character of the person applying for appointment thereafter, has to be treated as Good and such a person cannot be held ineligible for appointment under the Rules of 1994?
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> **2.** Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person ?
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> **3.** Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard ?
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> **4.** Whether the high standards of adjudging the good character of a candidate for appointment as a Judicial Officer, which has been adopted and followed by the State under the Rules of 1994 till the

decision in the case of **Arvind Gurjar (supra)** were and are right and proper or whether in view of the decision in the case of **Arvind Gurjar (supra)**, the same should be considered to be relaxed to the extent that in all cases the character of a person should be treated to be good where he has been acquitted for minor offences on the basis of a compromise?

5. Whether the decision in the case of **Arvind Gurjar (supra)** lays down the correct law ?

6. Any other question that may arise for adjudication or decision in the dispute involved in the present petition and which the Larger Bench thinks appropriate to decide?

2. The brief facts leading to the present writ petition are that the petitioner applied for appointment as Civil Judge, Class-II (Entry Level). The selection process of the said recruitment commenced vide advertisement dated 13.10.2014 (Annexure P-1). The petitioner successfully completed all the three stages of the examination i.e. preliminary examination, main examination and interview and his name was recommended for appointment as Civil Judge, Class-II. However, while recommending the name of the petitioner on 3rd September 2015, the following was communicated to the State Government by this Court:-

"(2) **Shri Ashutosh Pawar (Roll No.1621), s/o Shri Gaurav Pawar**, R/o 9, Adarsh Indira Nagar, Main Road, Indore (MP) – 452002, Selected at Sr.No.-1 in ST category, has informed that on the basis of crimes registered against him at Police Station Malhargunj, Indore- (i) Cr.Case 1742/08 under S. 452, 294, 324/34, 323/34, 506-B IPC was commenced, which was disposed on the basis of compromise and he was acquitted vide order dt. 13/04/2012 (copy of Order enclosed with Attestation Form), Passed by Shri Ashutosh Shukla, JMFC, Indore; (ii) Cr. Case 135/05 under S. 294, 323/34, 506-B IPC was commenced before juvenile justice Board and on admission on 12.01.07, order of admonition was passed.

Before issuing the appointment order, in respect of these selected candidate, the Government is required to verify as to the status and

> result of the criminal cases against them and to take such necessary steps as may be required under concerned law/rules."
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> [emphasis supplied]

3. It is on the basis of the said communication, the State Government communicated on 9th March, 2016 (Annexure P-11) that the petitioner is not suitable for appointment to the post of Civil Judge, Class-II. The said order has been challenged by the petitioner in the present writ petition.

4. Learned counsel for the petitioner relies upon a Division Bench judgment of this Court in **Arvind Gurjar**'s case (**supra**) wherein the writ petition was filed by a candidate, whose name was also recommended along with the present petitioner for appointment. The said petition was allowed relying upon the judgments of the Supreme Court reported as (**1998) 1 SCC 550** (**Nilgiris Bar Association vs. T.K. Mahalingam and another**) and **(2016) 8 SCC 471 (Avtar Singh vs. Union of India and others).** The Division Bench held as under:-

> "**11**. The larger Bench of three Judges Bench of the Apex Court has specifically held that it is obligatory on the part of the employer to consider the background facts of the case, nature of offence and whether acquittal in a criminal case would affect fitness for employment. In the present case it has been mentioned in the order that the offence punishable under Section 506-B of IPC is a grievous offence and conviction of seven years could be imposed and because the petitioner was acquitted on the basis of compromise, hence, he is not eligible to be appointed to the post of Civil Judge, Class-II. There is no consideration about the facts of the case and the fact that the incident had taken place between two groups of students. There was no plan and thereafter the matter was compromised. It is a common knowledge that at the time of registration of a case the complainant intends to mention the grievous nature of offence. It is very easy to mention that person threatened to kill but that has to be considered taking into consideration the facts of

> the case. The petitioner did not use any force. There is no mention of the fact that even the petitioner threatened the complainant to kill. During the student life there is possibility of quarrel between the two groups of students. On that basis the person cannot be held a person of not having a good character. If a criminal case is registered and which has resulted in compromise, on our opinion on that basis, it can not be held that a person is not having good character when the character certificate has been issued by the Principal after judging the total academic career. In the character certificate it is specifically mentioned that no disciplinary action was taken against the petitioner neither it was initiated when he was studying law, Hence, in our opinion, the order of denial of the petitioner for appointment to the post of Civil Judge, Class-II is contrary to law on the basis of singular incident which has resulted in compromise."

5. The Supreme Court judgments reported as **(2015) 2 SCC 591 (State of Madhya Pradesh and others vs. Parvez Khan)**; and **(2013) 7 SCC 685 (Commissioner of Police, New Delhi and another vs. Mehar Singh)** though wrongly mentioned as **(2013) 7 SCC 263 (Jarnail Singh vs. State of Haryana)** were considered by the Division Bench in **Arvind Gurjar**'s case (**supra**) but the Bench returned a finding that the said cases are distinguishable as the allegations in these cases were quite serious whereas the criminal case registered against the petitioner therein had resulted in his acquittal on the basis of compromise, therefore, it cannot be said that the petitioner does not have good character and issued directions to appoint the petitioner as Civil Judge, Class-II.

6. On the other hand, another Division Bench in **Roop Narayan Sahu (supra)** was examining the case of appointment to the post of Constable. The candidature of the petitioner therein was rejected although he was acquitted by granting benefit of doubt. The Court held as under:-

> "**14**. Thus, the decision taken by the Department was not mechanical, but it was a conscious decision after taking into consideration the facts and circumstances of the case in proper perspective. Further, if a candidate is to be recruited to the Police service, he must be worthy confidence of an utmost rectitude and must have impeccable character and integrity. The persons having criminal antecedents, would not fall within the ambit of the said category. Even if he is acquitted or discharged, it cannot be presumed that he can be completely exonerated. [See: State of Madhya Pradesh and others vs. Parvez Khan, (2015) 2 SCC 591]"

7. The appointment to the post of Civil Judge, Class-II is governed by the Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (in short "the Rules of 1994"). Rule 7 is a clause pertaining to eligibility. Sub-clause (d) of the said Rules provides that no person shall be eligible for appointment by direct recruitment unless he has good character and is of sound health and free from any bodily defect, which renders him unfit for such appointment. Rule 9 of the Rules of 1994 gives finality to the decision of the High Court as to the eligibility or otherwise of a candidate for admission to the examination whereas Rule 10 provides that the High Court shall forward to the Government a list of selected candidates in order of merit for recruitment. The Sub-rule (2) of the Rule 10 contemplates that the candidate will be considered for appointment to the available vacancies subject to the provisions of the Rules of 1994 and M.P. Civil Services (General Conditions of Service) Rules, 1961 (in short "the Rules of 1961"). The relevant Rules of the Rules of 1994, read as under:-

> "**7. Eligibility**. - No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3(1) unless -
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> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) xxx xxx xxx

(d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.

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9. Finality of High Court's decision about the eligibility of a candidate. - The decision of the High Court as to the eligibility or otherwise of a candidate for admission to the examination shall be final.

10. List of the candidates recommended by the High Court.- (1) The High Court shall forward to the Government a list arranged in order of merit of the candidates selected for recruitment by the High Court. The list shall be published for general information.

(2) Subject to the provisions of these rules and the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 the candidates will be considered for appointment to the available vacancies, in the order in which their names appear in the list."

8. The Rule 6 of the Rules of 1961 deals with disqualification to public services of the State, which reads as under:-

"**6. Disqualification.** - (1) No male candidate who has more than one wife living and no female candidate who has married a person having already a wife living shall be eligible for appointment to any service or post:

Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any such candidate from the operation of this rule.

(2) No candidate shall be appointed to a service or post unless he has been found after such medical examination as may be prescribed, to be in good mental and bodily health and free from any mental or bodily defect likely to interfere with the discharge of the duties of the service or post:

Provided that in exceptional cases a candidate may be appointed provisionally to a service or post before his medical examination, subject to the condition that the appointment is liable to be terminated forthwith, if he is found medically unfit.

(3) No candidate shall be eligible for appointment to a service or post if, after such enquiry as may be considered necessary, the appointing authority is satisfied that he is not suitable in any respect for service or post.

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9. It may be mentioned here that the petitioner has disclosed two cases which were lodged against him i.e. (i) an offence punishable under Sections 323, 294, 506-B and 34 of IPC for which the petitioner was tried by the Juvenile Justice Board but was let off after giving him warning in the aforesaid crime and (ii) an FIR was lodged against him for the offence under Sections 452, 324/34, 323/34, 506-B and 294 of IPC being Criminal Case No.1742/2008. In the said case, the petitioner was acquitted on 13.04.2012 in view of the compromise between the parties in respect of compoundable offences and in respect of offence under Section 452 of IPC, the petitioner was acquitted granting benefit of doubt. The pendency of two cases was communicated by the High Court to the State Government for appropriate decision thereon and it is thereafter, the State has taken a decision to reject the candidature of the petitioner.

10. In the aforesaid factual background, the questions referred to for the decision of the Larger Bench are taken up for decision.

11. As the question Nos.1, 4 and 5 correlate with each other, therefore, they are being dealt with and decided conjointly.

QUESTION Nos. 1, 4 & 5:

> **1**. Whether in all cases, where an FIR lodged against a person for minor offences has been quashed on the basis of a compromise arrived at between the parties or a person has been acquitted on account of a compromise between the parties, the character of the person applying for appointment thereafter, has to be treated as Good and such a person cannot be held ineligible for appointment under the Rules of 1994?
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> **4**. Whether the high standards of adjudging the good character of a candidate for appointment as a Judicial Officer, which has been adopted and followed by the State under the Rules of 1994 till the

> decision in the case of **Arvind Gurjar (supra)** were and are right and proper or whether in view of the decision in the case of **Arvind Gurjar (supra)**, the same should be considered to be relaxed to the extent that in all cases the character of a person should be treated to be good where he has been acquitted for minor offences on the basis of a compromise?
>
> **5**. Whether the decision in the case of **Arvind Gurjar (supra)** lays down the correct law?

12. Learned counsel for the petitioner referred to a judgment of the Division Bench of this Court in **Arvind Gurjar**'s case **(supra**) and also to the Supreme Court decision in **Nilgiris Bar Association (supra**) to contend that acquittal from a criminal case does not lead to any blemish on the character of the petitioner, therefore, it cannot be said that the petitioner is not possessed of good character.

13. On the other hand, Shri Tiwari, appearing for the State refers to the Supreme Court judgments reported as **Mehar Singh (supra)** and **Parvez Khan (supra)** to contend that acquittal of a candidate in a criminal trial is not conclusive as the appointing Authority has to consider the suitability of a candidate keeping in view the nature of post and the duties to be discharged. It is contended that the appointment of the petitioner is as a Judicial Officer; therefore, no blemish whatsoever could be ignored. It is contended that the acquittal of a person in a criminal trial means that no case is made out for conviction but that does not mean that the candidate is suitable for appointment. Still further, the decision of the State cannot be said to be arbitrary or irrational, which may warrant interference in exercise of power of judicial review.

14. In **Nilgiris Bar Association**'s case (**supra**), Section 4 of the Probation of Offenders Act, 1958 was being examined and this was a case where a person representing himself as an Advocate, enrolled himself with the Bar Association and started working as an Advocate. On a complaint lodged by the Bar Association, the impostor pleaded guilty to the charge and was released under Section 4 of the Probation of Offenders Act, 1958. The Bar Association challenged the order of the Magistrate in a revision. The order was not interfered with but the respondent before the Supreme Court was directed to donate a sum of Rs.15,000/- to the Bar Association for buying books to their library. It is the said order, which was challenged by the Bar Association before the Supreme Court. The Supreme Court not only set aside an order passed by the learned Single Bench but also of the Magistrate and the respondent was sentenced to undergo rigorous imprisonment for six months for the offence punishable under Sections 419 and 420 of IPC each. The Supreme Court observed that the expression "character" is not defined in the Act. The word "character" is not an abstract opinion in which the offender is held by others. The Supreme Court ultimately held as under:-

> "**11**. Character of the offender in this case reflects in the modality in which he was inveigling in a noble profession duping everybody concerned. In such a view of the matter the two courts could not have formed an opinion in favour of the character of the respondent. It is apposite to observe here that the learned Single Judge did not mention anything about the character of the respondent qua the accusations found against him."

15. We find that the reliance placed by the petitioner on the judgment in **Nilgiris Bar Association**'s case (**supra**) is hardly of any help to the argument raised. Firstly, the Supreme Court has convicted and sentenced the impostor

for an offence under Section 419 and 420 of IPC keeping in view his "character". Referring to Black's Law Dictionary, the Supreme Court held that "character" is defined as "the aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes. Therefore, it is a question of fact in each case as to whether a person is of a "good character", suitable for appointment against a public post. Therefore, the reliance on the said judgment by the Bench in **Arvind Gurjar**'s case (**supra**) is misplaced.

16. In **Mehar Singh**'s case **(supra)**, the Supreme Court was considering the cancellation of a candidature for appointment to the post of Constable with Delhi Police. The Commissioner of Police has issued a Standing Order for screening the candidates involved in criminal cases. Such screening committee rejected the candidature of the appellant. The Supreme Court maintained the order of rejection of candidature of the candidate for appointment to the post of Constable while observing that the police force is a disciplined force. It shoulders great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. The Court held as under:-

> "**23**. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be

within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co- relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India, AIR 1964 SC 787,* this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

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26. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that

the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

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29. In this connection, we may usefully refer to *Delhi Admn. vs. Sushil Kumar (1996) 11 SCC 605*. In that case, the respondent therein had appeared for recruitment as a constable in Delhi Police Services. He was selected provisionally, but, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of constable was not found desirable. Accordingly, his name was rejected. He approached the Tribunal. The Tribunal allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304, Section 324 read with Section 34 and Section 324 of the IPC, he cannot be denied the right of appointment to the post under the State. This Court disapproved of the Tribunal's view. It was observed that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable for the post under the State. This Court observed that though the candidate was provisionally selected, the appointing authority found it not desirable to appoint him on account of his antecedent record and this view taken by the appointing authority in the background of the case cannot be said to be unwarranted. Whether the respondent was discharged or acquitted of the criminal offences, the same has nothing to do with the question as to whether he should be appointed to the post. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.

30. It was argued that *Delhi Admn. vs. Sushil Kumar (1996) 11 SCC 605* must be distinguished from the facts of the instant case because the respondent therein had concealed the fact that a criminal case was registered against him, whereas, in the instant case there is no concealment. It is not possible for us to accept this submission. The aspect of concealment was not considered in *Sushil Kumar* at all. This Court only concentrated on the desirability to appoint a person, against

whom a criminal case is pending, to a disciplined force. *Sushil Kumar* cannot be restricted to cases where there is concealment of the fact by a candidate that a criminal case was registered against him. When the point of concealment or otherwise and its effect was not argued before this Court, it cannot be said that in *Sushil Kumar* this Court wanted to restrict its observations to the cases where there is concealment of facts.

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33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening

Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand."

[emphasis supplied]

17. In **Parvez Khan**'s case **(supra)**, the candidate wanted appointment on compassionate ground. The candidature was rejected though he was acquitted in a criminal trial. The Supreme Court quoted from **Mehar Singh**'s case and observed as under:-

"**13**. From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated.

> Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational. There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharge based on compounding."

18. It may be noticed that the two judgments of the Supreme Court reported as **(2013) 9 SCC 363 (Devendra Kumar vs. State of Uttaranchal and others**) and **(2010) 14 SCC 103 (Daya Shankar Yadav vs. Union of India and others)** which were referred to by the learned counsel for the petitioner during the course of hearing dealt with a situation where the candidate had concealed the material information of lodging of the criminal cases. In **Daya Shankar Yadav**'s case **(supra**) though the Court found that the verification form was not clear but still it was held that when the candidate has suppressed the material fact that he was prosecuted, the candidature was rightly rejected. In **Devendra Kumar**'s case **(supra**) again the candidate had suppressed the fact of his involvement in a criminal trial but the concealment of such fact by itself was found to be an act of moral turpitude. The Supreme Court in **Devendra Kumar (supra)** held as under:-

> "**25**. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato 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 *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, (1996) 4 SCC 127;* and *Lily Thomas v. Union of India and others, (2000) 6 SCC 224*). Nor can a person claim any right arising out of his own wrongdoing. (*jus ex injuria non oritur)*."

19. In a Larger Bench decision in **Avtar Singh**'s case **(supra**), the Supreme Court was primarily considering the question of suppression of fact and appointment of a candidate to the civil post. The Court held that even if a candidate has made disclosure of the concluded trial but still the employer has a right to consider the antecedents and cannot be compelled to appoint a candidate. The Court held as under:-

> "**30**. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case,

nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

Xxx xxx xxx

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.

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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.

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38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

*** *** ***

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."

20. The judgment in **Avtar Singh**'s case **(supra)** (paras 34, 36 and 38.5 as extracted above) takes same view as has been taken in **Mehar Singh (supra)** and **Parvez Khan** (**supra**) though there is no specific reference made to such judgments.

21. Recently, the Supreme Court in yet another judgment rendered on 08.01.2018 in **Civil Appeal No.67/2018 (Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and another**) has allowed the State's appeal relying upon its earlier decisions in **Mehar Singh (supra**); **Parvez Khan (supra**); as well as in the case of **Avtar Singh (supra**). Again, this was a case for appointment on the posts of Constable in Chandigarh Police and the issue for consideration was: whether the candidature of the respondents who had disclosed their involvement in criminal cases and also their acquittal could be cancelled by the Screening Committee on the ground of their unsuitability and as to when the Court can interfere with the opinion of the Screening Committee. The Court held as under:-

> "**10**. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Deputy Inspector General of Police and Another v. S. Samuthiram **(2013) 1 SCC 598,** in which this Court held as under:-
>
> > "24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the

accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In Commissioner of Police, New Delhi and Another v. Mehar Singh **(2013) 7 SCC 685**, the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasizing upon the importance of character and integrity required for joining police force/discipline force, in Mehar Singh case, this Court held as under:-

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The same principle was reiterated in State of Madhya Pradesh and Others v. Parvez Khan **(2015) 2 SCC 591**.

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in Avtar Singh v. Union of India and Others **(2016) 8 SCC 471**, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (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."

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost character."

22. The reliance of the learned counsel for the petitioner on the judgment of the Supreme Court reported as **(2015) 2 SCC 377 (Joginder Singh vs. Union Territory of Chandigarh and others**) is of no help to the arguments raised as the attention of the Court was not drawn to earlier judgment in **Mehar Singh**'s case **(supra).** After the judgment in **Joginder Singh** (**supra**), **Parvez Khan**'s case **(supra)** was decided on 1.12.2014 and **Pradeep Kumar**'s case (**supra**) has been decided recently on 08.01.2018 quoting extensively from the judgment in **Mehar Singh**'s case (**supra**). The view taken in **Mehar Singh; Parvez Khan** and **Pradeep Kumar**'s cases **(supra)** is no different than the view taken by the larger Bench of the Supreme Court in **Avtar Singh**'s case **(supra)**, which unequivocally held that the decision in respect of suitability of a candidate has to be taken by the employer.

23. But even if there is conflict between the two judgments of the Supreme Court by the equal strength, even then the earlier view would be binding precedent if the earlier judgment was not brought to the notice of the Court in a later judgment. A Full Bench of this Court in **2003 (1) MPHT 226 (FB) (Jabalpur Bus Operators Association and others vs. State of M.P. and another**) has held that in case of conflict between the two judgments of the coordinate Bench of the Supreme Court, the earlier judgment will prevail. The relevant extract is reproduced as under:-

> "**9**. Having considered the matter with broader dimensions, we find that various High Courts have given different opinion on the question involved. Some hold that in case of conflict between two judgments on a point of law, later decision should be followed; while others say that the Court should follow the decision which is correct and accurate whether it is earlier or later. There are High Courts which hold that decision of earlier Bench is binding because of the theory of binding

precedent and Article 141 of the Constitution of India. There are also decisions which hold that Single Judge differing from another Single Judge decision should refer the case to Larger Bench, otherwise he is bound by it. Decisions which are rendered without considering the decisions expressing contrary view have no value as a precedent. But in our considered opinion, the position may be stated thus-

With regard to the High Court, a Single Bench is bound by the decision of another Single Bench. In case, he does not agree with the view of the other Single Bench, he should refer the matter to the Larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division Bench, it should refer the matter to Larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of later Division Bench shall be binding. The decision of Larger Bench is binding on Smaller Benches.

In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a Larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench, is binding on the High Courts and the Subordinate Courts. Similarly, in presence of Division Bench decisions and Larger Bench decisions, the decisions of Larger Bench are binding on the High Courts and the Subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision in binding in all circumstances, or the High Courts and Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and Subordinate Courts should lack competence to interpret decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate hierarchical supremacy of Courts. The common thread which runs through various decisions of Apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and

> exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full Bench decision in Balbir Singh's case (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the High Court has to follow the judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in the preceding paragraph of this judgment, does not lay down the correct law as to application of precedent and is, therefore, over-ruled on this point."

24. In view of the judgment in **Avtar Singh**'s case (**supra**), the reliance of the learned counsel for the petitioner on the judgment of the Supreme Court reported as **(2011) 4 SCC 644 (Commissioner of Police and others vs. Sandeep Kumar)** and on **Joginder Singh** (**supra**) is not tenable.

25. The present is not a case of concealment of facts but in view of the judgment of the Supreme Court in **Mehar Singh** and **Parvez Khan (supra**) wherein appointment to the post of Constable has been held to be a post requiring utmost rectitude and only a person of impeccable character and integrity is required to be appointed, such test will increase manifold in respect of a Judicial Officer, who is called upon to discharge the sovereign functions in the administration of justice. The Supreme Court in a judgment reported as **(1993) 4 SCC 288** (**All India Judges' Association and others vs. Union of India and others**) observed as under:-

> **"7**. It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot however, help observing that the failure to realize the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in

> the sense of 'employment'. The judges are not: employees. As members of the judiciary, they exercise the sovereign judicial power of the State…..... The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally.
>
> **8**. This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the judges in want of the essential accoutrements and thus to impede them in the proper discharge of their duties, is to impair and whittle away justice itself. ”

26. In a judgment reported as **(1987) 3 SCC 1 (Daya Shankar v. High Court of Allahabad and others)** while examining the conduct of use of unfair means by a Judicial Officer in the LL.M. examination, it was held that Judicial Officers have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. The Court held as under:-

> **“11.** In our opinion the conclusion reached by the Inquiry Officer that the petitioner used unfair means is fully justified. No amount of denial could take him away from the hard facts revealed. The conduct of the petitioner is undoubtedly unworthy of a judicial officer. Judicial officer cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy.”

27. In a judgment reported as **(1995) 5 SCC 457** (**C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and others)** it has been held by the Supreme

Court that judicial offices are essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. It was held as under:-

> **"21.** Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. … It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society."

28. Thus, the expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate who seeks appointment as Civil Judge. The personal conduct of a candidate to be appointed as Judicial Officer has to be free from any taint. The same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well.

29. Recently, a Division Bench of Bombay High Court in **W.P. No.2848/2013 (Mohammed Imran s/o Shabbir Daryawardi vs. State of**

Maharashtra and others) decided on 14.12.2017 was considering the cancellation of candidature of a candidate for the post of Civil Judge (Junior Division). The Court held as under:-

> "On hearing the learned Counsel for the parties, we find that the petitioner would not be entitled to the relief claimed. The petitioner had applied for the post of CJJD and JMFC. As rightly submitted on behalf of the respondent no.3, for appointment to the said post, the applicant should have had unblemished character and conduct and his antecedents need to be looked into before making the appointment....."

30. At this stage, we may point out that a Division Bench of Indore Bench of this Court in **Writ Appeal No.367/2015 (Sandeep Pandey vs. State of M.P. and others**) decided on 17.12.2015 distinguished **Mehar Singh**'s case (**supra**) on the ground that – that was a case dealing with Standing Orders issued by Delhi Administration whereas in Madhya Pradesh, the Regulation 54 of the M.P. Police Regulations contemplates that a person seeking appointment to the post of Constable should bear good moral character. Whether a person bears good moral character has to be adjudged by the Inspector General of Police. The Court found that since there is no Standing Order, therefore, judgment in **Mehar Singh**'s case (**supra**) is not applicable.

31. We find that the Standing Order is nothing but a procedure to determine suitability of a candidate for appointment to a post in a transparent and in a non-arbitrary manner by the high ranking officials whereas Regulation-54 of the M.P. Police Regulations empowers the Inspector General of Police to take a call as to whether a candidate possesses good moral character. Instead of a Committee in Delhi, the suitability is required to be judged in the case of appointment in the Police by the Inspector General of

Police. Therefore, the Court was bound by the judgment in **Mehar Singh**'s case (**supra**) and thus, such judgment of this Court in **Sandeep Pandey**'case **(supra)** does not lay down correct law. We may notice that a special leave petition bearing **Special Leave to Appeal (C) No.20522/2016 (State of M.P. and others vs. Sandeep Pandey**) against the said judgment has been granted by the Supreme Court on 07.11.2016 and operation of the impugned judgment has been stayed and that the Civil Appeal No.010749/2016 is pending consideration.

32. Therefore, in respect of the Questions No.1, 4 and 5 we hold that decision of criminal Court on the basis of compromise or an acquittal cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters and therefore, acquittal in a criminal case is not a certificate of good conduct to a candidate. The competent Authority has to take a decision in respect of the suitability of candidate to discharge the functions of a civil post and that mere acquittal in a criminal case would not be sufficient to infer that the candidate possesses good character. In this view of the matter, we find that the judgment in **Arvind Gurjar**'s case **(supra**) holding that it cannot be held that candidate does not have a good character, is not the correct enunciation of law. Consequently, the judgment in **Arvind Gurjar**'s case (**supra**) is overruled.

33. This brings us to consider the Question Nos. 2 and 3 referred to for the opinion, which read as under:-

QUESTION Nos.2 & 3:

> "**2.** Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?
>
> **3**. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?"

34. The power of judicial review under Article 226 of the Constitution of India is not that as of Court of appeal but to find out whether the decision-making process is in accordance with law and is not arbitrary or irrational. In a Constitution Bench judgment reported as **AIR 1954 SC 440 (T.C. Basappa vs. T. Nagappa and another)** it was held that the High Court has power to issue writs in a case where subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of record but such jurisdiction is not wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned. Relevant extract of the said decision is reproduced as under:-

"**(11)** In dealing with the powers of the High Court under article 226 of the Constitution this Court has expressed itself in almost similar terms vide – 'Veerappa Pillai vs. Raman and Raman Ltd., AIR 1952 SC 192 at pp. 195-196 (I) and said:

> "Such writs as are referred to in article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction, vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under article 226 of the Constitution.

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(**24**). As regards the omission to include hiring charges the High Court has observed that the Tribunal did not record any finding that such hiring was proved. The Tribunal has in fact found that as regards some cars they were hired, while others had been taken on loan, the money value for their use having been paid by the first respondent which is tantamount to saying that he had to pay the hiring charges. The matter has been dealt with in paragraph 29(d) of the Tribunal's order and the entire evidence has been gone through.

We are unable to say that the finding of the Tribunal that the respondent No.1 had omitted to include in his return of election expenses the dinner and hotel charges is a finding unsupported by any evidence. Reference may be made in this connection to paragraph 29(f) of the Tribunal's order which deals with the matter in detail.

On the whole our opinion is that the so-called apparent errors pointed out by the High Court are neither errors of law nor do they appear on the face of the record. An appellate Court might have on a review of this evidence come to a different conclusion but these are not matters which would justify the issue of a writ of certiorari. In our

> opinion the judgment of the High Court cannot be supported and this appeal must be allowed. The writ issued by the High Court will therefore be vacated. We make no order as to costs of this appeal."

35. In another Constitution Bench judgment reported as **AIR 1965 SC 532 (State of Mysore and another vs. K.N. Chandrasekhara**), the question examined was in relation to the appointment to the post of Munsif by the Karnataka Public Service Commission. The Court held that if the High Court was satisfied that the persons, who were occupying the post were appointed contrary to the Rules, the High Court could set aside the proceedings of the Commission and direct preparation of fresh list according to law but could not direct to include the name of the six petitioners only because they applied to the Court. The relevant extract read as under:-

> "**10**. It may at once be observed that the order passed by the High Court cannot in any view of the case be sustained. The High Court could, if it held that the notification issued by the Commission and the appointments made by the State pursuant thereto were made in violation of the statutory rules, quash the list but the High Court could not direct that the names of six persons merely because they had applied for setting aside the list of candidates selected for promotion be incorporated in that list. The direction made by the High Court was in the nature of mandamus. Such a direction could be issued against a person or body to compel the performance of a public duty imposed upon it by law - statutory or common. The commission is undoubtedly a body constituted pursuant to the provisions of the Constitution and has to exercise powers and perform functions entrusted to it by the Rules framed under Art. 309. But the order which the High Court made was not for compelling performance of its duty imposed upon the Commission by statute or common law. If the High Court came to the conclusion that the proceeding of the Commission was vitiated on account of some irregularity or illegality, it could declare the proceeding void. The High Court however held that the orders including respondents 4 to 13 to the petitions in the list of persons

> eligible for appointment should be allowed to stand, because the petitioners in the petitions before it did not insist on the issue of a writ of quo warranto. If the High Court was satisfied on an application specifically made in that behalf that the persons who were occupying posts to which they were appointed contrary to the rules governing the appointment and consequently were not competent to occupy the posts, it is difficult to appreciate the ground on which the High Court would be justified in declining to pass appropriate orders. Either the High Court could set aside the proceeding of the Commission and direct preparation of a fresh list according to law, or the High Court could dismiss the petitions because in its view the list was regularly prepared. But the order passed by the High Court maintaining the inclusion of respondents 4 to 13 in the list and then directing the Commission to include the names of the six petitioners in the list merely because they had applied to the High Court is without authority."

36. In another judgment reported as **1969 (3) SCC 489 (Thakur Birendra Singh vs. The State of M.P. and others**), the Court held that the High Court could have quashed the orders but the High Court was not sitting in appeal over the decision of the Board of Revenue. Once the orders complained of are quashed, the matter should have been left at large without any further direction leaving the Revenue Authorities free to take any steps.

37. The scope of power of judicial review has also been examined in a judgment reported as **(1994) 6 SCC 651 (Tata Cellular vs. Union of India)**, the Supreme Court held as under:-

> "**74**. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.
>
> **75**. In *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141, 154, Lord Brightman said :
>
> > "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

* * *

> Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms :

> "This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In *R. v. Panel on Takeovers and Mergers, ex p Datafin plc* (1987) 1 All ER 564, Sir John Donaldson, M.R. commented:

> "An application for judicial review is not an appeal." In *Lonrho plc v. Secretary of State for Trade and Industry* (1989) 2 All ER 609, Lord Keith said: "Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin v. Entry Clearance Officer*, (1983) 2 All ER 864, Re, Lord Fraser observed that :

> "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted

with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In *R. v. Panel on Take-overs and Mergers, ex p in Guinness plc (1989) 1 All ER 509,* Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department*, ex Brind (1991) 1 ACR 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

38. The Supreme Court in a judgment reported as **(2008) 1 SCC 683 (Aravali Golf Club vs. Chander Hass)** has held that in the name of judicial

activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State. The Court held as under:-

> "**17**. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.
>
> **18**. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen (2007) 1 SCC 408; and S.C. Chandra v. State of Jharkhand* (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).
>
> **19**. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.
>
> **20**. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State — the legislature, the executive and the judiciary — must have respect for the other and must not encroach into each other's domains.
>
> **21**. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:
>
> > "When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
> >
> > *Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined*

> *with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression*.
> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."
>
> (Emphasis supplied)

> We fully agree with the view expressed above. Montesquieu's warning in the passage above quoted is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for "overreach" and encroachment into the domain of the other two organs."

39. A Full Bench of this Court in **Writ Appeal No.581/2017 (Nitin Pathak vs. State of M.P. and others**) examined the question as to whether in exercise of power of judicial review the Court can refer the matter to a Court chosen expert or whether the Court itself can act as Court of appeal and make a different view than what has been finalised as the model answer key by the Examining Body. The Bench held as under:-

> **"32**. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of preventing the abuse of power be itself guilty of usurping power."

40. In view of the law laid down in above said judgments, there is no doubt that in exercise of power of judicial review under Article 226 of the Constitution of India, this Court only examines the decision-making process and does not substitute itself as a Court of appeal over the reasons recorded by the State Government. We find that the decision of the State Government

holding that the petitioner is not suitable, is just, fair and reasonable keeping in view the nature of the post and the duties to be discharged.

41. Even if the High Court finds that the decision of the State Government is suffering from some illegality, the jurisdiction of the High Court in a writ petition under Article 226 of the Constitution of India is to remit the matter to the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own. The Supreme Court in a judgment reported as **(1994) 4 SCC 448 (State of Haryana vs. Naresh Kumar Bali**) was examining a question: as to whether there could be a direction to appoint a candidate, who sought appointment on compassionate ground. The Supreme Court held as under:-

> "**16**. With regard to appointment on compassionate ground we have set out the law in *Life Insurance Corpn. of India v. Asha Ramchhandra Ambekar (1994) 2 SCC 718*. The same principle will clearly apply here. What the High Court failed to note is the post of an Inspector is a promotional post. The issuing a direction to appoint the respondent within three months when direct recruitment is not available, is unsupportable. The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226."

42. Again while considering the question of compassionate appointment in a judgment reported as **(2008) 8 SCC 475 (General Manager, State Bank**

of India and others vs. Anju Jain), the Supreme Court held that there could not be any direction for appointment or promotion. The relevant para of the said decision is extracted as under:-

> "**37**. Even on second ground, the submission of the Bank is well-founded. As noted earlier, the learned Single Judge issued direction to the Bank to appoint the writ petitioner, widow of the deceased employee within one month. As per settled law, a writ of mandamus can be issued directing the authority to consider the case of the petitioner for an appointment or promotion as the case may be but no direction can be given to appoint or promote a person."

43. Similar view has been expressed in a judgment reported as **(2014) 3 SCC 767 (Ganapath Singh Gangaram Singh Rajput vs. Gulbarga University represented by its Registrar and others**) wherein while dealing with the scope of Writ of Mandamus in the matter of appointment/recruitment, the Supreme Court held, thus:-

> "**25**. Ordinarily, in a case where the person appointed is found ineligible, this Court after setting aside such appointment, directs for consideration of cases of such of the candidates, who have been found eligible. It is only in exceptional cases that this Court issues mandamus for appointment. The case in hand is not one of those cases where the High Court ought to have issued mandamus for appointment of Shivanand as Lecturer in MCA. Hence, we are of the opinion that the High Court rightly held Ganpat ineligible and quashed his appointment. However, it erred in issuing mandamus for appointment of Shivanand. Accordingly, we uphold the impugned order (*Shivanand v. Gulbarga University, Writ Appeal No.3216 of 2004, order dated 19-11-2009/24-11-2009 (KAR*) of the High Court whereby it had set aside the appointment of the appellant herein and direct that the case of the writ petitioner Shivanand and all other candidates be considered in accordance with law. However, we make it clear that the selection already made shall be taken to its logical conclusion."

44. Therefore, the High Court could not issue any direction for appointment of a candidate from the date the other candidates were appointed as such is not the jurisdiction vested in the High Court under Article 226 of the Constitution of India.

45. In view of the above, we find that the judgment of this Court in **Arvind Gurjar**'s case (**supra**) does not lay down the correct law as the High Court has substituted its decision regarding suitability of a candidate and also issued a direction to appoint the petitioner, therefore, the entire judgment does not lay down correct law and is thus, overruled. The question Nos. 2 and 3 are answered accordingly.

QUESTION No.6:

> (6) Any other question that may arise for adjudication or decision in the dispute involved in the present petition and which the Larger Bench thinks appropriate to decide?

46. Learned counsel for the petitioner raised another argument that the High Court has recommended the name of the petitioner for appointment as Civil Judge, therefore, the State Government is not competent to reject the name of the petitioner for appointment. He relies upon Rule 10 of the Rules of 1994 to contend that the High Court has to determine the eligibility of the candidate and not the State Government.

47. Though the argument raised by the learned counsel for the petitioner has merit but in the present case, the High Court while recommending the name of the petitioner has left the question of eligibility to be determined by the State Government. The High Court does not have any mechanism to verify the antecedents. Though the petitioner has disclosed such antecedents and

appropriately a decision on eligibility should have been taken by the High Court but once the High Court has left the decision to the State Government, the decision of the State Government that the petitioner is not eligible for appointment, cannot be said to be illegal or without jurisdiction. However, we may clarify that decision in respect of eligibility of any candidate on account of involvement in a criminal case has to be taken by the High Court. If the State has any information in respect of the antecedents or any other material which is relevant in respect of suitability of a candidate, the State must share the information with the High Court. The ultimate decision on suitability of candidate for appointment is to rest with the High Court. The question No.6 stands answered accordingly.

48. The matter be placed before the Bench as per Roster in view of the opinion of this Court on the questions of law having been rendered in the above manner.

(HEMANT GUPTA)
CHIEF JUSTICE

(RAVI SHANKAR JHA)
JUDGE

(Smt. NANDITA DUBEY)
JUDGE

S/