IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 16th OF AUGUST, 2023

WRIT PETITION No. 12846 of 2016

BETWEEN:-

VIJAY TRIPATHI S/O LATE R.N. TRIPATHI, AGED ABOUT 34 YEARS, OCCUPATION: SUB INSPECTOR, POLICE LINE SATNA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRAKASH UPADHYAYA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPTT. OF HOME AFFAIRS MANTRALAYA BHOPAL (MADHYA PRADESH)**
2. **DIRECTOR GENERAL OF POLICE JAHANGIRABAD JAHANGIRABAD (MADHYA PRADESH)**
3. **SUPERINTENDENT OF POLICE SATNA SATNA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI K.S.BAGHEL – GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1. This petition under Article 226 of the Constitution of India has been filed against the order dated 28.6.2016 passed by the Superintendent of

Police, Satna in File No.SP/Satna/Steno/DE/08/2016 by which the petitioner has challenged the charge-sheet as well as departmental enquiry against him.

2. It is the case of the petitioner that on 14.5.2016 S.P.E. (Lokayukt) prepared a trap and the petitioner along with Head Constable 279 Dadan Singh and Constable 509 Mukesh Dwivedi were made accused in Crime No.153/2016 for offences under sections 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. The allegation against the petitioner was that he was a part of conspiracy in taking bribe. It is submitted that on 28.6.2016 departmental charge-sheet has been issued which is based on vague charges. Without considering the reply submitted by the petitioner, an Enquiry Officer and Presenting Officer cannot be appointed by order dated 19.7.2016 and accordingly the charge-sheet and the departmental enquiry has been challenged.
3. It is submitted by counsel for the petitioner that during the pendency of this writ petition, the petitioner was acquitted in criminal case by judgment dated 16.12.2021 passed by Special Judge (Prevention of Corruption Act) Satna in S.C.Lok-02/2018. Since the charges in the departmental enquiry were leveled on the basis of criminal prosecution of the petitioner, and as the petitioner has been acquitted, therefore, the departmental enquiry should be dropped. It is further submitted that since the complainant had turned hostile in the criminal trial, therefore, the petitioner cannot be held guilty in the departmental enquiry.
4. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that it is well established principle of law that even after exoneration of an accused in a criminal case he can be proceeded

against in a departmental enquiry. It is further submitted that charges which are leveled against the petitioner are clear and unambiguous.

5. Heard the learned counsel for the parties.

6. So far as acquittal of the petitioner in the criminal case is concerned, it is clear from the judgment that the complainant had turned hostile. So far as submission of the petitioner that now he cannot be held guilty in a departmental enquiry is concerned, it is sufficient to mention here that the Supreme court in the case of **Hazari Lal v. State (Delhi Admn.), (1980) 2 SCC 390** has held that even if the complainant has turned hostile still the case is to be decided on the basis of surrounding circumstances. Furthermore, by virtue of interim order dated 3.8.2016 it is sufficient to mention here that the proceedings in the departmental enquiry could not proceed and the statement of the complainant has not been recorded in the departmental enquiry. The degree of proof in a criminal case is completely different from the degree of proof in the departmental enquiry. The Supreme Court in the case of **State of A.P. v. K. Allabakash, (2000) 10 SCC 177** has held as under :-

> **1.** The respondent, a Sub-Inspector of Police was convicted of the offence under Section 302 of the Penal Code, 1860 for causing the death of a prisoner in the police station. The High Court, on an appeal filed by the respondent, acquitted him for want of evidence. All material witnesses for proving the prosecution case have turned hostile, including PW 1, the son of the deceased. After hearing learned counsel for the State and perusing the relevant documents we are of the view that the High Court has come to the correct conclusion that prosecution has failed to prove the case against the respondent.
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> **2.** However, we make it clear that acquittal of the respondent shall not be construed as a clear exoneration of

the respondent, for the allegations call for departmental proceedings, if not already initiated, against him.

3. With the said observations we dispose of this appeal.

7. The Supreme Court in the case of **BHEL v. M. Mani, (2018) 1 SCC 285** has held as under :-

> **21.** The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case.
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> **22.** This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no avail. It is held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held—the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See *Karnataka SRTC* v. *M.G. Vittal Rao* [*Karnataka SRTC* v. *M.G. Vittal Rao*, (2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171] .)

8. The Supreme Court in the case of **Maharashtra SRTC v. Dilip Uttam Jayabhay, (2022) 2 SCC 696** has held as under :-

> **11.3.** Much stress has been given by the Industrial Court on the acquittal of the respondent by the criminal court. However, as such the Labour Court had in extenso considered the order of acquittal passed by the criminal court and did not agree with the submissions made on behalf of the respondent workman that as he was acquitted by the criminal court he cannot be held guilty in the disciplinary proceedings.

> **11.4.** Even from the judgment and order passed by the criminal court it appears that the criminal court acquitted the respondent based on the hostility of the witnesses; the evidence led by the interested witnesses; lacuna in examination of the investigating officer; panch for the spot panchnama of the incident, etc. Therefore, the criminal court held that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. On the contrary in the departmental proceedings the misconduct of driving the vehicle rashly and negligently which caused accident and due to which four persons died has been established and proved. As per the 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, the Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal court. Even otherwise it is required to be noted that the Industrial Court has not interfered with the findings recorded by the disciplinary authority holding charge and misconduct proved in the departmental enquiry, and has interfered with the punishment of dismissal solely on the ground that same is shockingly disproportionate and therefore can be said to be an unfair labour practice as per clause 1(*g*) of Schedule IV of the MRTU & PULP Act, 1971.

9. The Supreme Court in the case of **Uttaranchal Road Transport Corpn. v. Mansaram Nainwal, (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)

> "*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 [**Ed.** : Herein italicised.] 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.

14. Unfortunately, the High Court has not discussed the factual scenario as to how *Anthony case* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] had any application. As noted above, the position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in *Sidhana case* [(1997) 4 SCC 385 : 1997 SCC (L&S) 1076] . As the High Court had not dealt with the factual scenario and as to how *Anthony case* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order.

10. Therefore, merely because petitioner has been acquitted in a criminal case registered against him, it cannot be a ground for quashing a departmental enquiry.

11. So far as vagueness of the allegations are concerned, in the charge-sheet following charge was leveled :-

> **१- वरिष्ठ कार्यालयों के लिखित निर्देश एवं वरिष्ठ अधिकारियों के व्दारा अनैतिक प्रलोभन मे न पहने व ईमानदारी के साथ कार्य करने की हिदायत के बाद भी आम जनता में पुलिस की छवि धूमिल कर पुलिस रेग्यूलेशन के पैरा** 64 (2) (3) **का उल्लघन करना ।**

12. From the plain reading of the charge it is clear that the same is not clear and the act of the petitioner by which the image of the police was tarnished in the eyes of general public has not been clarified. Under these circumstances, this Court is of the considered opinion that the respondents must clarify the charge which was leveled against the petitioner pointing out the reasons for framing the aforesaid charges.

13. Under these circumstances this petition is **disposed of** with the following observation :-

    i) Charge-sheet cannot be quashed merely on the ground that petitioner has been acquitted in a criminal case ;

    ii) Charge leveled against the petitioner in the departmental charge-sheet is vague and, therefore, the respondents shall amend the same by pointing out the reasons which led to tarnishing the image of police in the eyes of general public.

14. Let the entire exercise be completed within a period of 30 days from the date of filing certified copy of this order.
15. Petitioner shall positively submit a certified copy of this order to the Superintendent of Police, Satna latest by 4.9.2023. The Superintendent of Police Satna shall modify the charges on or before 4.10.2023.
16. The departmental enquiry was stayed by order dated 3.8.2016, therefore, the Superintendent of Police shall complete the departmental enquiry within a period of six months thereafter.
17. It is made clear that this Court has not considered the merits/demerits of the case and the departmental enquiry shall be considered strictly in accordance with law.

(G.S. AHLUWALIA)
JUDGE

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