2025:AHC:187064-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 9462 of 2025

Navodaya Vidhyalaya Samiti and 2 others

…..Petitioner(s)

Versus

Pundarikaksh Dev Pathak and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Rajesh Tripathi
Counsel for Respondent(s)	:	A.S.G.I., Devesh Kumar Sharma Pankaj Kumar Gupta

With

WRIT - A No. - 6670 of 2025

Pundarikaksh Dev Pathak

…..Petitioner(s)

Versus

Union of India and 3 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Devesh Kumar Sharma, Pankaj Kumar Gupta
Counsel for Respondent(s)	:	A.S.G.I., Anant Kumar Tiwari

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. These two writ petitions have been filed challenging the same order dated 03.01.2025, whereby the Central Administrative Tribunal, Allahabad Bench, Allahabad ('the Tribunal') has disposed of Original Application ('O.A.') No. 1015 of 2021 (Pundarikaksh vs. Union of India and others), set aside the order dated 02.11.2021 passed by the departmental authority and issued a direction to the competent authority to re-examine the case of the applicant in the light of observations made in the Tribunal's order and, after taking into consideration the mandate of Hon'ble Supreme Court in **Avtar Singh vs. Union of India and others : 2016 (8) SCC 471,** pass a fresh reasoned order within a period of three months.

2. Whereas the challenge laid by Navodaya Vidhyalaya Samiti and others, vide Writ-A No. 9462 of 2025, is only to the order dated 03.01.2025, the petitioner of Writ-A No. 6670 of 2025 (also referred as 'the applicant' at some places in this order), apart from challenging part of the order dated 03.01.2025, has also challenged a subsequent order dated 25.02.2025 whereby review application filed by him has been rejected by the Tribunal.

3. Brief facts of the case are that in a Recruitment Drive, 2019 initiated by the department, the applicant applied for the post of P.G.T. (Mathematics). Having become successful in the process of selection, letter of appointment was issued to him on 22.07.2020, he joined the said post on 07.08.2020 at Jawahar Navodaya Vidyalaya, Gauriganj, Amethi ('the institution') and was paid salary. After two months, a letter dated 29.10.2020 was issued by Navodaya Vidyalaya Sangathan, Regional Office, Lucknow to the Principal of the institution, which was accompanied by a complaint against the applicant and he was asked to submit a response. The complaint was to the effect that the applicant

had, while applying for the post in question, concealed pendency of a criminal case against him.

4. The applicant responded to the notice stating that the incident giving rise to the said criminal case occurred on 18.04.2011 and a final report was submitted by the Investigating Officer on 14.06.2011, however, after re-investigation, a charge sheet was filed in Court, which was not in the knowledge of the applicant. The nature of allegations, false implication of the applicant and all circumstances relating to the case including the dispute being trifling and of civil nature, were elaborately stated in the response. However, an order terminating services of the applicant was passed by the authority on 02.11.2021, which was served upon him on 10.11.2021. It is against the said order, the O.A. was filed by the applicant.

5. The Tribunal, after considering the case of the parties, has found that qua concealment of criminal proceedings, Hon'ble Supreme Court has laid down various parameters in the judgement of **Avtar Singh** (supra) and, after reproducing the ratio of the said judgment and by observing that the applicant was aged about 17 years at the time of lodging of first information report against him, subsequent submission of final report and that the allegations in the FIR raised a civil dispute relating to which an O.S. No. 841 of 2009 was also filed, disposed of the O.A., set aside the termination order and remitted the matter to the department to pass a fresh order, as noted above.

Writ A No. 9462 of 2025

6. Learned counsel appearing for the petitioners- Navodaya Vidhyalaya Samiti and others has made submissions that once concealment of criminal proceedings on the part of the applicant while entering into services was apparent on the face of the record, the Tribunal has grossly erred in setting aside the termination order that was passed for violation of conditions of selection and appointment and it is

settled proposition of law that once an incumbent, while entering into service, conceals pendency of criminal case against him, the same results in termination of his services.

7. Per contra, learned counsel for the respondent submits that once the respondent was admittedly a juvenile at the time of alleged incident giving rise to lodging of FIR in question, the Tribunal, after setting aside order of termination, should have directed his reinstatement in service with all consequential benefits and the order impugned, to the extent of remand to the authority, is unsustainable and, for this reason, the respondent also has challenged part of the order to that extent by filing connected Writ A No. 6670 of 2025.

8. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. It is not in dispute that at the time of alleged incident dated 18.04.2011 giving rise to FIR dated 08.06.2011, the respondent was aged about 17 years, hence, a juvenile. The finding to that effect recorded by the Tribunal has not been shown to be perverse and, even otherwise, an order dated 04.06.2024 passed by the Juvenile Justice Board (JJ Board) declaring the respondent as juvenile is also on record. Said being the position, this Court has to examine validity of the order passed by the Tribunal from both perspectives, i.e. as to whether setting aside of termination order was justified and as to whether remand was necessary in the facts of the case.

10. It stands reflected from the termination order dated 02.11.2021 that a show cause notice was issued to the respondent on 27.09.2021, which was responded to by him by submitting a very detailed reply dated 04.10.2021, however, absolutely no consideration of the reply is found in the order of termination and only following is the so called consideration of the response:-

"चूकि श्री पुंडरीकाक्ष देव पाठक ने प्राचार्य जवाहर नवोदय विद्यालय अमेठी के माध्यम से प्रेषित अपने स्पष्टीकरण दिनांकः 04/10/2021 द्वारा कारण बताओ नोटिस पर अपना स्पष्टीकरण प्रेषित किया जो इस कार्यालय में दिनांकः 18/ 10/ 2021 को प्राप्त हुआ ।

चूंकि श्री पुंडरीकाक्ष देव पाठक ने अपने स्पष्टीकरण में किसी नए तथ्य का उल्लेख नहीं किया इसलिए उनका स्पष्टीकरण स्वीकार्य नहीं है।"

11. We have also gone through the response given by the respondent to the show cause notice, which contains a detailed version regarding institution of criminal case and aspects associated thereto and considering the cryptic nature of the order of termination, we are of the opinion that the authority was bound to examine each and every aspect of the matter including the defence put forth by the respondent as per the guidelines issued by the Hon'ble Supreme Court in the case of **Avtar Singh** (supra), that was existent since 2016 and was binding on the department at the time when services of the respondent were hurriedly terminated in the year 2021. Having not done so, we find that the department has failed to discharge lawful duty cast on it and, therefore, we are not inclined to interfere with the order of the Tribunal whereby it has set aside the order of termination.

12. In view of above discussion, Writ-A No. 9462 of 2025 has no merit and the same is, accordingly, **dismissed**.

Writ A No. 6670 of 2025

13. Learned counsel for the petitioner-Pundarikaksh Dev Pathak has made vehement submissions that the JJ Board had, by order dated 04.06.2024, declared the petitioner as a juvenile, which order remained unchallenged and, therefore, in view of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'J.J. Act, 2000'), commission of offence by a juvenile would not amount to any

disqualification qua his services and, hence, even if the factum of pendency of criminal case against the petitioner was not disclosed by him during the course of selection/appointment, the said fact being immaterial, such non-disclosure would not be fatal to his service and, therefore, remand was unwarranted, particularly when the Tribunal itself has recorded finding in favour of the petitioner that he was a juvenile aged 17 years at the time of lodging of the FIR. To buttress his submissions, learned counsel has referred to Section 19 of J.J. Act, 2000 and also placed reliance on a judgment of Co-ordinate Bench of this Court in the case of **Shivam Maurya vs. State of U.P. and 5 others; 2020 (5) ADJ 5.**

14. Per contra, learned counsel for the respondents has made submission that since the Tribunal has only remanded the matter to the competent authority to pass a speaking order in the light of directions contained in the order itself as well as the law laid down by the Hon'ble Supreme Court in the case of **Avtar Singh** (supra), the arguments advanced on behalf of the petitioner cannot be examined at this stage, when a fresh order is yet to be passed by the authority and, therefore, it would be quite premature to examine the said contention. It is further submitted that there is no provision, either in the J.J. Act, 2000 or in any other law, whereunder an incumbent to Government service has been exempted from disclosing pendency of or decision in a criminal case at the time when he enters into process of selection or is offered appointment and, therefore, the contention advanced on behalf of the petitioner is thoroughly misplaced.

15. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

16. Once the status of the petitioner at the time of alleged incident dated 18.04.2011, as a juvenile is well established on record, as noted above, the question to be examined by this court is as to whether non-disclosure of pendency of criminal proceedings against him in the

concerned declaration forms etc., would be fatal to his service. In this regard, first of all we deem it appropriate to refer section 19 of the J.J. Act, 2000 which reads as under:-

> "19. **Removal of disqualification attaching to conviction**:- (1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act **shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.**
>
> (2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period prescribed under the rules, as the case may be."

17. A bare perusal of Section 19(1) of the Act makes it clear that it starts with a '**non-obstante clause'** excluding the applicability of any other law in the matter of a juvenile and clearly provides that a juvenile who has committed an offence and has been dealt with under the provisions of the Act, shall not suffer disqualification attaching to a conviction of an offence under such law. It means that even if a juvenile is convicted for an offence committed by him, his conviction would not be treated as a disqualification. On the said proposition, we may refer to a judgment of Hon'ble Supreme Court in **Union of India and others vs. Ramesh Bishnoi (2019) 19 SCC 710**, wherein it has been laid down as under:-

> "It is clear that at the time when the charges were framed against the respondent, on 30.06.2009, the respondent was well under the age of 18 years as his date of birth is 05.09.1991. Firstly, it was not disputed that the charges were never proved against the respondent as the girl and her parents did not depose against the respondent, resulting in his acquittal on 24.11.2011. **Even if the allegations were found to be true, then too the respondent could not have been deprived of getting a job on the basis of such charges as the same had been committed while the respondent was juvenile. The thrust of the legislation, i.e. The Juvenile Justice (Care and Protection of Children) Act, 2000 as well as The Juvenile Justice (Care and Protection of Children) Act, 2015 is that even if a juvenile is convicted, the same**

> should be obliterated, so that there is no stigma with regard to any crime committed by such person as a juvenile. This is with the clear object to reintegrate such juvenile back in the society as a normal person, without any stigma. Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down guidelines for the Central Government, State Governments, the Board and other agencies while implementing the provisions of the said Act. In clause (xiv) of Section 3, it is clearly provided as follows:-
>
> "3. (xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances."
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> In the present case, it is an admitted fact that the respondent was a minor when the charges had been framed against him of offences under Sections 354, 447 and 509 of IPC. It is also not disputed that he was acquitted of the charges. However, even if he had been convicted, the same could not have been held against him for getting a job, as admittedly he was a minor when the alleged offences were committed and the charges had been framed against him."
>
> (emphasis by Court)

18. In the matter before the Hon'ble Supreme Court, the concerned incumbent had been acquitted from the charges in 2011 and the Hon'ble Supreme Court also examined even the situation where the allegations levelled against a juvenile would have been found to be true and he was convicted, the same would stand obliterated and no stigma would remain existent in his getting job. When a plea was raised before the Hon'ble Supreme Court that though the concerned juvenile was acquitted but no disclosure was made by him as regards the criminal case pending against him which would be fatal to his service, the Hon'ble Supreme Court held as under:-

> "28. In the facts of the present case, it is admitted position that the petitioner was juvenile as declared by the Board at the time when the F.I.R. was lodged against him, therefore, his case was to be dealt, taking into consideration the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000. Even if it is presume that the petitioner had not disclosed about the pendency of the criminal case, the requirement of disclosed details

> **of criminal prosecution faced as a juvenile is violative of right to privacy and right to reputation of child, guaranteed under Article 226 of the Constitution of India. It also denudes the child of protection sought by the Juvenile Justice Act, 2000, hence, it was not expected from the petitioner to disclose details of criminal prosecution faced as a juvenile.**
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> 29. Admittedly, the petitioner has been acquitted in the present case and the case so lodged against him was trivial in nature and should not be viewed as disqualification for entry in Government service."
>
> (emphasis by Court)

19. We are conscious of the fact that J.J. Act, 2000 has since been replaced by Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'J.J. Act, 2015') and by virtue of sub-section (1) of Section 111 of the J.J. Act, 2015, the Act of 2000 has been repealed, however, as per sub-section (2) of Section 111, anything done or any action taken under the Act of 2000 shall be deemed to have been done or taken under the corresponding provisions of Act of 2015.

20. Therefore, while examining the effect of juvenility of the present petitioner on his services, we find that since the FIR in question was lodged against him in the year 2011 and the relevant date of the alleged commission of offence by him, i.e. 18.04.2011, is prior to coming into force of Act of 2015, no provision of the new Act would come in his way. We are making these observations in the light of Section 24 of the Act of 2015, which is identical to Section 19 of the Act of 2000 providing that even conviction of a juvenile shall not suffer disqualification qua his services, however, there is an addition in the new Act in terms of proviso to sub-section (1) of Section 24 wherein a child who has completed or is above the age of 16 years and is found to be 'in conflict with law' by the Children's Court under Section 19(1)(i) of the new Act, the protection granted under sub-section (1) of Section 24 would not be available to him.

21. Above aspect has been noticed for the reason that since the petitioner has been declared juvenile in the year 2024 and has been found to be 'child in conflict with law' by the J.J. Board vide its order dated 04.06.2024 and the Act of 2000 is not in force, proviso attached to sub-section (1) of Section 24 of J.J. Act, 2015 may be read against him, but the proviso would not be applicable in the present case, inasmuch as, relevant date for consideration of the criminal case lodged against the petitioner would be the date when the said offence was alleged to have been committed by him, i.e. 18.04.2011 and not any subsequent date. At that time, the old Act of 2000 was in force wherein no such proviso was there as it finds place in the Act of 2015.

22. From the above discussion, it is crystal clear that even conviction of a juvenile has been found to be irrelevant qua his services and the present case stands on much better footings where trial against the petitioner is pending. Further, as per judgment of Hon'ble Supreme Court in the case of **Ramesh Bishnoi** (supra), even requirement of disclosing the details of criminal prosecution faced by a juvenile is violative of right to privacy and right to reputation of child, guaranteed under the Constitution of India, and therefore, it is not expected of a juvenile to disclose such details. Same proposition has been laid down by this Court in the case of **Shivam Maurya** (supra) and the judgment of Hon'ble the Supreme Court in the case of **Ramesh Bishnoi** (supra) as well as in the case of **Shivam Maurya** (supra) are being consistently followed by this Court. Reference to the judgement of a learned Single Judge of this Court in **Abhishek Kumar Yadav vs. Union of India and 3 others**, **2022 (6) ADJ 564,** can also be made in this regard.

23. We may mention here that in the review application filed by the petitioner before the Tribunal, specific reference was made to the order passed by the J.J. Board as regards his status as juvenile and review was sought taking aid of various provisions of J.J. Act, 2000 as well as Division Bench judgment in the case of **Shivam Maurya** (supra). Further,

prayers were made in the review application to maintain that part of the order dated 03.01.2025 whereby termination order was set aside and to direct respondent Nos. 2 and 3 to reinstate the petitioner as P.G. Teacher in the institution in question with all consequential benefits. However, the Tribunal, without taking into consideration the legal pleas raised, rejected the review application by order dated 25.02.2025 (also impugned before us) by observing that review was not rehearing of the original matter and that the review application was misconceived.

24. In view of above discussion, we are of the considered opinion that once the Tribunal itself recorded a finding regarding juvenility of the petitioner, it rightly set aside the termination order but remand made to the departmental authority was an unwarranted exercise on its part. We are, therefore, inclined to set aside the part of order of Tribunal whereby matter has been remanded to the authorities for fresh consideration. Further, considering the grounds raised and prayers made in the review application, we also deem it appropriate to direct reinstatement of the petitioner in service with all consequential benefits.

25. Accordingly, Writ-A No. 6670 of 2025 is **allowed**.

26. The order dated 03.01.2025 passed by the Tribunal is set aside to the extent the Tribunal has remanded the matter to the authorities for fresh consideration and both the orders impugned in this petition are modified with a direction to the respondents to reinstate the petitioner in service and grant him all consequential financial and service benefits within a period of one month from the date an authentic copy of this order is produced before them.

(Kshitij Shailendra, J.) (Arun Bhansali, CJ.)

October 16, 2025
Sazia/AKShukla