

HIGH COURT OF MADHYA PRADESH: JABALPUR**Writ Appeal No.58/2017**

Smt. Shanti Bavaria **Appellant**
 - V/s -
State of M.P. & Others **Respondents**

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Shri P.N. Dubey, counsel for the appellant.

Shri Amit Seth, Government Advocate, for respondent/State.

Whether Approved for Reporting : Yes

Law Laid down :

It is not necessary to obtain personal sanction of His Excellency, Governor of Madhya Pradesh for taking decision to initiate disciplinary proceedings, and if the council of Ministers have taken such decision, it will serve the purpose and meet the requirement of Rule 9 of the Pension Rules. Reliance is placed upon **State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak, AIR 1996 SC 765 & Samsher Singh and another Vs. State of Punjab, (1974) 2 SCC 831.**

The judgment in **Dr. Yashwant Trimbak's** case (supra) has been over-ruled only on one question that the sanction granted by Governor is outside the scope of judicial review. The other findings recorded by the Hon'ble Supreme Court have not been interfered with.

Ram Jawaya Kapur Vs. State of Punjab, AIR 1955 SC 549; State of MP and others Vs. T.N. Verma and another, 2001 (1) MPLJ 587; and, Nabam Rebia and Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly and others, 2016 (8) SCC 1 – **followed.**

Significant Paragraph Nos: 7, 8, 9, 10, 11 and 13

Judgment Reserved on : 04.10.2017

Delivered on : 10.10.2017

JUDGMENT

10-10-2017

Per Hemant Gupta, Chief Justice:

The challenge in the present appeal is to an order passed by the learned Single Bench on 1.8.2016, whereby the writ petition filed by the appellant/petitioner challenging the issuance of charge-sheet on 11.1.2012

remained unsuccessful, relying upon the judgment in the case of **State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak, AIR 1996 SC 765.**

2- The brief facts leading to the present appeal is that the appellant attained the age of superannuation on 31.12.2010. After her superannuation, a departmental enquiry has been instituted vide order-dated 11.1.2012 which enquiry is said to be in violation of Rule 9(2)(b)(i) of MP Civil Services (Pension) Rules, 1976 (hereinafter referred to as 'Pension Rules') and also in contravention of the judgment reported as **State of MP and others Vs. T.N. Verma and another, 2001 (1) MPLJ 587.**

3- The learned Single Bench relied upon **Dr. Yashwant Trimbak's** case (supra), as it was found that it is not necessary to obtain personal sanction of His Excellency, Governor of Madhya Pradesh for taking decision to initiate disciplinary proceedings, and if the council of Ministers have taken such decision, it will serve the purpose and meet the requirement of Rule 9 of the Pension Rules.

4- Before this Court, learned counsel for the appellant argued that the judgment of the Hon'ble Supreme Court in **Dr. Yashwant Trimbak's** case (supra) stands over-ruled in a judgment reported as **Brajendra Singh Yambem Vs. Union of India and another, (2016) 9 SCC 20**, wherein the Court held as under:-

“43. The order of sanction to be granted by the President of India as provided under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 is for initiation of the disciplinary proceedings against the appellant, which cannot be treated as an executive action of the Government of India. Rather, it is a statutory exercise of power by the President, under Rule

9(2)(b)(i) of the CCS (Pension) Rules, 1972. The said Rules are framed by the President of India in exercise of legislative power conferred under Article 309 of the Constitution of India.

50. The observation made by this Court in the case of Dr. Yashwant Trimbak (supra) to the extent that orders of sanction granted by the Governor are outside the scope of judicial review, is untenable in law. The same is contrary not only to the law laid down by this Court referred to supra, but also the provisions of Articles 77(2) & 166(2) of the Constitution of India. Therefore, the same has no application to the fact situation for the reason that the President has exercised his statutory power for grant of sanction under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 to initiate the disciplinary action but not the executive action against the appellant.”

Therefore, the charge-sheet issued without personal approval of His Excellency, Governor of Madhya Pradesh is without jurisdiction.

5- On the other hand Shri Amit Seth, learned Government Advocate, argued that the judgment in **Dr. Yashwant Trimbak's** case (supra) has been over-ruled only on one question that the sanction granted by Governor is outside the scope of judicial review. The other findings recorded by the Hon'ble Supreme Court have not been interfered with. It is also argued that in respect of how the executive power of the State is to be exercised has been examined in the judgment reported as **Ram Jawaya Kapur Vs. State of Punjab, AIR 1955 SC 549**; later by the Seven Judges Bench in the case of **Samsher Singh and another Vs. State of Punjab, (1974) 2 SCC 831**, held that the judgment of the Hon'ble Supreme Court in the case of **B.K. Sardari Lal Vs. Union of India, 1971 (1) SCC 411**, does not lay down the correct law. In **B.K. Sardari Lal 's case (Supra)**, it was held that power under Article 311(2) of the Constitution has to be exercised by the President alone and such

power cannot be delegated. The judgment in **Brajendra Singh Yambem's** case (supra) does not expressly state that the Hon'ble President has to exercise the powers conferred under Rule 9(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which is *pari materia* with Rule 9(2)(b)(i) of the Pension Rules nor was the such question raised. In fact, in the aforesaid case, the Charge sheet was issued under the orders of the Hon'ble President.

6- Before proceeding further, the relevant Rule 9 of the Pension Rules needs to be extracted. It read as under:

“9. Right of Governor to withhold or withdraw pension –

- (1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental and judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:”

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- (2) (a) The departmental proceedings, if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:

- (i) shall not be instituted save with the sanction of the Governor;
- (ii) shall not be in respect of any event which took place more than four years before such institution.”

7- In **Brijendra Singh's** case (supra), the Court framed the following questions for its opinion:

- “(i) Whether the impugned judgment and order passed by the Division Bench of the High Court correctly appreciates the scope of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 in light of the fact the disciplinary proceedings were initiated more than four years after the alleged incidents?
- (ii) Whether the impugned judgment and order is erroneous and is vitiated in law?
- (iii) What Order? ”

In the aforesaid case, the memorandum of charges were issued in pursuance to the sanction accorded by the Hon'ble President under Rule 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'Rules of 1972'). The Article of charges were challenged on the ground that proceedings have been initiated for the alleged incident which took place more than 10 years earlier, therefore, the charge sheet is barred by limitation provided under Rule 9(2)(b)(ii) of the Rules of 1972. The Division Bench of the High Court held that once sanction was granted by the President of India then the bar of limitation period of 4 years will not apply. The order of the learned Single Bench quashing the charge-sheet was set aside. It is the said order of the Division Bench which was set aside by the Hon'ble Supreme Court. The Court held that the disciplinary proceedings initiated by the

disciplinary authority after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 are liable to be quashed while overruling the finding recorded in **Dr. Yashwant Trimbak's** case (supra) that an order of sanction granted by Governor are outside the scope of judicial review. It was held as under:

“51. In the instant case, the action of the Disciplinary Authority is untenable in law for the reason that the interpretation of the CCS (Pension) Rules, 1972 which is sought to be made by the learned Additional Solicitor General on behalf of the respondents amounts to deprivation of the Fundamental Rights guaranteed to the appellant under Part III of the Constitution of India. Therefore, we have to hold that the disciplinary proceedings initiated by the disciplinary authority after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 are liable to be quashed.

52. For the aforesaid reasons, we answer the questions of law that arose for consideration of this Court in favour of the appellant. The Division Bench of the High Court erred in allowing the Writ Appeal Nos. 39 and 40 of 2011. Therefore, the impugned judgment is liable to be set aside and accordingly, set aside.”

8. The charge-sheet dated 11.1.2012 in the present case is issued under the orders of the Hon'ble Governor. In **Yashwant Trimbak's** case (supra), the charge-sheet was also served under the order of Governor of Madhya Pradesh. The Court held that such an order authenticated in the name of Governor cannot be questioned in any Court on the ground that it is made or executed by the Governor. After holding so, the Court held as under:

“14. The Rule in question no doubt provides that departmental proceedings if not instituted while the Government servant was in service whether before his retirement or during his re-employment shall not be instituted save with the sanction of the Governor. The question

that arises for consideration is whether it requires the sanction of the Governor himself or the Council of Ministers in whose favour the Governor under the Rules of Business has allocated the matter, can also sanction. It is undisputed that under Article 166(3) of the Constitution the Governor has made rule for convenient transaction of the business of the Government and the question of sanction to prosecute in the case in hand was dealt with by the Council of Ministers in accordance with the Rule of Business. Under Article 154 of the Constitution the executive power of the State vests in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The expression 'executive power' is wide enough to connote the residue of the governmental function that remain after the legislative and judicial functions are taken away.

15. Under Article 163(1) of the Constitution, excepting functions required by the Constitution to be exercised by the Governor in his discretion, the Governor acts on the aid and advice of the Council of Ministers. This Court in the case of *Samsheer Singh Vs. State of Punjab and another* (AIR 1974 SC 2192) had indicated that any function vested in the Governor, whether executive, legislative or quasi judicial in nature and whether vested by the Constitution or by a statute be delegated by Rules of Business unless the contrary is clearly provided for by such constitutional or statutory provision. The Court further held:

“The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Whenever the Constitution requires the satisfaction of the President or the Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor.”

16. After referring to the several previous authorities this Court further held: (Para 57 of AIR)

“For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of Union and the Chief Minister at the head in the case of State in all matters which vest in the executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally.”

17. The order of sanction for prosecution of a retired Government servant is undoubtedly an executive action of the Government. A Governor in exercise of his powers under Article 166(3) of the Constitution may allocate all his functions to different Ministers by framing rules of business except those which the Governor is required by the Constitution to exercise his own discretion. The expression “business of the Government of the State” in Article 166(3) of the Constitution, comprises of functions which the Governor is to exercise with the aid and advice of the Council of Ministers including those which he is empowered to exercise on his subjective satisfaction and including statutory functions of the State Government. The Court has held in *Shamrao Vs. State of Maharashtra*, 1964 (6) SCR 446 that even the functions and duties which are vested in a State Government by a statute may be allocated to Ministers by the Rule of Business framed under Article 166(3) of the Constitution. In *State of Bihar Vs. Rani Sonabati Kumari*, 1961(1) SCR 788, where power of issuing notification under Section 3(1) of the Bihar Land Reforms Act, 1950 have been conferred on the Governor of Bihar, this Court held: (Para 40 of AIR)

“Section 3(1) of the Act confers the power of issuing notifications under it, not on any officer but on the State Government as such though the exercise of that power would be governed by the rule of business framed by the Governor under Art. 166(3) of the Constitution”.

18. Therefore, excepting the matters with respect to which the Governor is required by or under the Constitution to act in his discretion, the personal satisfaction of the Governor is not required and any function may be allocated to Ministers.

19. Mr. Jain’s contention is solely based on the ground that in the Rule itself both the expressions ‘Governor’ and ‘Government’ have been used and therefore the expression ‘sanction of the Governor’ in Rule 9(2)(b)(i) would mean the personal sanction of the Governor. We are

unable to accept this contention. The power to sanction is nothing but an executive action of the Government provided under the Rules. This is not a matter with respect to which the Governor is required under the Constitution to act in his discretion. In this view of the matter when the Governor has framed rules of business under Article 166(3) of the Constitution allocating his functions and it is the Council of Ministers which has taken the decision to sanction prosecution of the respondent, we see no legal infirmity in the same. The Tribunal erred in law in coming to the conclusion that the sanction required under the rule is a sanction of the Governor.

20. In our considered opinion, in the facts and circumstances of the present case the power of Governor under Rule 9(2)(b)(i) has been duly allocated in favour of the Council of Ministers under Article 166(3) of the Constitution and the said Council of Ministers has taken the decision to grant sanction for prosecution of the respondent.”

9- The question as to whether the charge-sheet was required to be approved by the Hon’ble President or the Hon’ble Governor personally or in accordance with Rules of business framed by the Council of Ministers was a specific question raised and decided in **Yashwant Trimbak’s** case (supra), as reproduced hereinabove. It is only that part of the order whereby the Court held that the sanction granted by the Governor is outside of scope of judicial review, was found to be untenable.

10- The question as to whether the power of sanction has to be exercised by the Hon’ble President or the Governor as the case may be, personally, has come up for consideration before the Supreme Court time and again. In **Ram Jawaya Kapur’s** case (supra), it was held that the executive power of the State under Article 162 is exclusively in respect of matters enumerated in List II of Seventh Schedule. The authority also extends to the

Concurrent List except as provided in the Constitution itself or in any law passed by Parliament.

“16. In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature? Under article 53(1) of our Constitution, the executive power of the Union is vested in the President but under article 75 there is to be a Council of Minister with the Prime Minister at the head to aid advise the President in the exercise of his functions. The president has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part." The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them. ”

11- In seven Bench Judgment in **Samsher Singh's** case (supra), the Court was seized of a question as to whether the termination of services of a probationer is required to be personally approved by the Hon'ble Governor. It is held therein that there is Council of Ministers to aid and advise the Governor. The rules of business are for discharge of executive powers and function of the State in the name of the Governor. It was held as under:

“31. Further the rules of business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the

case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor as the case may be, are sources of the rules of business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's Department there is in law no delegation because constitutionally the act or decision of the official is that of the, Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (See Halsbury's laws of England 4th Ed. Vol. I paragraph 748 at p. 170 and Carleton Ltd. v. Works Commissioners (1943) 2 All ER 560).

44. The distinction made by this Court between the executive functioning of the Union and the executive functions of the President does not lead to any conclusion that the President is not the constitutional head of Government. Article 74(1) provides for the Council of Ministers to aid and advise the President in the exercise of his functions. Article 163(1) makes similar provision for a Council of Ministers to aid and advise the Governor. Therefore, whether the functions exercised by the President are functions of the Union or the functions of the President they have equally to be exercised with the aid and advice of the Council of Ministers, and the same is true of the functions of the Governor except those which he has to exercise in his discretion.

45. In Sardari Lal's case (supra) an order was made by the President under sub-clause (c) to clause (2) of Article 311 of the Constitution. The order was:

"The President is satisfied that you are unfit to be retained in the public service and ought to be dismissed from service. The President is further satisfied under sub-clause (c) of proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State it is not expedient to hold an inquiry".

The order was challenged on the ground that the order was signed by the Joint Secretary and was an order in the name of the

President of India and that the Joint Secretary could not exercise the authority on behalf of the President.

46. This Court in Sardari Lal's case (supra) relied on two decisions of this Court. One is Moti Ram Deka etc. v. General Manager N.E.F. Railway, Maligaon, Pandu AIR 1964 SC 600, and the other is Jayantilal Amritlal Shodhan's case (supra). Moti Ram Deka's case (Supra) was relied on in support of the proposition that the power to dismiss a Government servant at pleasure is outside the scope of Article 53 and 154 of the Constitution and cannot be delegated by the President or the Governor to a subordinate officer and can be exercised only by the President or the Governor in the manner prescribed by the Constitution. Clause (c) of the proviso to Article 311(2) was held by this Court in Sardari Lal's case (supra) to mean that the functions of the President under that provision cannot be delegated to anyone else in the case of a civil servant of the Union and the President has to be satisfied personally that in the interest of the security of the State it is not expedient to hold an inquiry prescribed by Article 311(2). In support of this view this Court relied on the observation in Jayantilal Amrit Lal Shodhan's case (supra) that the powers of the President under Article 311(2) cannot be delegated. This Court also stated in Sardari Lal's case (supra) that the general consensus of the decisions is that the executive functions of the nature entrusted by certain Articles in which the President has to be satisfied himself about the existence of certain facts or state of affairs cannot be delegated by him to anyone else.

47. The decision in Sardari Lal's case that the President has to be satisfied personally in exercise of executive power or function and that the functions of the President cannot be delegated is with respect not the correct statement of law and is against the established and uniform view of this Court as embodied in several decisions to which reference has already been made. These decisions are from the year 1955 upto the years 1971. The decisions are Rai Saheb Ram Jawaya Kapur v. State of Punjab [1955] 2 S.C.R. 225, A. Sanjeevi Neidu v. State of Madras [1970] 3 S.C.R. 505 and U. N. R. Rao v. Smt. Indira Gandhi [1971] Suppl. S.C.R. 46. These decisions neither referred to nor considered in Sardari Lal's case (supra).

48. The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercise all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor.

53. The majority view in Babu Ram Upadhyya's case (supra) is no longer good law after the decision in Moti Ram Deka's case (supra). The theory that only the President or the Governor is personally to exercise pleasure of dismissing or removing a public servant is repelled by express words in Article 311 that no person who is a member of the Civil service or holds a civil post under the Union or a State shall be dismissed or removed by authority subordinate to that by which he was appointed. The words "dismissed or removed by an authority subordinate to that by which he was appointed" indicate that the pleasure of the President or the Governor is exercised by such officers on, whom the President or the Governor confers or delegates power."

12- In **T.N. Verma's** case (supra), the issue as to whether the Hon'ble Governor has to personally approve the charge-sheet or that the charge-sheet can be approved by the council of Ministers was not been raised or examined. Said question has been raised and decided in **Samsher Singh's** case (supra). In

view thereof, we do not find that the said judgment lays down any binding precedent.

13- In another constitutional Bench judgment, reported as **Nabam Rebia and Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly and others, 2016 (8) SCC 1**, the Hon'ble Supreme Court examined as to which of the powers of the Governor lies exclusively in his discretion. It was held as under:-

“153. Though the debate could be endless, yet we would consider it apposite to advert to the decisions rendered by this Court in the Sardari Lal Vs. Union of India, (1971) 1 SCC 411, and Samsher Singh vs. State of Punjab, (1974) 2 SCC 821. Insofar as the Sardari Lal's case is concerned, this Court had held therein, that the President or the Governor, as the case may be, would pass an order only on his personal satisfaction. In the above case, this Court while examining the case of an employee under Article 311(2) (more particularly, under proviso (c) thereof), recorded its conclusions, in the manner expressed above. The same issue was placed before a seven-Judge Bench constituted to re-examine the position adopted in the Sardari Lal's case. The position came to be reversed. This Court in the Samsher Singh's case declared, that wherever the Constitution required the satisfaction of the President or the Governor, for the exercise of any power or function, as for example under Articles 123, 213, 311(2), 317, 352(1), 356 and 360, the satisfaction required by the Constitution was not the personal satisfaction of the President or the Governor. “... but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government ...”. It is therefore clear, that even though the Governor may be authorized to exercise some functions, under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice tendered to him under Article 163, unless the Governor has been expressly authorized, by or under a constitutional provision, to discharge the concerned function, in his own discretion.

154. We are therefore of the considered view, that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides, that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the concerned constitutional provision, could not be construed otherwise. We therefore hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever the Governor in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review. We are of the view, that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e., where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

155. We may, therefore, summarise our conclusions as under:

- (1) Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefore, under Article 163(1).
- (2) Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.
- (3) Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the concerned provision, and the same cannot be construed otherwise.
- (4) Fourthly, in situations where this Court has declared, that the Governor should exercise the particular function at his own and without any aid or advice, because of the impermissibility of the other alternative, by reason of conflict of interest.
- (5) Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article

163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review.

- (6) Sixthly, in view of the conclusion drawn at Fifthly above, the judgments rendered in the Mahabir Prasad Sharma Vs. Prafulla Chandra Ghose, (1968) 72 CWN 328::1968 SCC Online Cal 3, and the Pratapsingh Raojirao Rane Vs. Governor of Goa, AIR 1999 Bom 53::1998 SCC Online Bom 351, by the High Courts of Calcutta and Bombay, respectively, do not lay down the correct legal position. The constitutional position declared therein, with reference to Article 163(2), is accordingly hereby set aside.”

14- Thus, there is no doubt that the Hon'ble Governor acts on the aid and advice of his Council of Ministers except the matters which fall exclusively to be exercised by him in his discretion. The power as to whether pension of an employee should be stopped or not is not a matter which falls within his exclusive discretion. Therefore, the charge-sheet dated 11.1.2012 served upon the appellant in the name of Hon'ble Governor cannot be said to be without jurisdiction and thus same is not suffering from any illegality.

15- Thus, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

16- Accordingly, the writ appeal stands **dismissed**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

Aks/-