IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 14th OF SEPTEMBER, 2022

WRIT PETITION (SERVICE) NO. 2925 OF 2004

Between:-

GOVERDHAN SHARMA S/O SHRI KEDAR NATH SHARMA, AGED 38 YEARS, OCCUPATION SRVICE, R/O HOUSE NO. 19, SECTOR IV, VINAY NAGAR, GWALIOR

…....PETITIONER

(BY SHRI ALOK KUMAR SHARMA – ADVOCATE)

AND

1. **THE DIVISIONAL MANAGER, UCO BANK, E-5, ARERA COLONY, BHOPAL**

2. **PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

….....RESPONDENTS

(SHRI SAMEER KUMAR JAIN – ADVOCATE FOR RESPONDENT NO. 1 - ABSENT)

This petition on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following relief:-

(i) That, the Award passed by respondent no. 2 contained in Annexure P-1 may kindly be declared as illegal and the same may kindly be quashed.

(ii) That, the order of punishment contained in Annexure P-11 of with holding 5 annual increments with cumulative effect and disallowing period of suspension as period spent on duty as well as increments during the period of suspension may also kindly be declared as illegal, arbitrary and the same may kindly be quashed.

(ii) Any other relief which this Hon'ble Court may deem fit may also be given to the petitioner along with costs.

2. The facts as pleaded by the petitioner are that the petitioner was appointed as Daftari-cum-Peon in UCO Bank. The petitioner was an active member of Trade Union namely UCO Bank Employees Union, Gwalior and was also holding the post of Secretary in the said Union. The petitioner was protected under the provisions of Industrial Disputes Act. It is claimed that the petitioner had been very active trade union worker and had very important posts in the UCO Bank Employees Union as well as M.P. Bank Employees Association. The petitioner had been State Vice President of UCO bank Employees Union M.P., Secretary of UCO Bank Employees Union Gwalior and President of Dabra Unit of the Union. He had also been Vice President of M.P. Bank Employees Association, Gwalior. In pursuance of his union activities, the petitioner had made complaints against some of the officers of UCO Bank including the then Divisional Manager and because of this, the officers were annoyed with the petitioner and they were planning to fix the petitioner. It is claimed that one Shri Parwani made a complaint to Assistant General Manager, in which he alleged that the petitioner along with some other employees has physically assaulted him while he was

going to Sarafa Bazar, Gwalior Branch of the Bank. Shri Parwani also made similar complaint to Police Station Kotwali Huzrat, Gwalior. On the basis of aforesaid complaint, General Manager (Personnel) issued an administrative order dated 11.07.1991, by which Shri K.M. Kothari, the then Assistant General Manager was appointed as disciplinary authority, because Shri Parwani himself was disciplinary authority of the petitioner. Before this, petitioner along with four persons, namely, V.K. Bansal, R.C. Rajput, Anand Shrivastava and Ram Singh were suspended by order dated 05.06.1991. A charge-sheet was issued on 11.07.1991 wherein five charges were levelled. The petitioner submitted his reply denying the charges mainly on the ground that the allegations are false and are based on concocted story and also took a plea of *alibi*. Thereafter, the Inquiry Officer submitted his inquiry report on 21.12.1992. In the meanwhile, disciplinary authority Shri K.M. Kothari voluntarily retired from service, therefore, General Manager (Personnel) issued another administrative order dated 13.11.1992 thereby appointing Divisional Manager, Bhopal as disciplinary authority of the petitioner. On the basis of inquiry report, disciplinary authority proposed punishment of dismissal from service vide order dated 23.01.1993. In the meanwhile, the petitioner had challenged the suspension order as well as the inquiry by filing M.P. No.646/1992. During pendency of the petition, a show cause notice dated 23.01.1993 (Annexure P-7) was issued, which was challenged by the petitioner by filing writ petition before this Court and status quo was granted by order dated 18.02.1993. The Management of the Bank also assured the petitioner that he would be exonerated and all consequential benefits would be given to him, therefore, he withdrew the petition. All

other four employees who were charge-sheeted along with the petitioner were exonerated by the Management and no punishment was imposed on them. Accordingly, the petitioner deserved the same treatment, but officiating disciplinary authority who had no legal or moral authority to pass the order of punishment, acted arbitrarily and imposed punishment of penalty of stoppage of 5 annual increments with cumulative effect vide order dated 29.05.1993. It was also held that the period of absence between the date of suspension and date of order of punishment shall not be treated as a period spent on duty nor the petitioner would be given increments during the period of suspension and no emoluments shall be given to the petitioner for suspension period. Accordingly, the petitioner raised dispute before Conciliation Officer, Government of India and, accordingly, the dispute was referred to Central Government Industrial Tribunal-cum-Labour Court vide order dated 27.04.1994. The petitioner submitted his statement of claim before the CGIT, Jabalpur. The Management of the Bank also submitted its written statement. Rejoinder was submitted by the petitioner. Both the parties adduced their evidence by filing their affidavits. The case was proceeded and on 05.10.2001 it was closed for award, but the award could not be passed. On 28.06.2002 new Presiding Officer took over the charge and fixed the case on 29.07.2002 for argument and on 29.07.2002 petitioner filed an application stating that his Advocate has withdrawn and he himself would argue the case and prayed that the case be listed at Gwalior because of his difficulty to attend the case at Jabalpur. This application was allowed and the case was kept in un-dated category till the programme of Gwalior is finalized. On 24.03.2003 new Presiding Officer

took charge and the case was fixed for 22.04.2003 at Gwalior. On 22.04.2003 the petitioner attended the case, but the Management filed an application for adjournment, which was rejected and, accordingly, the case was closed for orders. It is the claim of the petitioner that the case was closed without any argument and on 29.07.2003 award was passed. It is claimed by the petitioner that CGIT had passed the award without hearing the arguments and the absence of both the parties was marked on the date of passing of award. The CGIT ignored the fact that Advocate of petitioner had withdrawn himself from the case and it was for the petitioner to argue the same. It is also claimed that the findings given by the CGIT are perverse.

3. Per contra, the petition is vehemently opposed by the counsel for the respondents. It is denied that the petitioner was not informed about passing of the award. The award was duly published and the petitioner had information about it. The petitioner was posted as Daftari-cum-Peon. It is denied that any action was taken on account of his involvement in Union activities. It is clear from the charges that the petitioner along with other employees forcibly entered inside the cabin of Shri Parwani and after closing down the doors, the petitioner assaulted Divisional Manager and pressed his neck and hit at the genitals of Shri Parwani. Only with the intervention of other officers, Divisional Manager could be rescued. The withdrawal of writ petition by the petitioner on the assurance given by the respondent was also denied. The role played by the petitioner was distinguishable from the role of the other employees, therefore, their cases have been decided on the allegations made against them. It was denied that the award was not passed without hearing. On 01.08.2001 the

petitioner had filed written arguments and on 02.04.2003 the petitioner had made oral arguments and respondents had sought time for advancing the arguments, but the said request was turned down and, thereafter, the case was fixed for award.

4. Heard the learned counsel for the parties.

5. The petitioner has filed copies of the order-sheets of the CGIT as Annexure P-17. From the order dated 05.10.2001, it is clear that it appears that arguments were heard and the case was closed for award and before the award could be passed, Presiding Judge was transferred. Accordingly, he was succeeded by another officer and fresh notices were issued to the authorities for their arguments on 29.07.2002. On 29.07.2002 the petitioner was present in person, but the Management was not represented. The petitioner filed an application alleging that he cannot attend the hearing at Jabalpur and requested to fix the case at Gwalior and the said application was allowed and it was directed that the case shall be fixed at Gwalior whenever programme is made and till then the case be kept undated. Thereafter, on 25.03.2003 an order-sheet was written thereby fixing 22.04.2003 at Gwalior. On 22.04.2003 the petitioner was present in person. The application filed by the Management for grant of time for argument was rejected. The case was closed for orders. The Management was granted liberty to file oral or written submissions. Thereafter, the case was called on 29.07.2003 and on 29.07.2003 none of the parties were present and award was passed separately and was declared in open sitting of the Court. From the order-sheet dated 01.08.2001, it is clear that the petitioner had also filed his written arguments, which were on record. From the order-sheets of CGIT,

it is clear that the petitioner was present on 22.04.2003 and the case was fixed for passing of orders, but the petitioner did not raise an objection that he should be heard. Thus, it appears that the petitioner must have been heard and prayer made by the Management to defer the hearing was rejected, but for one reason or the other, CGIT could not mention about the hearing of the argument of the petitioner.

6. Be that whatever it may.

7. The petitioner filed his rejoinder and claimed that he was tried for the same incident in Criminal Case No.678/2004 and by judgment dated 19.07.2005 passed by the JMFC, Gwalior, he has been acquitted. Since the allegations made against the petitioner in a criminal case as well as in the departmental inquiry are same, therefore, he cannot be held guilty in a departmental inquiry. There was a bi-party agreement between the department. Clause 19.4 of the bi-party settlement also provides for stay of the departmental proceedings.

8. Challenging the impugned award dated 29.07.2003 (Annexure P-1) passed by CGIT as well as the order dated 29.05.1993, by which the punishment of stoppage of 5 increments with cumulative effect was imposed, it is submitted by the counsel for the petitioner that as per the bi-partite settlement, when the petitioner was already facing criminal trial, then the departmental proceedings should have been stayed. From Clause 19.6 of the bi-partite settlement, only one increment could have been imposed.

9. Per contra, it is mentioned by the counsel for the respondents in the additional return that there is no violation of principle of natural justice. The acquittal of the petitioner in criminal case will not *ipso facto*

result in exoneration in the departmental inquiry. Although a person may be acquitted in a criminal case, but still he can be held guilty in a departmental inquiry.

10. Heard the learned counsel for the parties.

11. The Supreme Court in the case of **Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhay,** reported in **(2022) 2 SCC 696** has held as under:-

> "11.4 ….....As per cardinal principle of law, an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standards of proof in both the cases are different and the proceedings operate in different fields and with different objectives. Therefore, Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal Court....."

12. The Supreme Court in the case of **Uttaranchal Road Transport Corpn. v. Mansaram Nainwal** reported in **(2006) 6 SCC 366** has held as under:-

> **10.** The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in *Union of India* v. *Bihari Lal Sidhana* [(1997) 4 SCC 385 : 1997 SCC (L&S) 1076] . It was held in para 5 as follows: (SCC pp. 387-88)
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> > "*5*. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working

as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

11. The ratio of *Anthony case* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] can be culled out from para 22 of the judgment which reads as follows: (SCC p. 691)

"*22*. The conclusions which are deducible from various decisions of this Court referred to above are:

(*i*) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(*ii*) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental

proceedings till the conclusion of the criminal case.

(*iii*) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(*iv*) The factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(*v*) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

12. Though the High Court had not indicated as to how the decision of this Court in *Anthony case* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] laid down as a matter of law that whenever there is acquittal in a criminal trial reinstatement is automatic, in all probabilities basis was para 36 of *Anthony case* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] which reads as follows: (SCC p. 695)

"*36*. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary

proceedings. *In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts*. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs 15,000."

(underlined - for emphasis)

13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (*i*) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The

> enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa* v. *Sudhansu Sekhar Misra* [(1968) 2 SCR 154 : AIR 1968 SC 647] and *Union of India* v. *Dhanwanti Devi* [(1996) 6 SCC 44] .) A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn* v. *Leathem* [1901 AC 495 : (1900-03) All ER Rep 1 : 85 LT 289 (HL)], Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

13. Similar law has been laid down by the Supreme Court in the cases of **South Bengal State Transport Corpn. v. Sapan Kumar Mitra and others** reported in **(2006) 2 SCC 584, Divisional Controller, Gujarat SRTC v. Kadarbhai J. Suthar** reported in **(2007) 10 SCC 561**, **N. Selvaraj v. Kumbakonam City Union Bank Ltd. and another** reported in **(2006) 9 SCC 172**, **West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh** reported in **(2008) 3 SCC 729**, **Ajit Kumar Nag v. Indian Oil Corpn. Ltd. and others** reported in **(2005) 7 SCC 764** and **Shashi Bhushan Prasad v. Inspector General Central Industrial Security Force and others** reported in **(2019) 7 SCC 797**. Thus, the acquittal of the petitioner in a criminal case involving similar allegations would not result in dropping of the departmental inquiry or making an order of punishment vulnerable. Furthermore, the petitioner has not filed copy of the judgment of acquittal to show the grounds on which he was

acquitted. Furthermore, it appears that the petitioner was acquitted by judgment dated 19.07.2005, whereas departmental inquiry had already come to an end and the order of punishment was passed on 29.05.1993 and award was also passed by the CGIT on 29.07.2003. Thus, subsequent acquittal of the petitioner will not vitiate the departmental inquiry as well as the award passed by the CGIT.

14. So far as the stay of departmental proceedings during the pendency of criminal case is concerned, it is suffice to mention here that the petitioner never approached this Court for stay of the departmental inquiry. The final order / award which was already passed prior to the acquittal of the petitioner cannot be quashed on the ground that the respondents should have stayed the departmental inquiry specifically when the outcome of the criminal case has no bearing or relevance on the outcome of the departmental inquiry.

15. So far as the submission made by the counsel for the petitioner that Clause 19.6 of the bi-partite settlement provides that only one increment can be stopped is concerned, the said submission is misconceived. The word “increment” would necessarily include increments. When a person can be dismissed from service, then any other interpretation of word “increment” as one increment would be absurd. It is well established principle of law that any interpretation which leads to absurdity should be avoided.

16. No other arguments are advanced by the counsel for the petitioner.

17. Since this Court cannot act as an Appellate Authority and the subsequent acquittal of the petitioner after the award passed by the CGIT will not have any bearing on the departmental inquiry as well as

reference made to CGIT, this Court is of the considered opinion that the orders dated 29.05.1993 and 29.07.2003 do not call for any interference.

18. Accordingly, the petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

Abhi