

In Residence**Case :-** WRIT - A No. - 9594 of 2020**Petitioner :-** Anuj Kumar**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Arvind Kumar Singh**Counsel for Respondent :-** C.S.C.**Hon'ble Ajay Bhanot,J.**

1. The petitioner has assailed the order dated 03.09.2020 passed by respondent no. 3- Commandant, 43 Battalion, Provincial Armed Constabulary (PAC), Etah, whereby the competent authority has found that the petitioner is not suitable for appointment on the post of Constable in the PAC.

2. Sri Arvind Kumar Singh, learned counsel for the petitioner contends that the respondent No.3 was misdirected in law by overlooking the fact that the petitioner was tried for an offence as a juvenile. The case of the petitioner is covered by the law laid down by this Court in ***Rajiv Kumar Vs. State of U.P. and another***, reported at ***2019 (4) ADJ 316***, ***Shivam Maurya Vs. State of U.P. and Others*** reported at ***(2020) 5 ADJ 6*** and in ***Kishan Paswan Vs. Union of India and others*** reported at ***2020 (11) ADJ 254***. The impugned order is arbitrary, illegal and violative of fundamental rights of the petitioner guaranteed under Articles 14, 16 and 21 of the Constitution of India.

3. Per contra, learned Standing Counsel submits that the pendency of a criminal case and the suppression of

the same in the Attestation Form by the petitioner are admitted. The offence against the petitioner was not of a trivial nature, and moreover the petitioner had been convicted by the learned trial court. He is not suitable for appointment in a disciplined force like the Provincial Armed Constabulary (PAC) and his candidature was lawfully invalidated. The impugned order is not liable to be interfered with.

4. Heard learned counsels for the parties.

5. The petitioner applied for appointment on the post of Constable in the Civil Police and Provincial Armed Constabulary (PAC) in response to an advertisement issued by the Uttar Pradesh Police Recruitment and Promotion Board, Lucknow, on 14.01.2018.

6. The petitioner was successful in the written examination and also qualified the physical standard test. The petitioner was selected for appointment to the post of Constable in the PAC and his name was shown at serial no. 1350 of the select list taken out by the respondent authority.

7. After the selection of the petitioner, an enquiry was made by the Senior Superintendent of Police, Etah, into the criminal antecedents of the petitioner and his suitability for appointment to the post of Constable in the PAC. The aforesaid enquiries revealed that the petitioner had faced criminal prosecution consequent to registration of Case Crime No. 104 of 2011, under

Sections 3/4 of U.P. Public Examinations (Prevention of Unfair Means) Act, 1998. On account of the aforesaid criminal case faced by the petitioner, the petitioner was refused appointment as Constable in the PAC.

8. Aggrieved by the aforesaid denial of appointment, the petitioner instituted a writ petition before this Court, registered as Writ A No. 4270 of 2020, Anuj Kumar Vs. State of U.P. and Others. The writ petition was decided by a judgment rendered on 15.06.2020. The operative portion of the aforesaid judgment in Anuj Kumar (supra), is extracted hereinunder:

“In view of the above, as no useful purpose would be served in keeping the matter pending, with the consent of parties the matter is being decided at this stage. It is directed that in case petitioner approaches the respondent no. 3 through a comprehensive representation alongwith certified copy of this order within fifteen days from today, the respondent no. 3 shall consider and decide the same, in accordance with law, keeping in mind the guidelines issued by Apex Court in case of Avtar Singh (Supra), preferably within a period of two months from the date of receipt of representation of petitioner.

Writ petition stands disposed of.”

9. In compliance of the direction issued by this Court, the case of the petitioner for appointment was reconsidered by the competent authority in the impugned order dated 03.09.2020.

10. The facts relevant for the adjudication of the controversy are established beyond the pale of any dispute in the impugned order. The facts being undisputed, the controversy turns on pure questions of law. No useful purpose will be served by exchange of

pleadings and prolonging the litigation. The matter is being decided finally with consent of parties.

11. The undisputed facts necessary for adjudication for this controversy can be prised out from the impugned order dated 03.09.2020.

12. The impugned order dated 03.09.2020 after extracting the operative portion of the judgment of this Court dated 15.06.2020 in Anuj Kumar (Supra), records that the petitioner has submitted a representation in support of his candidature. The impugned order thereafter finds that the perusal of the records reveal that the petitioner had successfully qualified the written examination as well as the physical standard test in the selection proceedings for direct recruitment of PAC Constable. An enquiry into the criminal antecedents and character verification was initiated by the local police at Etah.

13. The letter of the Senior Superintendent of Police, Etah, dated 27.12.2019, is referenced in the impugned order. The said letter discloses that Case Crime No. 104 of 2011, under Sections 3/4 of U.P. Public Examinations (Prevention of Unfair Means) Act, 1998, was registered against the petitioner and a chargesheet was submitted in the learned trial court on 09.04.2011. The matter was finally decided by the Lok Adalat on 28.08.2011 upon payment of penalty by the petitioner. The report of the Senior Superintendent of Police, Etah, contains a recital to the effect that the offence is of a

trivial nature and the current reputation of the petitioner is good.

14. The contents of the communication dated 27.12.2019 sent by the Senior Superintendent of Police, Etah are stated. Thereafter the opinion of the District Magistrate, Etah, sought in regard to the suitability of the petitioner for appointment is discussed.

15. The District Magistrate Etah in the letter dated 15.01.2020, opined that in the aforesaid criminal case the petitioner had confessed to his crime. Use of unfair means is an offence which comes within the ambit of “moral turpitude” as described in the Government Order dated 28.04.1958. The petitioner had already been punished by the trial court by imposition of penalty. On the foot of the aforesaid reasoning, the District Magistrate opined that the petitioner is not suitable for appointment on the post of Constable in the PAC. In view of the aforesaid opinion of the District Magistrate Etah the petitioner was not issued an appointment letter.

16. The impugned order then proceeds to quote the opinion of the Joint Director Prosecution, District Etah on 31.08.2020. The aforesaid opinion cites various holdings in the case of *Avtar Singh v. Union of India and Others*¹, as set out in paragraph nos. 38.4.1, 38.4.2, 38.4.3 and 38.8.

17. The opinion records that the petitioner had not

¹ (2016) 8 SCC 471

raised a plea of juvenility before the learned trial court by asserting that he was a juvenile at the time of the institution of criminal case. Further the petitioner has deposited the penalty of Rs. 250/- imposed by the learned trial court and thus admitted to his guilt. The provision of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998, provides for two categories of punishments namely imposition of penalty and imprisonment.

18. On the foot of the aforesaid reasoning, it is opined that the petitioner was found guilty by the learned trial court. After setting out the aforesaid material in the impugned order, the competent authority agrees with the same. The competent authority finally holds the petitioner unsuitable for appointment on the post of Constable in PAC on account of the penalty of Rs. 250/-, imposed by the learned trial court as a punishment.

19. The date of birth of the petitioner is 13.07.1995. The offence for which the petitioner was prosecuted occurred on 25.03.2011. On the date of the offence for which the petitioner was prosecuted, he was 15 years 8 months 12 days old. The petitioner was juvenile within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2015.

20. These undisputed facts raise the following questions of law for consideration:

I. Whether the petitioner can be denied appointment

on the footing of the prosecution and the conviction of the petitioner by the Lok Adalat by order dated 05.11.2019, in Case Crime No. 104/2011, under Sections 3/4 of U.P. Public Examinations (Prevention of Unfair Means) Act, 1998.

II. Whether the respondents authorities erred in law by requiring the petitioner to disclose details of criminal prosecution faced by him as a juvenile in the Attestation Form?

21. The said questions were also posed for determination before this Court in ***Rajiv Kumar Vs. State of U.P. and another***².

22. I find that the ***Rajiv Kumar (supra)*** is squarely applicable to the facts of this case. The judgment of ***Rajiv Kumar (supra)*** is of some length. However, some parts of the judgment can be usefully extracted.

23. The judgment of this Court in ***Rajiv Kumar (supra)*** found that the aforesaid questions which arose for consideration, involved an interface between various branches of law:

“17. The controversy is defined by an interplay of different branches of law and competing rights of individuals and institutions. The interface of employers' rights, child rights and employees' rights and a composite view and concerted implementation of different branches of law, constitutional rights, Juvenile Justice Acts, child rights regime, service law will provide the way for the resolution of the controversy.”

24. The creation of children as a separate class in the Constitution was looked at in light of relevant

constitutional provisions :

“20. The constitution makers understood the special needs of children and envisaged a distinct place for children in the Constitution. The children are constituted into a separate class of citizens under the Constitution. Various provisions devoted to the child in the text of the Constitution attest the paramount importance accorded to the welfare of the child in our Constitutional scheme.”

25. Articles 15 (3), 21(a), 45, 47, 39(e) and 39(f) of the Constitution of India were specifically invoked.

26. **Rajiv Kumar (supra)** entrenched the right to reputation of a child as a fundamental right flowing from Article 21 of the Constitution of India relying on the law laid down by this Court in **Sumpurnanand Vs. State of U.P.**³. Similarly, the fundamental right to privacy of the child was also engaged by applying the holding of the Hon'ble Supreme Court in **K.S. Puttaswamy v. Union of India**⁴.

27. Various international instruments in regard to children in conflict with law were considered:

“38. The condition of children in conflict with law engaged the concerns of the world community. The concerns were put in the consciousness of the international community by the adoption of the Beijing Rules in 1985 and the UN Standard Minimum Rules for Administration of Juvenile Justice.

39. The United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a document which reflects the consensus of international opinion and convergence of

³ 2018 (11) ADJ 550

⁴ (2017) 10 SCC 1

values amongst civilized nations. In fact, the United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a statement of universal values. The Juvenile Justice Acts in India trace their origin to the aforesaid international standards and other UN Conventions on the subject. As will be seen the courts have readily incorporated the international treaties and conventions into the corpus of our case law jurisprudence.”

28. The Juvenile Justice (Care and Protection of Children) Acts (enacted from time to time) were examined in the context of various international instruments on child rights:

“52. The child rights jurisprudence reached the next stage in its evolution, with the UN Convention on Rights of Child, 1989 and UN Juvenile Protection Rule, 1990. In the comity of civilized nations, the state of children in conflict with law was elevated from international consciousness to international conscience, from conception of philosophy to agenda for action. India honoured its international obligations and cemented its international standing by promulgating The Juvenile Justice Act, 2000 and then The Juvenile Justice Act, 2015.

53. The Juvenile Justice Act 1986 , the Juvenile Justice Act 2000 and the Juvenile Justice Act 2015 are in consequence of and in consonance to the international covenants on child rights in general and children in conflict with law in particular. The enactments represent a conceptual shift from a strict retributive approach to benign rehabilitative justice. The enactments are a turning away of law from exclusion by penalizing to assimilation by reintegration. The objects of the legislations have been constant. The provisions have been amended to cope

with needs of the times and benefit from the fruits of experience.”

29. A survey of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 was made thus:

“Section 2.13 "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

Section 2.33 "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more;

Section 2.45. "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;"

Section 15 of the Act which contemplates a preliminary assessment into heinous offences by the court and the distinction created between heinous and non heinous offences under the scheme of the Act was part of the discussion.

59. Of course, it needs to be clarified that the Juvenile Justice Act, 2015 is prospective in its application. However, the fundamental principles of Child Rights Jurisprudence or position of law in regard to children in conflict with law which are incorporated in the Act infact predate the statute.

60. Sections 74 and 99 of the Juvenile Justice Act, 2015 provide for protecting the identity of a child who has faced criminal prosecution under the Juvenile Justice Act,

2015. Section 24 much like Sections 74 and 99, has been a consistent theme in the preceding enactments relating to children in conflict with law. Section 24 removes any disqualification of a child on the findings of an offence under the Act. Sections 24, 74 and 99 of the Juvenile Justice Act 2015 are as follows.”

30. Other aspects of the Juvenile Justice (Care and Protection of Children) Act, 2015, supported the discussion in the following manner:

"24. Removal of disqualification on the findings of an offence.

1. Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

2. (2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

(emphasis supplied) Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

74. Prohibition on disclosure of identity of children.

1. No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

2. The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

3. Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

99. Reports to be treated as confidential.

1. All reports related to the child and considered by the Committee or the Board shall be treated as confidential:

Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

2. Notwithstanding anything contained in this Act, the victim

shall not be denied access to their case record, orders and relevant papers."

61. Rule 14 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 has relevance to the controversy. The Rule provides for destruction of records. The intention of legislature to efface the records of prosecution of a child is clearly evident in the said provision:

14. Destruction of records.-

The records of conviction in respect of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer, and thereafter be destroyed by the Person-in-charge or Board or Children's Court, as the case may be:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub section (1) of section 19 of the Act, the relevant records of conviction of such child shall be retained by the Children's Court.

62. The Hon'ble Supreme Court in *Jitendra Singh v. State of U.P.* reported at (2013) 11 SCC 193, considered various aspects of child rights jurisprudence in the context of Juvenile Justice Act 2000 and also the International Convention on the Rights of the child and the Beijing Rules. The right to privacy and confidentiality of a juvenile, the inability of a child to know its rights, the imperative of rehabilitation and safeguards of law were issues on which the Hon'ble Supreme Court ruled that:

41. The Rules, particularly Rule 3, provide, inter alia, that in all decisions taken within the context of administration of justice, the principle of best interests of a juvenile shall be the primary consideration. What this means is that "the traditional objectives of criminal justice, that is retribution and repression,

must give way to rehabilitative and restorative objectives of juvenile justice". **The right to privacy and confidentiality of a juvenile is required to be protected by all means and through all the stages of the proceedings, and this is one of the reasons why the identity of a juvenile in conflict with law is not disclosed. (emphasis supplied)**

Following the requirements of the Convention on the Rights of the Child, Rule 3 provides that institutionalisation of a child or a juvenile in conflict with law shall be the last resort after a reasonable inquiry and that too for the minimum possible duration.

(emphasis supplied)

42. Rule 32 provides that:

"32.Rehabilitation and social reintegration.--The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise through alternate care programmes and long-term institutional care shall be of last resort."

43. It is quite clear from the above that the purpose of the Act is to rehabilitate a juvenile in conflict with law with a view to reintegrate him into society. This is by no means an easy task and it is worth researching how successful the implementation of the Act has been in its avowed purpose in this respect.

44. As regards procedurally dealing with a juvenile in conflict with law, the Rules require the State Government concerned to set up in every district a Special Juvenile Police Unit to handle the cases of juveniles or children in terms of the provisions of the Act (Rule 84). This Unit shall consist of a juvenile or child welfare officer of the rank of Police Inspector having an aptitude and appropriate training and orientation to handle such

cases. He will be assisted by two paid social workers having experience of working in the field of child welfare of which one of them shall be a woman.

45. Rule 75 of the Rules requires that while dealing with a juvenile or a child, except at the time of arrest, a police officer shall wear plain clothes and not his uniform.

46. The Act and the Model Rules clearly constitute an independent code for issues concerning a child or a juvenile, particularly a juvenile in conflict with law. This code is intended to safeguard the rights of the child and a juvenile in conflict with law and to put him in a category separate and distinct from an adult accused of a crime.

(emphasis supplied)

31. It needs to be mentioned that the Juvenile Justice (Care and Protection of Children) Acts were amended from time to time. However, fundamental principles of child rights jurisprudence and constitutional rights of a child which have remained constant also guided the decision in **Rajiv Kumar (supra)**.

32. The consideration of the scheme of the enactments is concluded in the following paragraphs:

“65. The diminished culpability of children rests on the premise of lack of maturity and an underdeveloped sense of responsibility in children and that the deficiencies are reversible which will be reformed with advancing age and neurological development. The heightened capacity for change in juvenile delinquents holds the promise of a new sunrise.

67. From the features and the scheme of the Juvenile Justice Act (as amended from time to time) and law laid down by

various courts, both the legislative intent and the position of law can be deduced with clarity. **Intention of the legislature is to treat children as a separate class in prosecution of offences committed by the children.**

68. Rigors of the prosecution have been diluted in the criminal procedure. The legislature and the law has gone the whole length to protect the identity of children who have faced prosecution. Non disclosure of the details of the crime committed by the child is another feature which reflects a sensitive approach of the legislature to children in conflict with law. (emphasis supplied)

69. Finally the legislations culminate in the overarching aim of rehabilitating children who had trouble with the law by assimilating them in the social mainstream.

70. By removing all disqualifications accruing from the finding of guilt or a conviction of a juvenile under the Acts, the final hurdle in the reintegration of a child in the society has been removed.” (emphasis supplied)

33. The scope of the rights of the State as an employer to ascertain the criminal antecedents of its perspective employees were then adverted to:

“Rights of an employer:

80. The State employer examines the criminal antecedents of its employees prior to their induction in government service.

81. Criminal antecedents are an accepted criteria to form an opinion on criminal traits in an individual and his suitability for employment. A person may be denied entry into government service or removed from government service if found in possession of such criminal traits.

85. A false declaration on oath regarding past prosecution in a criminal case or a conviction in a criminal offence or pendency of a criminal case could invalidate the appointment and entail termination of services. Some authorities would have it that such false affidavit would ipso facto result in the termination of the services of the employee. The other view took mitigating circumstances into account. The divergence in judicial views was finally resolved by a three Judge Bench of the Hon'ble Supreme Court in the case of Avtar Singh v. Union of India and Others, reported at (2016) 8 SCC 471.

89. Clearly the right of the State as an employer to know the criminal antecedents of its employees is unexceptional. But the rights are not unrestricted in case of children. The rights of the employer are limited by three constraints. The rights of an employer have to be reconciled to provisions of the Constitution and the propositions of Constitutional law. Thirdly the employer's rights are also circumscribed by the statutory regimes of child rights.” (emphasis supplied)

34. The interface of the rights of the State as an employer and a child's fundamental rights was made in the following enquiry:

“90. The rights of an employer are hedged, by the constitutional rights of a child. The interplay of the employer's rights with the constitutional rights of a child may now be considered.

91. A nuanced approach is required to understand the ambit of the right to reputation of a child and right to privacy of a child guaranteed under Article 21 of the Constitution of India.

92. In the wake of the preceding narratives, certain fundamental precepts can be distilled from the range of statutes and

pronouncements of courts which form the first principles of child rights jurisprudence. These fundamental principles of child rights jurisprudence would lend perspective and aid the understanding of Constitutional rights of children under Article 14 and Article 21 of the Constitution of India.

93. The vulnerability of a child is an attribute of childhood which is recognized by all legislatures. The incapacity of a child to know its rights is a given in child rights' jurisprudence. The inability of a child to assert its rights is a disability which is understood by all courts. The aim of the legislatures and the endeavour of the courts is to insulate the child from the cruel vagaries of life which it cannot comprehend and lacks the capacity to defend against. Reform of children in conflict with law, their reintegration in society and creation of a salutary environment for children to grow and realize their potentialities is the high purpose to which the legislatures and the courts have directed their efforts. Children have special needs in life and require special protection in law. The indispensable feature of all child rights' legislations is the special protection to children provided by the legislature in a given field.

As an old writer observed on the incapacity of infants-

"The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian.

94. As we have seen that fate of children in conflict with law has engaged the attention of the legislature, the courts and the larger comity of nations and international organizations. The collective endeavours have been guided by common purpose. Children in conflict with law need special care. The criminal justice system has to be sensitized to deal with the class of

children in conflict with law. The child has to be protected from harsh treatment and should not be exposed to the rough edges of the criminal justice system. The child has to be shielded from all aspects and consequences of the criminal justice system which can cast a lasting trauma or precludes it from leading a normal life free from blemish and prevents the reintegration of the child in the society.

95. One most critical feature of child rights regime is the issue of the taint caused by criminal prosecution and the disability accruing from criminal conviction. The consequent impediments in the reintegration of the delinquent child in the society are issues which are addressed by the legislatures and the courts alike. Some measures like restricted access to records of trials sealing and destruction of records of prosecution of juvenile delinquents are finding acceptability among legislatures across the world. Courts have been anonymising trials of children conflict with law to protect their identities.

96. All these issues and first principles thus lie at the heart of child rights jurisprudence, animate the purpose of child rights legislation and engage the "life" of a child under Article 21 of the Constitution of India.

(emphasis supplied)

97. Of course, persons between 16-18 years of age prosecuted for heinous crimes, have been put in a separate class by the legislature. They may be denied the protective cover of the child rights regime as per provisions of law.

98. A past prosecution of a child in a criminal case which remains in public records pertaining to employment becomes part of public discourse. In public employment, past prosecution of a child in a criminal case is often made a

criteria for forming an opinion of the child's criminal antecedents. Such criteria revives the taint of a past prosecution to blight the prospects of future employment. A reference to a past prosecution will tarnish the reputation of a child and become a permanent stigma in his life. Consideration of a past prosecution of child in a criminal case for any purpose or in any discourse, will create a perpetual disability for the child. The practice of making the past prosecution a criteria for forming an opinion of the child's criminal antecedents or even making it a consideration in public employment will provoke consequences which the child rights regime seeks to prevent. The consideration of a past prosecution of a child in a criminal case will prevent reintegration of the child in the mainstream of the society. It will pose an impediment in the reformation of the child and the growth of the child into a responsible adult. It will disable the all around development of the child into a law abiding citizen. It will preclude realization of the mandate of Article 39 of the Constitution of India. These circumstances will violate the child rights regime and the "life" of a child as guaranteed under Article 21 of the Constitution of India will be devoid of meaning.

99. The right of privacy of a child would be meaningful if such prosecution is not made part of public discourse as a criteria for appointment to public posts or admission to any institution of learning or for that matter any other transaction in life.

100. Similarly, the right to privacy in the context of a child would include his right to deny information relating to his prosecution as a child under the Juvenile Justice Act and

for offences which do not come in the category of heinous offences under the said Act.

101. The prerequisite for realizing the Fundamental Rights of a child vested by Article 21 of the Constitution of India, is to create all conditions essential for reintegration of the child in the social mainstream and to open opportunities for self development and self fulfillment, free from the taint of the past. The fact of the prosecution has to be purged from public records to rid the child of the taint.

(emphasis supplied)

102. The wide consensus of such values helps us in determining the rights of a child. The endeavours of the courts and the legislatures alike is to protect the identity of the child offender, and to shield the child in conflict with law from suffering lasting and traumatic consequences of criminal prosecution. **A child who has been prosecuted for criminal offence is entitled to a fresh chance in life. The child has to begin life as an adult on a clean state, as if no such criminal prosecution happened. This is possible when the fact of such criminal prosecution is purged from public discourse and is not a consideration for appointment to an office. The denial of public space and legitimacy to the fact of such criminal prosecution is the sheet anchor of the right to privacy and right to reputation of a child. An employer cannot elicit any information from any candidate or employee regarding the prosecution of the latter in a criminal case as a minor child for non heinous offences. An employer is precluded from seeking a declaration from a candidate or an employee regarding the prosecution of the latter in a criminal case as a child. *(emphasis supplied)***

103. These prerequisites create an environment which fosters a

balanced growth of a child and enables it to realize its full potentialities. **These prerequisites accord meaning to the life of a child as contemplated under Article 21 of the Constitution of India. This is the essence of the fundamental right guaranteed to a child by Article 21 of the Constitution of India. (emphasis supplied)**

104. The Directive Principles of State Policy enshrined in Article 39 of the Constitution of India are infact the mandatory requirements of law to bring the rights of a child vested by Article 21 of the Constitution of India to fruition.

105. The meaning of life for children contemplated in Article 21 would be fruitful, if conditions of life for children envisaged under Article 39 are created.”

35. The requirement posed by the State employer to a candidate to disclose the details of criminal prosecution faced as a minor / juvenile was also tested on the anvil of Article 14 of the Constitution :

“109. Legislative enactments treat children differentially from adults. Children are constituted in a separate class from adults in law. **The treatment accorded to children in law is different from that of adults. This differential treatment underlies the sensitive approach to children in law. The criminal prosecution of a child is not at par with the prosecution of an adult for a similar crime. The said prosecution and the consequences of such prosecutions cannot be treated alike. Law ensures that the adverse consequences of prosecution of child are not only mitigated but are completely obviated.**

110. **Children in conflict with law are a well defined class.**

This class cannot be treated like adults. Children are not "miniature adults".

111. It has been held by good authority that treating unequals as equals will militate against the mandate of Article 14 of the Constitution of India.

112. The criteria of past criminal prosecution for forming an opinion about considering a criminal antecedents of a candidate is a valid one. This criteria which is valid for adults, would be flawed if applied to children. This would amount to treating unequals as equals. A logical sequitor is that fact of a past criminal prosecution of a child is not a relevant consideration for appointment to a public post or office and is violative of Article 14 of the Constitution of India. (*emphasis supplied*)

113. Arbitrariness is another facet of Article 14 of the Constitution of India. Arbitrary action or criteria is negated by Article 14. This aspect of Article 14 is also engaged in the instant controversy. Some facts stated in detail in the preceding part of judgment are reproduced in substance hereunder:

114. The personality of a child is in constant evolution and his (sic) character traits are not permanent. The causes which impel a child to be on the wrong side of law or commit deviant acts are often traceable to his (sic) environment. A child has no control over his (sic) environment and his (sic) deviant behaviour is reversible. A child's conduct is capable of correction and a child is reformed over the years. Good authority in law and the field of child psychology has concluded that the character traits which impelled a child into a criminal act are transient and will be reformed with age.

115. In such a situation, the criteria of considering the past crimes committed by an employee as a child do not form a reliable, rational and a just basis for making an assessment of criminal traits and to determine suitability for employment. This criteria would be an irrelevant consideration for appointment to a public post. Above all such criteria is wholly arbitrary and flagrantly violates Article 14 of the Constitution of India.” (emphasis supplied)

36. The line of enquiry then shifted to the restrictions created on the rights of an employer by various Juvenile Justice (Care and Protection of Children) Acts, which produced the undermentioned limitations:

“(B). Employers' Rights and Juvenile Justice Act, 1986 and Juvenile Justice Act, 2015

116. The critical feature and the guiding philosophy of child rights jurisprudence and Juvenile Justice Act, 1986 and also Juvenile Justice Act, 2015 is to prevent the child from reoffending and to reintegrate the child in the society, to enable the child to grow into a reformed and a responsible adult and a law abiding citizen. The aim can be achieved if the taint of a past criminal prosecution does not blight the future prospects of a child. A past aberration as a child cannot define his future life as an adult. The aim of reintegrating the child in the society would be defeated in detail if the fact of a past prosecution stigmatizes the future life of the child. Not only conviction but the criminal prosecution itself carries a stigma.

117. The future of a child, in conflict with law will be secure and the reintegration of child will be complete, only if the taint of a past criminal prosecution is purged from his life. The

legislature, the prosecution agencies, the employers and the courts have a responsibility in this regard. The legislature has gone the whole length by providing that disqualification will result from a conviction of the child under the Juvenile Justice Act 1986 as well as the Juvenile Justice Act, 2015.

118. Salient features of the Juvenile Justice Act, 1986 protect the child not only from the rigor of the criminal prosecution but also from the consequences of conviction under the said Act.

119. As we have seen earlier that the Juvenile Justice Act, 1986 also provides for non disclosure of details of the child who faced prosecution and restricts access to the records relating to such prosecution. Destruction of records of prosecution faced by the child is another provision reflecting a clear intent of the Legislature.

120. Section 25 of the Juvenile Justice Act, 1986 quoted earlier, protects the child from the consequences accruing from the conviction under the Act and mandates that such conviction under the Act cannot operate as a disqualification against such child.

121. If the conviction of a child under the Juvenile Justice Act, 1986 is not a disqualification for appointment, it stands to reason that prosecution of a child in a criminal case cannot operate as a disqualification too. The important logical corollary is that the criminal prosecution faced by an employee as a child cannot become the criteria for forming an opinion about criminal antecedents and suitability for appointment. It is an irrelevant consideration. The material considered and standards adopted to form an opinion about the antecedents and suitability of adults for appointment on public posts cannot be applied to children who had trouble with the law or to a candidate who faced criminal

prosecution as a child.”

125. The Constitutional rights of a child and statutory rights of a child guaranteed under the Juvenile Justice Act 1986 cannot be implemented in silos. Every agency of governance including State employers are under an obligation to implement the rights of a child guaranteed by the constitution and protected by the Juvenile Justice Act, 1986.”

(emphasis supplied)

37. The current case falls in the ambit of Juvenile Justice (Care and Protection of Children) Act, 2000, but the above said reasoning would fully apply here.

38. Finally in ***Rajiv Kumar (supra)*** the holdings were summed up as follows:

“157.....The insistence of the State employer on a disclosure of criminal prosecution faced as a child reflected an impersonal attitude and a rote response to child rights. This is not an environment which fosters a healthy development of children and where rights of children flourish.

158. The requirement posed by the respondents to the petitioner to make a declaration disclosing details of criminal prosecution faced by the latter, insofar as it included the criminal prosecution faced by the petitioner as a minor child of 10 years was in violation of the fundamental rights of the petitioner guaranteed by Article 14 and 21 of the Constitution of India and in the teeth of Section 25 of the Juvenile Justice Act, 1986.

159. The details of past prosecution faced by the petitioner as a child was not a valid criteria nor a lawful consideration

to judge his suitability for appointment. Such criteria was arbitrary and illegal.

160. The declaration made by the petitioner was not a relevant consideration in the appointment of the petitioner. Hence, even the falsity of the declaration made by the petitioner could not invalidate his appointment.

161. The petitioner in defence of his fundamental rights vested by Article 14 and 21 of the Constitution of India, could hold his silence or decline to disclose details of the prosecution in a criminal trial faced by him as a minor child of 10 years. Such action or declaration of the petitioner cannot be faulted with. The services of the petitioner cannot be terminated on the foot of such action or declaration.”

(emphasis supplied)

39. A similar view was taken by a Division Bench of this Court in ***Shivam Maurya Vs. State of U.P. and others***, reported at **2020 (5) ADJ 5:**

“14. The said Act is a beneficial legislation. The principles of such beneficial legislation are to be applied only for the purpose of interpretation of this statute. The concealment of the pendency of criminal case against the appellant-petitioner was of no consequence. As per the requirement of law a conviction in an offence will not be treated as a disqualification for a juvenile. The records of the case pertaining to his involvement in a criminal matter are to be obliterated after a specified period of time. The intention of the legislature is clear that in so far as juveniles are concerned their criminal records is not to stand in their way in their lives. The cancellation of the candidature of the appellant-petitioner was thus bad. The authority concerned failed to appreciate the fact that the appellant-petitioner was

entitled to benefit of the provisions of Act of 2000. The cancellation of the candidature of the petitioner goes contrary to the object sought to be achieved by the Act of 2000. Section 19 of the Act of 2000 protects a juvenile and any stigma attached to his conviction is also removed. The Act of 2000 does not envisage incarceration of a juvenile which clearly shows that the intention and object was not to shut the doors of a disciplined and decent civilised life. It provides him an opportunity to mend his life for the future.

15. We thus hold that the authority concerned fell in complete error in not extending the benefit of Act of 2000 to the appellant-petitioner particularly when there are specific provisions provided therein to take care of a juvenile being implicated, tried and / or convicted in a criminal matter. We thus extend the benefit provided under Section 19 of the Act of 2000 to the appellant-petitioner.”

40. While construing the provisions of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000, insofar as they remove any disqualification attaching to a conviction under the said Act, the Division Bench of the Calcutta High Court in the case of ***Sahadeb Ghosh Vs. State of West Bengal***⁵ held thus:

"Section 19 of the said Act of 2000 clearly says that, notwithstanding anything contained in any other law, a juvenile, who, has committed an offence and has been dealt with under the provisions of the said Act of 2000, shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Therefore, if conviction does not become a bar and/or disqualification, it is unacceptable that pendency of a proceeding against a juvenile can be a bar.

A benefit sought to be given by the legislature under section 19 of the said

Act of 2000 cannot be obliterated. Logical corollary of the said provision is that even if a juvenile is convicted, such conviction would not act as disqualification. Even, under sub-section (2) of section 19 of the said Act of 2000 records of such conviction are to be removed after the period of expiry of appeal or after a reasonable period as prescribed under the rules.

We are of the opinion that inactions on the part of the authorities are against the provisions of the said Act of 2000. It goes contrary to the object sought to be achieved by the said Act of 2000. Section 19 of the said Act of 2000 protects a juvenile and any stigma attached to his conviction is, also, removed. The approach should be to condone minor indiscretions made by young people than to brand them as criminal for the rest of his life. The said Act of 2000 does not envisage incarceration of a juvenile nor wants to shut on him the doors of a decent and disciplined civilised life. On the contrary, it opens for him such a vista by providing him an occasion to amend and regulate his delinquency. The Courts are not to thwart such a course for him by either caprice, bias or any impractical or unimaginable reason.

We hold that benefits sought to be given to a convicted person under section 19 of the said Act of 2000 read with the said Rules of 2007 shall equally apply to a person against whom a case is pending before the Juvenile Justice Board. Thus, the authorities cannot refuse to give appointment to the writ petitioner on the sole ground of pendency of a criminal case before the said Board.

We are unable to accept the contention of Mr. Majumdar that this Court in exercise of the power of judicial review is unnecessarily interfering with the managerial functions of the State by extending the benefits of section 19 of the said Act of 2000 to the writ petitioner. We are simply extending the benefits provided under section 19 of the said Act of 2000 as provided by the legislatures in their wisdom.

We, therefore, set aside the order of the tribunal and direct the authorities to complete the police verification of the petitioner irrespective of pendency of his case before the Juvenile Justice Board and to consider his case for appointment for the post of constable of police on the basis of such report, keeping in mind the intention of the legislature as enshrined in section 19 of the said Act of 2000."

41. The said judgements rendered by this Court and Calcutta High Court in ***Rajeev Kumar (supra)***, ***Shivam Maurya (supra)*** and ***Sahadeb Ghosh (supra)*** respectively were also followed in ***Kishan Paswan Vs. Union of India and others***⁶. The holdings of the Courts are consistent in successive cases in point.

42. From the preceding legal narrative, the following position of law emerges:

I. Juveniles and adults form separate classes. Criminal prosecution of an adult is a lawful basis for determination of suitability of a candidate for appointment to public office. However prosecution of juveniles is in a separate class. Using criminal prosecution faced by a candidate as a juvenile to form an opinion about his suitability for appointment, is arbitrary illegal and violative of Article 14 of the Constitution of India.

II. The requirement to disclose details of criminal prosecutions faced as a juvenile is violative of the right to privacy and the right to reputation of a child guaranteed under Article 21 of the Constitution of India. It also denudes the child of the protection assured by the Juvenile Justice Act, 2000 (as amended from time to time). Hence the employer cannot ask any candidate to disclose details of criminal prosecution faced as a juvenile.

III. The candidate can hold his silence or decline to

give information about the criminal prosecution faced as a juvenile. Denial of such information by the candidate will not amount to a false declaration or a willful suppression of facts.

IV. The conviction by a Juvenile Justice Board under the Juvenile Justice Act, 2000 of a juvenile is not a disqualification for employment. As a sequitor prosecution faced as a juvenile is not a relevant fact for forming an opinion about the criminal antecedents and suitability of the candidate for appointment. Such prosecution cannot be made a basis for denial of appointment. Non disclosure of irrelevant facts is not “deliberate” or willful concealment of material facts. Hence non-disclosure of such criminal cases cannot invalidate the appointment of the said person.

V. Clarification:

These holdings shall not apply to cases beyond the ambit of Juvenile Justice Act, 2000 (as amended from time to time) and also in cases of heinous crimes committed by persons in the age group of 16 to 18 years.

43. The undisputed facts narrated in the preceding part of the discussion establish the fact that the petitioner was a juvenile within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended from time to time), on the date of the commission of the alleged offence. He is entitled to the

protection of the said Act considering the nature of the offence he was prosecuted for. Merely because the petitioner did not raise the plea of juvenility before the learned trial court, does not denude him of the protection conferred upon him by law. The offence in issue is not a heinous crime. Further the impugned order is vitiated by its failure to consider the unimpeached report of the police authorities that the petitioner enjoys a good social reputation.

44. The questions posed earlier are answered in terms of the preceding holdings.

A. Prosecution and imposition of penalty upon the petitioner by the Lok Adalat in the judgment dated 05.11.2019, rendered in Case Crime No. 104/2011, under Sections 3/4 of U.P. Public Examinations (Prevention of Unfair Means) Act, 1998, cannot be the basis of denial of appointment to the petitioner. The said proceedings are not relevant criteria for purposes of appointment of the petitioner. I find that the respondents authorities have acted in a manner contrary to law by requiring the petitioner to disclose criminal prosecution faced by him as a juvenile.

45. The competent authority had misdirected itself in law by finding the petitioner unsuitable for appointment and him appointment on the post of Constable in PAC.

46. The impugned order dated 03.09.2020 is arbitrary and illegal. The order dated 03.09.2020 passed by the

respondent No.3-Commandant, 43 Battalion, Provincial Armed Constabulary (PAC), District Etah, is liable to be set aside and is set aside.

47. A writ in the nature of mandamus is issued commanding the respondents to execute the following directions:

- i. The appointment of the petitioner shall be processed in light of the observations made in this judgment.
- ii. The appointment letter shall be issued to him in accordance with law.
- iii. The petitioner shall be given the seniority, he would have been entitled to but for cancellation of his candidature by the impugned order.

48. The writ petition is allowed.

Order Date :- 30.04.2021

Dhananjai Sharma