

IN THE HIGH COURT OF SIKKIM
(CIVIL EXTRAORDINARY JURISDICTION)

W.P. (C) No. 49 of 2025

Vikash,

S/o Anand Kishore Mishra,

R/o Village Paika, Sonbhadra,

Uttar Pradesh-231205 Petitioner

-VERSUS-

1. Union of India,
Through the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi-110001.
2. Director General,
Sashastra Seema Bal,
Force Headquarters,
New Delhi-110066.
3. The Commandant,
36th Bn. Sashastra Seema Bal,
Gyalshing, Sikkim,
P. O. Yangtey, P.S. Gyalshing,
District West Sikkim-737111.
4. The Deputy Inspector General
Sector Headquarters,
Sashastra Seema Bal, Gangtok,
NH 10, 8th Mile, Marchak,
Ranipool-737135. Respondents

For Petitioner : Mr. A. Moulik, Sr. Advocate with
Mr. Ranjit Prasad, Ms. Laxmi Khawas
and Ms. Neha Kumari Gupta, Advocates.

For Respondents: Ms. Sangita Pradhan, Deputy Solicitor
General of India with Ms. Sittal Balmiki
and Mr. Amit Kumar Sharma, Advocates.

Date of Judgment reserved: 25/02/2026

Date of Judgment pronounced: 09/03/2026

Date of Judgment uploaded: 09/03/2026

CORAM:

HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE

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J U D G E M E N T

The Petitioner, Vikash hails from a village in Sonbhadra (Uttar Pradesh), and he is a matriculant. His family appears to be engaged in a small farm in his native village. Like any village youth, he was quite ambitious to enter public service. He applied for the post of Constable (Washerman) in the service of Sashastra Seema Bal (SSB), an armed force of the Union Government. This application was in the year 2020. At that time, he was only twenty-one (21) years old. He was selected in the vacancy of Economically Weaker Section (EWS) category. The appointment order shows that the appointment was purely temporary but likely to continue. His probation was for a period of two (02) years from the date of appointment.

He was offered an appointment in the State of Sikkim. Accordingly, he reported and joined duty as a Constable (Washerman) at 36th Bn SSB, Geyzing on 05.03.2024.

[2] The Petitioner approached this Court, challenging the order passed by the official Respondent on 17.08.2024 terminating his service. He had been terminated with effect from 17.08.2024 for the reason that he had suppressed involvement in two crimes while submitting declaration in the SSB recruitment form and also while giving undertaking at the time of joining SSB as a Constable.

[3] There is hardly any dispute about the fact that the Petitioner was involved in two crimes and those crimes were not disclosed while submitting application for recruitment and submitting response to verification at the time of joining.

[4] The following were the crimes registered against him:

- (i) FIR No. 56/2017 for offence under Sections 380/457 of the Indian Penal Code (IPC), 1860 registered by police station Chopan. The police filed the report. In the official report it is stated that the complaint against the accused was false after investigation. The final report was accepted by the Court.
- (ii) The crimes registered against the Petitioner along with his brothers in the year 2020 was registered as FIR No. 252/2020 for offences under Sections 323, 504 and 506 of IPC on 19.09.2020. The offences were compoundable. The complainant and Petitioner and others amicably settled the matter on 05.10.2023. Accordingly, the case resulted in the acquittal of the Petitioner, upon the Court accepting a compromise.

[5] There can be little dispute as to the reasons for non-disclosure of the first crime as Petitioner had no chance to know about the pendency of such

a case as police on investigation found that the complaint itself was false. The question then arises how far non-disclosure of the second crime would have an impact on his employment.

[6] Two aspects arise for consideration in this matter. The first relates to a crime registered against the Petitioner in the year 2020 which ultimately ended in acquittal upon a compromise arrived at with the complainant. The second aspect concerns the alleged suppression of this case in application form as well as in the verification form.

[7] Over the years, through judicial pronouncements of the Apex Court and various High Courts, the legal position has been clarified that involvement in trivial offences, and the non-disclosure of such offences, may not necessarily have a bearing on public employment. In such circumstances, the employer is at liberty to ignore the suppression and condone the lapse as observed in ***Avtar Singh Vs. Union of India and Others***.¹

[8] In matters of public employment, there exists no precise mechanism to assess the character of an individual except with reference to his public conduct. The underlying object of such assessment is to ensure public confidence in the image and integrity of public service.

[9] In a matter of this nature, Court is required to examine whether the impugned decision reflects a diligent application of mind. The question then arises as to what parameters ought to guide such an exercise. First, the nature of the post in question is undoubtedly a relevant consideration. Second, the social background of a candidate assumes considerable significance. This aspect acquires particular importance within our constitutional framework, wherein the nation strives to realize an egalitarian society by progressively eliminating social and economic barriers. Before analyzing this aspect we shall have to see some of the precedents which

¹(2016) 8 SCC 471

may have some bearing on this case. We shall first refer to the precedent cited on behalf of the Petitioner.

Reference to **Krishan Kumar Vs. Director General CISF & Ors.**² Learned Counsel for the Petitioner argued that non-disclosure of past minor criminal case does not automatically justify termination of employment and each case must be evaluated on its specific facts and circumstances. Learned Counsel for the Petitioner referring to the first crime registered against the Petitioner in the year 2017 submitted that the Petitioner was a minor and relied on the judgment of Delhi High Court in **Santosh Kumar Yadav @ Ranjan Vs. Union of India & Ors.**³ wherein it was held that a juvenile is not required to disclose criminal antecedents in the employment applications as per the Juvenile Justice (Care and Protection of Children) Act, 2000 protecting them from stigma. The Petitioner also placed reliance on **Ravindra Kumar Vs. State of Uttar Pradesh and Others**⁴ wherein the Apex Court reiterated the principles laid down in **Avtar Singh** (*supra*) and opined that employer is bound to consider all relevant facts valuable as to antecedents while adjudging suitability of such candidate in public employment. The Petitioner also relied on the judgment of the Apex Court in **Commissioner of Police & Ors. Vs. Sandeep Kumar**⁵ where the Apex Court adopted a reformatory approach rather than condemning a candidate for his past criminal offence.

[10] The Learned Deputy Solicitor General of India for the Respondent has placed reliance on **Union of India and Others Vs. Bipad Bhanjan Gayen**⁶ and argued that mere suppression in the application form and the verification form itself would establish the character of the candidate Petitioner and in a disciplined force like SSB, such misconduct cannot be countenanced and submitted that non-disclosure in application form and verification form

²2024 DHC 8775

³ 2025 DHC 426-DB

⁴(2024) 5 SCC 264

⁵2011 4 SCC 644

⁶(2008) 11 SCC 314

would justify termination. Learned Deputy Solicitor General also relied on ***Union of India and Others Vs. Shishu Pal alias Shiv Pal***⁷, wherein the Apex Court held that if declaration given in the verification roll is found to be false then termination can be justified.

[11] In **Avtar Singh case** (*supra*), the Apex Court laid down broad guidelines as factors to be taken in consideration while exercising power of condoning candidature or discharging his employment from service. It is appropriate to refer to **para 38.2** of the said case, *“While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information”* and **para 38.4.1**, *“In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact for false information by condoning the lapse.”*

[12] I already noted in para 9 as to what aspects requires to be considered in a matter like this. If this crime was disclosed in the application and verification form, it could not have any impact on antecedents of the Petitioner. None of this case would form part of material facts to dissuade a prospective employer giving petitioner employment in public service. The first crime was found to be false against the Petitioner. In second crime it is apparently some sort of family dispute and no overt act attributed to the Petitioner. It is to be noted that the offence was compounded and entered in acquittal of the Petitioner. If these offences would not have bearing in prospective employment, nothing prevents the Respondent employer in condoning such lapse and ignoring those crimes. Our second aspect assumes importance in this case where suppression of fact or false information should be condoned as a mere lapse or not; here I need to have a broader discussion.

⁷2024 SCC Online SC 1769

[13] In **Avtar Singh case** (*supra*) in **para 36**, it was held, “ *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*” and in **para 37**, “*The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.*”

[14] In a matter of this nature, the employer cannot simply overlook suppression of facts or the furnishing of false information. Such lapses must be viewed with due seriousness, particularly in disciplined forces such as the **SSB**. However while acting so, employer cannot remain oblivious to the nature of the office. Where the post carries a higher level of responsibility, involves public trust or requires the exercise of discretion, such conduct would undoubtedly have to be viewed with greater disapproval. In positions where the duties demand a higher degree of public confidence and discretionary authority, even suppression relating to a trivial offence may not be readily condoned. However, where the post in question carries no significant element of discretion, public interface, or sensitive responsibility in the discharge of duties, the matter may require a more nuanced consideration. In such circumstances, the request for condonation of the lapse may deserve deliberation in the light of the broader constitutional goals of promoting equality and alleviating the disadvantages faced by socially and economically backward sections of society.

[15] The Constitution envisages a social order in which ameliorative measures are undertaken to address historical and structural disadvantages.

A person born into conditions of extreme poverty cannot always be expected to exhibit the same social behavior as one whose character has been shaped in a more advantageous environment. The psychological construct of an individual is often influenced by the social and economic circumstances into which he is born and raised. These realities cannot be ignored while assessing issues relating to character and suitability in matters of public employment.

It is appropriate to refer to an article, *“The psychology of social class: How socioeconomic status impacts thought, feelings and behavior,”* by **Antony S R Manstead**⁸ published in the British Journal of Social Psychology, where the author has drawn distinction between socioeconomic status and social class as culture. As highlighted in the article, *“material resources available to working and middle class people create cultural identities that are based on distinctive patterns of observable behaviour arising from differences in wealth, education and occupation. To the extent that these patterns of behaviour are both observable and reliably associated with individual wealth, occupational prestige and education, they become potential signals to others of a person’s social class”* and *“those who grow up in middle or upper class environments are likely to have more material and psychological resources available to them, and as a result have stronger beliefs about the extent to which they can shape their own social outcomes; by contrast, those who grow up in lower class environments are likely to have weaker beliefs about their ability to control their outcomes.”* The character assessment of a person therefore must be based on understanding social inequalities that exist in our society. This is exactly the reason the Constitution contemplates a substantial model of equality. In a post like this Constable (Washerman), the lapse of this nature can be condoned taking into consideration the social background of the Petitioner.

⁸ Manstead, A. S. R. (2018). The psychology of social class: How socioeconomic status impacts thought, feelings, and behaviour. *British Journal of Social Psychology*, <https://doi.org/10.1111/bjso.12251> [Accessed on 5th March 2026]

If the employer continues to condemn him, that will remain as a stigma for him and would be directly contradicting the Constitutional scheme of amelioration.

It is appropriate to conclude this judgment quoting **Oscar Wilde**, *“every saint has a past, and every sinner has a future.”*

[16] Accordingly, impugned order is set aside.

[17] In the peculiar circumstances of the case claim for arrears and salary is declined. However, arrears prior to termination, if any, shall be paid within three (03) weeks.

[18] Writ petition succeeds.

[19] Petitioner shall be permitted to continue in the service subject to terms and conditions in the employment.

Chief Justice

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