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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 13.01.2026**
Judgment delivered on: 23.01.2026

+ **LPA 10/2026 & CM APPL. 1904-06/2026**

UNION OF INDIA & ORS.

.....Appellant

Through: Ms. Anjana Gosain, Ms. Akansha Choudhary and Ms. Shreya Manjari, Advs.

versus

RAJESH

.....Respondent

Through: Mr. N.L Bareja and Mr. Saqib, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

DEVENDRA KUMAR UPADHYAYA, C.J.

CHALLENGE

1. This *intra-court* appeal instituted under Clause 10 of the Letters Patent, lays challenge to the judgment and order dated 31.10.2025 passed by the learned Single Judge whereby, *W.P.(C) 218/2025*, filed by the respondent, has been allowed and the order dated 09.12.2024 impugned in



the writ petition passed by appellant no.2 – Airport Authority of India (*hereinafter referred to as the ‘AAI’*) has been quashed.

2. The learned Single Judge has also directed the appellant – AAI to appoint the respondent on the post in question, namely, Junior Executive (Common Cadre). It may be noted at this juncture itself that the order dated 09.12.2024, which was under challenge before learned Single Judge was passed in compliance of an order dated 30.09.2024 passed by this Court in *W.P.(C) 13711/2024*, whereby the prayer of respondent no.1 to revive the offer of appointment of the post in question was rejected.

FACTS

3. Facts in this case are undisputed and lie in a narrow compass, which are as under:

3.1 Under an order passed under Section 156(3) Cr.P.C. by the learned Illaqa Magistrate, Karnal, FIR No.431/2012 was registered at Police Station Butana, District Karnal, Haryana under Section 498A, 406 and 506 of the Indian Penal Code. The complaint was made by the wife of the respondent. After investigation, the respondent was charged under Section 406, 498A and 506 of IPC and he faced trial in Criminal Case No.898/2013. On conclusion of trial, the respondent was held guilty and, accordingly, convicted for committing the offences under Section 498A and 406 of IPC *vide* judgment dated 04.09.2014. Accordingly, *vide* order dated 05.09.2014, he was sentenced to undergo simple imprisonment for a period of one year and fine of Rs.500/- for commission of offence under Section 498A IPC. He was further sentenced to undergo simple imprisonment for a period of one



year with a fine of Rs.500/- for the offence punishable under Section 406 of the IPC.

3.2 The respondent challenged the judgment of conviction and order of sentence by filing an appeal, namely, *Criminal Appeal No.129/2014*. During pendency of this criminal appeal filed by the respondent against his conviction, the marriage of the respondent with his wife Ms. Rita Rani was dissolved by mutual consent *vide* order dated 19.09.2015 passed by the competent Court under Section 13B of Hindu Marriage Act, 1955 and, accordingly, a decree of divorce by mutual consent was passed.

3.3 The criminal appeal was disposed of by the Additional Sessions Judge, Karnal by means of the order dated 21.09.2015. It is noteworthy that the respondent did not press the appeal so far as the judgment of conviction is concerned, and accordingly, the judgment of conviction passed by the Trial Court was upheld by the Appellate Court while passing the order dated 21.09.2015.

3.4 On the point of quantum of sentence, it was urged by the respondent before the Appellate Court that considering the facts of the case, he be released on probation of good conduct under the Probation of Offenders Act, 1958 (*hereinafter referred to as the 'Act, 1958'*). The learned Appellate Court considering various factors, including that the marriage between the respondent and the complainant, namely, his wife had already been dissolved by a decree of divorce by mutual consent and that the complainant-wife did not have any grievance against the respondent and that she had no objection, released the respondent on probation of good conduct.



3.5 The Appellate court found it to be a fit case for extending the benefit of probation under Section 4 of the Act, 1958. The Appellate Court accordingly, having regard to all the aforesaid facts and also taking into consideration that the respondent was challaned as far back as in the year 2012 and since then he had been undergoing the strain of criminal prosecution, ordered release of the respondent on probation of good conduct for a period of six months. The respondent was required by the Appellate Court to furnish the requisite probation bond in the sum of Rs.25,000/- with one surety in the like amount. The Appellate Court further directed that the respondent shall keep peace and he shall be of good behavior during the period of probation, failing which he shall be liable to undergo the sentence awarded to him by the Trial Court.

3.6 The respondent was thereafter appointed as Library Attendant in the Higher Education Department of Government of Haryana on 25.01.2019. An advertisement was issued by the appellant – AAI for recruitment for appointment against various posts, including the post in question, namely, Junior Executive (Common Cadre). The respondent, pursuant to the said advertisement, made his application and the result of the selection made for appointment was declared on 27.03.2024 where the respondent was found successful.

3.7 Pursuant to his selection, the respondent was issued an offer of appointment by the appellant – AAI on 11.04.2024. The said offer of appointment was accepted by the respondent and accordingly, he reported for training, as directed, on 19.04.2024. During the process of verification of documents, the respondent disclosed all the facts including the information



relating to his conviction in the criminal case and the benefit given to him by the Appellate Court under Section 4 of the Act, 1958 in Criminal Appeal No. 129/2014, which the respondent had instituted against the judgment of conviction passed by the Trial Court.

3.8 The respondent, however, was not allowed to join the training; rather he was instructed to make a representation to the competent authority of the appellant – AAI seeking approval to join the on-going training.

3.9 The respondent, accordingly, made a representation to the General Manager (HR), Establishment Section, Corporate Headquarters of the appellant – AAI, however, *vide* e-mail dated 19.08.2024, the request of joining made by the respondent was rejected and accordingly, the respondent was further informed by the said communication, dated 19.08.2024, that his appointment stood cancelled.

3.10 The respondent instituted proceedings of *W.P.(C) 13711/2024*, which was finally disposed of by means of an order dated 30.09.2024 passed by the learned Single Judge of this Court with a direction to the appellant – AAI that a fresh reasoned and speaking order be passed in respect of the offer of appointment of the respondent. The Court while issuing the said direction *vide* its order dated 30.09.2024 also provided that while taking decision afresh, the appellant – AAI shall also consider Section 12 of the Act, 1958 which provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under Section 3 or Section 4, shall not suffer disqualification, if any, attaching to a conviction of an offence.



3.11 The appellant – AAI was also directed that it shall also consider the fact that the respondent had been working in Higher Education Department, Government of Haryana since 25.01.2019 as Library Assistant and there was no blemish on his service career. In compliance of the said order passed by this Court on 30.09.2024, the Executive Director (HR) of the appellant – AAI took a fresh decision which was communicated to the respondent *vide* letter dated 09.12.2024 whereby, the competent authority/appointing authority opined that there was no valid point which substantiates the prayer of the respondent for reviving the offer of appointment.

3.12 It is this order dated 09.12.2024 which was assailed by the respondent by instituting the *W.P.(C) 218/2025*, which has been allowed by the learned Single Judge, quashing the decision as contained in the letter dated 09.12.2024 with a further direction that the respondent be appointed against the post in question. We may note that the post against which the respondent was selected and was issued offer of appointment was kept vacant under an interim order passed by the learned Single Judge in the underlying writ petition, on 10.01.2025. Thus, direction was issued to the appellant – AAI to appoint the respondent against this vacancy.

3.13 The learned Single Judge while allowing the writ petition filed by the respondent by means of the judgment which is under challenge herein, has recorded that there are no allegations of misrepresentation or suppression of facts against the respondent and that it is admitted to the parties that he had declared full facts about his conviction at the time he was required to do so, in the Attestation Form as required to be filled in by the appellant – AAI.



3.14 Learned Single Judge considered the judgment of this Court in *Shaitan Singh Meena v. Union of India, 2019 SCC OnLine Del 8216* and also the judgment in *Ajit Kumar v. Commissioner of Police, 2013 SCC OnLine Del 1521* and various other judgments and came to the conclusion that respondent is entitled to the protection from disqualification in terms of Section 12 of the Act, 1958 in view of the law laid down by the Division Bench of this Court in *Shaitan Singh (Supra)*. Various other judgments have been referred to by the learned Single Judge, including the judgment of the Hon'ble Supreme Court in *Shankar Dass v. Union of India and Anr., (1985) 2 SCC 358*. It is this judgment which has been questioned by the appellant – AAI in this *intra-court* appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT – AAI

4. It has vehemently been argued on behalf of the appellant – AAI that learned Single Judge has completely ignored the legal principle that discretion of the employer to verify the antecedents of a candidate for appointment cannot get washed away by operation of Section 12 of the Act, 1958. It has further been argued that in terms of the Regulation 6(7)(b) governing the conditions of service of the employees of appellant – AAI, namely, Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 (*hereinafter referred to as the ‘Regulations, 2003’*), a person convicted of offence involving moral turpitude is to be deemed to be ineligible for appointment and since the respondent in the instant case was convicted of an offence under Section 498A of IPC which involves moral turpitude, as such, he was ineligible and



accordingly, the offer of appointment given to him by the appellant – AAI was rightly cancelled.

5. Further submission on behalf of the appellant – AAI, as urged by learned counsel for the appellant – AAI, is that merely because the respondent was released on probation under the Act, 1958 did not wash away his conviction in the criminal case for the offence under Section 498A of the IPC and therefore, in terms of Regulation 6(7)(b) of the Regulations, 2003 he was ineligible to be appointed and such ineligibility does not get washed off because of operation of Section 12 of the Act, 1958. She has further argued that considering the nature of the post against which offer of appointment was issued to the respondent and also taking into account the nature of functions of the respondent attached to the post to which he would have been promoted while working with appellant – AAI, is a relevant factor which has appropriately been considered by the competent authority of the appellant – AAI while passing the order dated 09.12.2025 whereby, the prayer of the respondent for reviving the order of cancellation of his appointment has been refused.

6. Though, heavy reliance has been placed in support of the submissions made by learned counsel for the appellant – AAI on *Ajit Kumar (Supra)*, she has also placed reliance on the following judgments as well:

- a. *Satish Chandra Yadav v. Union of India*, (2023) 7 SCC 536
- b. *Avtar Singh v. Union of India*, (2016) 8 SCC 471
- c. *Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685
- d. *Rajendra Prasad Chourey v. Union of India*, 2024 SCC OnLine MP 6159



e. *Vincent Varghese v. State Bank of India, 1999 SCC OnLine Ker 22*

f. *Rajendra Prasad Pandey v. High Court of Judicature at Allahabad, 1998 SCC OnLine All 312*

7. On the strength of *Ajit Kumar (Supra)* it has been submitted by the learned counsel for the appellant – AAI that release of a candidate under Section 4 of the Act, 1958 would not obliterate his conduct which constitutes the offence and that when the conduct/act constituting the offence is not washed off the employer has a discretion to consider whether to appoint such a candidate or not even in the wake of Section 12 of the Act, 1958.

8. The other judgments cited by learned counsel for the appellant – AAI shall be discussed in the later part of this judgment.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. Defending the judgment and order passed by the learned Single Judge which is under challenge herein and opposing the appeal it has been contended by learned counsel representing the respondent that the learned Single Judge has arrived at a correct conclusion. He has further stated that the reliance placed by learned counsel for the appellant – AAI on *Ajit Kumar (Supra)* is misconceived for the reason that the instant case shall be governed by the law laid down by this Court in *Shaitan Singh (Supra)*, where *Ajit Kumar (Supra)* has also been considered.

10. Learned counsel for the respondent has also submitted that Section 12 of the Act, 1958 will supersede any other law for the reason that it contains a *non-obstante* clause and provides that a person, though found guilty, but has been dealt with under Section 4 of the Act, 1958, shall not suffer



disqualification attaching to his conviction of an offence. It has been argued further that because of the *non-obstante* clause occurring in Section 12 of the Act, 1958 the provisions contained in Regulation 6(7)(b) of the Regulations, 2003 will have to yield before the Act, 1958.

11. It is also his submission that ineligibility in terms of Regulation 6(7)(b) of the Regulations, 2003 is attached to the conviction and therefore, in terms of the law laid down by Hon'ble Supreme Court in *Shankar Dass (Supra)*, respondent shall not suffer disqualification for his appointment against the post in question by virtue of operation of Section 12 of the Act, 1958. On the aforesaid counts, the appeal has been opposed on behalf of the respondent and it has, thus, been urged that the judgment and order passed by the learned Single Judge which is under challenge herein does not warrant any interference by this Court in the instant appeal.

ANALYSIS AND CONCLUSION

12. As already observed above, facts of this case are not in dispute. The respondent had made all the disclosures, including the disclosure of his conviction as also his release under Section 4 of the Act, 1958. The only question for consideration and adjudication which emerges in this appeal is as to whether the respondent is entitled to the benefit of Section 12 of the Act, 1958, in other words, as to whether the disqualification or ineligibility for appointment, as described in Regulation 6(7)(b) of the Regulations, 2003, is attached to his conviction of the offence and in case it is found that such disqualification is attached to his conviction, he shall be entitled to the benefit of Section 12 of the Act, 1958 and accordingly, the cancellation of



offer of appointment made by the appellant – AAI would not be liable to be sustained.

13. For appropriately deciding the issue, it will be apposite to quote Section 12 of the Act, 1958 which is extracted here under:

"12. Removal of disqualification attaching to conviction - Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence."

14. The provisions of Regulation 6(7)(b) of the Regulations, 2003 are also relevant to be noticed which reads as under:

"Regulation 6(7)(b):

Persons convicted of offences involving moral turpitude or persons who have been dismissed from service by the Central Government or State Government or Public Sector Enterprises should be deemed to be ineligible for appointment in the Authority."

15. As to what is the purport of the phrase “shall not suffer disqualification” occurring in Section 12 of the Act, 1958, has been the subject matter of discussion by Hon’ble Supreme Court in ***Shankar Dass (Supra)*** wherein, it has been held that order of dismissal from service consequent upon a conviction is not a “disqualification” within the meaning of Section 12 of the Act, 1958. It has further been held that the word ‘Disqualification’ in Section 12 has been used in the sense in which certain statutes provide that persons, who are convicted to certain offences, shall incur certain disqualification (for example Representation of People Act, 1951) (*hereinafter referred to as the ‘Act, 1951’*). The facts of ***Shankar Dass (Supra)*** are that the employee therein was employed as a cash clerk by



Delhi Milk Supply Scheme Department and during his employment he was prosecuted for breach of trust in respect of a sum of Rs.500/-. The said employee repaid the amount and pleaded guilty of the charge and accepting the plea, he was convicted by the magistrate concerned under Section 409 of IPC but in view of the peculiar circumstances relating to the crime and the criminal, he was released under Section 4 of the Act, 1958. However, as a result of conviction, the employee was dismissed from service summarily, which was challenged by him by instituting a suit with the prayer for setting aside his dismissal from service, mainly on the ground that since he was released under the Act, 1958 it was not permissible for the authorities to visit him with a penalty of dismissal from service. The suit was, however, dismissed for the reason that since the employee was convicted in the criminal case, he was liable to be dismissed under Clause (a) of the second proviso to Article 311(2) of the Constitution of India. The judgment of the Trial Court was confirmed in appeal, which led the employee to file a second appeal before this Court which was allowed. While allowing the second appeal, this Court in this case, accepted the submission of the employee that by reason of Section 12 of the Act, 1958 he could not be dismissed from service.

16. In a letters patent appeal, the judgment by the learned Single Judge was set aside which was challenged by the employee by instituting a Special Leave Petition before the Hon'ble Supreme Court. Hon'ble Supreme Court, though, allowed the appeal filed by the employee, however, it was categorically held therein that the order of dismissal from service



consequent upon a conviction is not a disqualification within the meaning of Section 12 of the Act, 1958.

17. Hon'ble Supreme Court proceeded to observe that there are statutes which provide that a person who is convicted for an offence shall incur certain disqualification and cited the example of such a provision occurring in Chapter III of the Act, 1951. It was also noticed that the Act, 1951 provided for 'disqualifications for voting' according to which, a person convicted of certain offence, is disqualified for being a Member of Legislature or even for voting at elections of legislatures, Hon'ble Supreme Court held that it is in this sense in which the word 'qualification' is used in Section 12 of the Act, 1958. The discussion relating to actual purport of Section 12 of the Act, 1958 can be found in paragraph 4 of the judgment in *Shankar Dass (Supra)*, which is extracted here in below:

"4. Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of Legislatures or from voting at elections to Legislatures. That is the sense in which the word "disqualification" is used in Section 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned Single Judge of the Delhi High Court."

18. The appeal filed by the employee was allowed by the Hon'ble Supreme Court in *Shankar Dass (Supra)* with a further direction that he



shall be reinstated in service, not on the ground that dismissal from service on conviction of the employee was a disqualification within a meaning of Section 12 of the Act, 1958, but on certain other grounds. However, the law which was laid down by Hon'ble Supreme Court in *Shankar Dass (Supra)* is that in case a certain disqualification occurs on account of conviction, where the convict is released on probation under Section 3 or Section 4 of the Act, 1958, on account of operation of Section 12 of the said Act, such a convict released on probation shall not incur any such disqualification.

19. Differently put, the law laid down in *Shankar Dass (Supra)* is that a convict who has been given the benefit of Section 4 of the Act, 1958 shall not suffer any disqualification, if such a disqualification is attached to his conviction of the offence. If we examine the provisions of Regulation 6(7)(b) of the Regulations, 2003, what we find is that a person convicted of an offence involving moral turpitude is deemed to be ineligible for appointment with the appellant – AAI. A plain reading of Regulation 6(7)(b) of the Regulations, 2003 reveals that the ineligibility for appointment flows from conviction of the person seeking appointment of an offence involving moral turpitude and thus, such ineligibility or disqualification for appointment with the appellant – AAI, in terms of Regulation 6(7)(b) of the Regulations, 2003, is attached to his conviction for an offence involving moral turpitude and therefore, the protection, in such a case, of Section 12 of the Act, 1958 will be available. The ineligibility for appointment, in our considered opinion, as described in Regulation 6(7)(b) of the Regulations, 2003, since stems from the conviction, therefore, such disqualification is directly related or attached to conviction of the person seeking appointment.



20. Accordingly, since in this case the respondent was held to be ineligible for appointment only on account of his conviction where he was given benefit of Section 4 of the Act, 1958, in our opinion, the respondent is entitled to protection of Section 12 of the Act, 1958 and he cannot be made to suffer such disqualification attached to his conviction as he was released on probation under Section 4 of the Act, 1958.

21. We may also note that dismissal of an employee from service as a result of his conviction cannot be said to be a disqualification attaching to his conviction for the reason that such dismissal of the employee concerned is permissible in terms of Clause (a) of the proviso appended to Article 311 of the Constitution of India. However, in the instant case, the ineligibility directly stems from the respondent's conviction in respect of which he was granted the benefit of Section 4 of the Act, 1958.

22. Dismissal from service or any other punishment as described in Article 311(2) of the Constitution of India is not a disqualification or ineligibility for an employee to be retained in service attaching to his conviction, whereas conviction of an offence is an ineligibility in terms of Regulation 6(7)(b) of the Regulations, 2003, and therefore, we have no hesitation to hold that the respondent cannot be permitted to suffer the said ineligibility or disqualification from appointment with the appellant – AAI by virtue of Section 12 of the Act, 1958.

23. The scope and effect of Section 12 of the Act, 1958 has more lucidly been enunciated in *Union of India v. Bakshi Ram, (1990) 2 SCC 426* wherein, it has clearly been held that the offender shall not suffer disqualification attaching to a conviction of an offence under such law and



further that such law in the context is other law providing for disqualification on account of conviction. Hon'ble Supreme Court has given an example as to the circumstance in which Section 12 of the Act, 1958 applied. It has been observed, for instance, that if a law provides for disqualification of a person for being appointed in any office, in view of his conviction, that disqualification by virtue of Section 12 stands removed.

24. Paragraph 13 of the ***Bakshi Ram (Supra)*** is relevant to be quoted here which reads as under:

"13. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained."

25. If we consider the facts of the instant case in the light of what has been laid down by the Hon'ble Supreme Court in ***Bakshi Ram (Supra)***, what we finds is that the respondent was punished under Sections 498A and 406 of the IPC whereas, the 'other law' which provides for disqualification in account of conviction is Regulation 6(7)(a) of the Regulations, 2003 and accordingly applying the principle of law laid down in ***Bakshi Ram (Supra)***, by virtue of Section 12 such disqualification stands removed. When we say that such disqualification or ineligibility in terms of Regulation 6(7)(b) of the Regulations, 2003 stands removed, it does not mean, in any way, that we



are opining that the conviction of the respondent on account of his being released under Section 4 of the Act, 1958 stands washed off. All what is meant by removal of disqualification or ineligibility for appointment by virtue of Section 12 is that if a candidate incurs any disqualification or ineligibility on account of conviction, where he is released on probation, such disqualification or ineligibility shall stand removed and he would not suffer such disqualification or ineligibility for appointment.

26. Reverting to the law laid down in *Shankar Dass (Supra)*, we may mention that disqualification on conviction of certain offences has been provided for in Section 8 which occurs in Chapter III of Part II of the Act, 1951. Section 8 provides that a person who is convicted of certain offences, under various enactments, including the offences under IPC, shall be disqualified for being chosen as, and for being, a Member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State. Thus, a person who is convicted of the offences as described in Section 8 of the Act, 1951 which include the offences under various statutes including IPC, earns a disqualification of being chosen as or being a Member of the Legislatures.

27. We may also note that Section 11A of Act, 1951 also provides for disqualification arising out of conviction and corrupt practices for the offences punishable under IPC or under the Act, 1951 itself. Thus, a person, though convicted in any other statute earns disqualification in the Act, 1951. It is in this context that *Shankar Dass (Supra)* has clearly held that if an offender is given benefit of Section 4 of the Act, 1958 he will not earn such disqualification of either being chosen or for being Member of Legislatures.



We have already adverted to the fact that the respondent earned his disqualification or ineligibility for being appointed under the Regulations, 2003 and therefore, drawing the analogy with an offender convicted for the offences under IPC who is later on released on probation, will not suffer the disqualification provided for under Section 8 and 11A of the Act, 1951, we can safely conclude that in the instant case as well, though the respondent was convicted under Section 498A and 406 of IPC, however, since he earns disqualification or ineligibility for being appointed under Regulation 6(7)(b) of the Regulations, 2003 he shall be entitled to the benefit of Section 12 of the Act, 1958 as per the legal principle laid down in *Shankar Dass (Supra)* and reiterated in *Bakshi Ram (Supra)*.

28. As far as the judgments cited by the learned counsel for the appellant – AAI are concerned, they are clearly distinguishable on facts and the principle of law as to the actual purport of Section 12 of the Act, 1958 as discussed above.

29. *Satish Chandra Yadav (Supra)* is a case where benefit of Section 12 was not sought and further that it was a case of dismissal of a serving Constable. It was also a case of suppression of facts for the reason that the employee concerned in the said case had not disclosed pendency of the criminal case against him. Thus, *Satish Chandra Yadav (Supra)* has no application to the facts of the instant case.

30. As far as reliance placed by the learned counsel for the appellant – AAI on *Avtar Singh (Supra)* is concerned, it only lays down that the employer has the discretion to offer or refuse appointment on verification of character and antecedents of the employee concerned. In this case as well,



benefit of Section 12 of the Act, 1958 was not sought, rather the question which was considered was as to whether an employee continuing on probation can be discharged, though he had been acquitted of the charges. Hon'ble Supreme Court opined that in such cases, employer was bound to consider the grounds of acquittal and various other aspects such as overall conduct of the employee, including the accusations which have been leveled against him, and on verification if the antecedents otherwise are also not found good and he is found to be involved in number of cases, then notwithstanding acquittal, it would be open to the employer to form opinion as to fitness of the employee to be retained in service. In this view, *Avtar Singh (Supra)* also does not have any application to the facts of the instant case.

31. *Mehar Singh (Supra)*, the other judgment relied upon by the Hon'ble Supreme Court, was a case where benefit of Section 12 of Act, 1958 was not sought. *Mehar Singh (Supra)* holds that acquittal or discharge in a criminal case involving grave moral turpitude does not automatically disqualify such a person but there exists discretion with the competent authority to take decision in this regard. This judgment in our opinion also does not help the appellant – AAI.

32. As far as *Rajendra Prasad Chourey (Supra)* relied upon by the learned counsel for the appellant – AAI, we may observe that no benefit of Section 12 of the Act, 1958 was sought by the employee in this case and further that the employee was convicted during the period of service and he was seeking the benefit of reduction of sentence by the Hon'ble Supreme Court. It is in the facts of the said case that the Madhya Pradesh High Court



upheld the dismissal of the employee. We have already concluded above that dismissal from service is not a disqualification attaching to the conviction for the purposes of operation of Section 12 of the Act, 1958. For this reason, the judgment in *Rajendra Prasad Chourey (Supra)* does not help the cause of the appellant – AAI.

33. The other judgment relied upon by the learned counsel for the appellant – AAI, decided by High Court of Kerala is *Vincent Varghese (Supra)* where again, it was a case of dismissal on the basis of disciplinary action against the employee and Kerala High Court has held that Section 12 of the Act, 1958 does not preclude the employer to take departmental action. This case is also, thus, distinguishable on facts and does not come to the rescue of the appellant – AAI.

34. In *Rajendra Prasad Pandey (Supra)*, which has been cited by the learned counsel for the appellant – AAI, no benefit of Section 12 of the Act, 1958 was sought and further it was a case where the employee was suspended on account of his involvement in a criminal case and Allahabad High Court refused to grant him the relief of reinstatement on account of the pendency of the said criminal case. This judgment, thus, is also of no avail to the appellant – AAI.

35. Heavy reliance, as observed above, has been placed by the learned counsel for the appellant – AAI on *Ajit Kumar (Supra)*, which is a Division Bench judgment of this Court. We may note that *Ajit Kumar (Supra)* has been considered in *Shaitan Singh (Supra)* subsequently, which, too, is a judgment rendered by a Division Bench of this Court. Distinguishing *Ajit Kumar (Supra)*, the Division Bench of this Court in *Shaitan Singh (Supra)*



has considered that the offence involved in *Ajit Kumar (Supra)* was an offence punishable under Section 308 of the IPC whereas, the offence for which the employee was punished in *Shaitan Singh (Supra)* was in relation to a certain family dispute and therefore, it was held in *Shaitan Singh (Supra)* that the offence involved could not be termed serious, which is why it was possible for the parties involved to settle their dispute and Trial Court recorded the said fact while giving the benefit of probation to the employee concerned.

36. Learned Single Judge has also recorded a finding in the impugned judgment and order that he found the facts of the instant case closer to the facts of *Shaitan Singh (Supra)* and therefore, he has followed the dictum in *Shaitan Singh (Supra)*. We may also observe that, though in the instant case the respondent was convicted of an offence under Section 498A of the IPC, however, subsequent to conviction and during pendency of the appeal against the conviction, marriage of the respondent with his wife was dissolved and a decree of divorce was granted under Section 13B of the Hindu Marriage Act, 1955 by mutual consent. The Appellate Court while granting benefit of release on probation to the respondent has noted this fact, as also other relevant facts, including the fact that the wife of the respondent was present in the Court and had made a statement that the matter had been amicably settled between her and the respondent and that she had no grievance against the respondent and further that she had no objection if the respondent is released on probation of good conduct.

37. For the discussions made and reasons made above, we are not inclined to interfere in the impugned judgment and order passed by the learned



Single Judge. Resultantly, the appeal along with pending applications is dismissed. However, there will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

JANUARY 23, 2026/MJ