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WP-1674-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 1674 of 2025*VINAYAK PRASAD TIWARI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Vijay Kumar Shukla, learned counsel for the petitioner.

Shri Yogesh Dhande, learned Government Advocate for  
respondent/State.

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ORDER

Reserved on: 21.07.2025  
Pronounced on: 29.08.2025

The present petition has been filed challenging the suspension order dated 21/03/2023, charge sheet dated 26/04/2023 and enquiry report dated 09/08/2024.

2. The petitioner is working on the substantive post of Uchcha Madhyamik Shikshak and at the relevant time was posted as In-charge Principal of Government Higher Secondary School, Chandia, District Umaria. There was an allegation against the petitioner that he was Centre Superintendent in the School in the examination being conducted by the Board of Secondary Education for Class XIIth Board Examination and on 21/03/2023 there was paper of Mathematics subject. It was alleged that the confidentiality of the said paper was violated and PDF of question paper was sent by Centre Superintendent and Assistant Superintendent before start of examination to one Shri Naman Kol and Shri Kol had forwarded the solved answers in the



mobile phone of the petitioner, which the petitioner forwarded to the mobile phone of Amit Mishra, another teacher. Therefore, the allegation is of violating the secrecy of Board examinations while being Principal and Centre Superintendent.

3. The petitioner has called into question the entire action only on the ground that since the petitioner is a Class-II employee, therefore, the Collector has no authority and competence under the powers delegated to him in terms of Rules i.e. M.P. Civil Services (CCA) Rules, which vests authority only for minor penalties and suspension for Class-III employees within the district, whereas the powers of Class-II employees either vests in the Appointing Authority or in the Disciplinary Authority or Divisional Commissioner. Therefore, it is contended that the Collector not being a Disciplinary Authority of Class-II employees, could not have suspended the petitioner or issued charge sheet or get enquiry instituted and conducted against the petitioner.

4. *Per contra*, it is contended by counsel for the State that the petitioner was not proceeded against simpliciter being an employee of the State Government, but he was Centre Superintendent of the examination centre and the matter relates to violating the confidentiality and secrecy of Board question papers and in the matter, a criminal case has also been registered at Crime No.131/2023 under various sections of Indian Penal Code as well as M.P. Recognized Examinations Act, 1937.

5. It is further contended that the Collector has not exercised the powers as Collector of the District against Class-II employees but has exercised powers against the person who was In-charge of Examination. The State has relied



on Section 9(4) of MP Madhyamik Shiksha Adhiniyam, 1965, so also Clause 1.13 of guidelines for conduct of examination issued by Board of Secondary Education, which mentions that in case of any violation of confidentiality of examination then the Collector/Competent authority, would take urgent and immediate action which will include suspension. It is further contended that as per Section 3 of MP Recognized Examinations Act, there are certain obligations on the Centre Superintendent, which the petitioner has violated and also that as per Circular dated 20/01/2024 issued by the Commissioner, Public Instructions, the Centre Superintendent is liable to take action in case of breach of confidentiality of examination.

6. Heard.

7. The petitioner is admittedly a Class-II employee being holder of post of Uchcha Madhyamik Shikshak, which is governed by M.P. School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018 and Schedule-I to the said Rules mentions the post as Class-II post having pay scale of 9300-34,800+3600.

8. As per Rule 12 of M.P. Civil Services (CCA) Rules, disciplinary authority has been laid down and as per Rule 12(2)(b), a disciplinary authority can be one who had been so nominated by a special or general order of the Governor. Rule 12 is as under:

12. Disciplinary authorities.

(1) The Government may impose any of the penalties specified in Rule 10 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (3), any of the penalties specified in Rule 10 may be imposed on-

(a) a member of State Civil Service by the appointing authority or the authority specified in the Schedule in this behalf or by any other authority empowered in this behalf by a general or special



*order of the Governor;*

*(b) a person appointed to a State Civil post by the authority specified in this behalf by a general or special order of the Governor, or [xxx] [Omitted by Notification No. 503-CR-437-I-(iii) 72, dated 25-2-1972.] by the appointing authority or the authority specified in the Schedule in this behalf.*

*(3) Notwithstanding anything contained in this rule:-*

*(a) no penalty specified in clauses (v) to (ix) of Rule 10 shall be imposed by any authority subordinate to the appointing authority:*

*[Provided that the High Court shall have the power to impose all the penalties except penalties as specified in clause (vi) (so far as it relates to reduction in rank i.e., post of service), and clauses (vii) to (ix) of Rule 10.] [Added by Notification No. C-6-3-98-3-I, dated 20th May, 1998.]*

*(b) where a Government servant who is a member of a service, is temporarily appointed to any other service or post, the authority competent to impose on such Government servant any of the penalties specified in clauses (v) to (ix) of Rule 10 shall not impose any such penalties unless it has consulted such authority, not being an authority subordinate to it, as would have been competent under sub-rule (2) to impose on the Government servant any of the said penalties had he not been appointed to such other service or post.*

*Explanation. - Where a Government servant belonging to a service or holding to a service or holding a State civil post of any class, is promoted, whether on probation or temporarily to the service or civil post of the next higher class, he shall be deemed for the purposes of this rule to belong to the service of, or hold the State civil post of such higher class.*

9. There is a delegation notification vesting on the Collector power to impose minor penalties and suspension to Class-III and IV employees within the district which is vide Notifn. No.C-6-7-96-3-1, dated 23rd May,1996, Published in M.P. Rajpatra (Ext.) dated 10.1.1997. The said notification is not in dispute and none of the parties have disputed the said notification. It is not disputed that as per CCA Rules of 1966, the Collector has not been delegated the powers in respect of Class-II employees. Therefore, the order of suspension and consequential charge sheet seems to be beyond competence of the Collector, so far as CCA Rules, 1966 are concerned.

10. The competence was defended by the State relying on various circulars



and enactments applicable in the matter of conduct of examination. As per said rules and enactments, which is not in dispute, that the Centre Superintendent is under obligation to maintain secrecy in the examination centre and in case of violation of such secrecy, the Centre Superintendent is liable to be proceeded against departmentally and criminally. However, taking action against the Centre Superintendent at departmental level can only be by a competent authority who is the appointing authority or the disciplinary authority of the said employee. Except the guidelines issued by the Board of Secondary Education, which as per Clause 1.13 give some competence to the Collector, nothing has been placed on record by the State giving competence to the Collector to take disciplinary action against the Centre Superintendent irrespective of his classification or category of post. The said Clause 1.13 is as under:

*1.13 परीक्षा की विश्वसनीयता एवं गोपनीयता भंग होने तथा अव्यवस्था फैलने की दशा में केन्द्राध्यक्ष एवं सहायक केन्द्राध्यक्ष सर्वप्रथम एवं मुख्यतः उत्तरदायी होंगे। लापरवाही की दशा में तत्परता से अनुशासनात्मक कार्यवाही संबंधित/जिलाध्यक्ष/सक्षम अधिकारी द्वारा की जायेगी जिसमें अविलम्ब निलंबन शामिल होगा।*

11. Even the aforesaid Clause 1.13 states that the disciplinary action shall be taken by the concerned Collector/competent authority, which would include suspension without any delay. The said provisions would not lead to amendment in the service rules and it is only an executive instruction framed by the Board of Secondary Education. If it was some rule framed by the State Government in exercise of its constitutional powers under Article 309 or 311 of the Constitution of India then it could have been a different matter. However, in the statutory rules framed by the State Government under such



constitutional powers, no such power has been given to the Collector in respect of Class-II employees. Even Clause 1.13 as quoted above mentions that Collector/Competent Authority would do the needful. Therefore, the Collector, or if he is not the competent authority, then the competent authority would be competent to take action against the employer concerned. This does not give any separate power to the Collector to take action against an Officer holding Class-I and Class-II post irrespective of the position that the Collector is not a disciplinary authority of such officers/employees.

12. Now the question arises that what relief can be granted to the petitioner. Admittedly, the petitioner was Centre Superintendent and he has been involved in criminal case also. FIR at Crime No.131/2023 at Police Station Umaria, District Umaria has been registered against the petitioner under Section 409, 420, 120-B IPC and under provisions of M.P. Recognized Examination Act, 1937.

13. This Court checked the CMIS data from the aforesaid crime number and it was found that the petitioner has been arrested in connection with the crime on 21/03/2023 and he was granted bail only on 23/06/2023 by this Court in M.Cr.C. No.22565/2023. Therefore, the petitioner has spent more than three months in custody in connection with the said crime.

14. It is further revealed that challan has been filed against the petitioner and the Trial Court has taken cognizance against the petitioner and ST No.33/2023 is pending against the petitioner before Second ASJ, Umariya, in which charges have been framed. The petitioner has challenged the order framing the charges in Cr.R. No.3626/2025 before this Court.

15. From the aforesaid facts, two things are clear. Firstly, that the petitioner



has spent more than three months in jail custody and secondly, that a challan for crime involving moral turpitude has been presented against the petitioner.

16. Therefore, though the Collector may have suspended the petitioner without having any competence to do so but in view of first proviso of Rule 9(1) and Rule 2(a) of Rule 9 of M.P. Civil Services (CCA) Rules, a Government servant is deemed to be placed under suspension by order of Appointing Authority with effect from date of his detention if he is detained in custody for a period exceeding 48 hours and further as per proviso to Rule 9(1)(b) he is to be invariably placed under suspension and challan of criminal offence involving corruption or moral turpitude is filed after sanction of prosecution by the Government against him.

17. Rule 9 is as under:

*9. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension-  
(a) where a disciplinary proceeding against him is contemplated or is pending, or*

*(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:*

*[Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him:] [Inserted by Notification No. C-6-2-96-3-(I), dated 3rd August, 1996.]*

*Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.*

*(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-*

*(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;*

*(b) with effect from the date of his conviction, if, in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*



*Explanation. - The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.*

*[(2-a) Where a Government servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is proposed to hold an enquiry against such Government servant under Rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of Rule 14, within a period of 45 days from the date of order of suspension:*

*Provided that where the disciplinary authority is the [State Government or the High Court] [Inserted by Notification No. F-6-5-81-3-I, dated 26-2-1982.], the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of 90 days from the date of order of suspension.]*

*(2-b) Where the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension:*

*Provided that the period of suspension shall in no case be enhanced beyond a period of 90 days from the date of the order of suspension.*

*(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*

*(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant, is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.*





*(5)(a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so:*

*[Provided that the order of suspension shall stand revoked on expiry of the period of forty-five days from the date of order of suspension in case a copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant by the disciplinary authority (if it is not the State Government) without obtaining the orders of the State Government for extension of the period for issue of the said documents, as required under sub-rule (2-b):*

*Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant.] [Inserted by Notification No.F-6-5-81-3-I, dated 26-2-1982.]*

*(b) [In respect of a Government servant, whose orders of suspension stand revoked in accordance with the first or second proviso of clause (a) the authority competent may, if it considers expedient so to do, place him under suspension after a copy of charges and other documents, as required by sub-rule (4) of Rule 14, have been issued to him.] [Inserted by Notification No.F-6-5-81-3-I, dated 26-2-1982.]*

*(c) [Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. [Re-lettered by Notification No.F-6-5-81-3-I, dated 26-2-1982.]*

*(d) An order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate:*

*[Provided that an order of suspension made under the first proviso to sub-rule (1) of Rule 9 shall not be revoked except by an order of the Government made for reasons to be recorded.] [Inserted by Notification No. C-6-2-96-3-(1), dated 3rd August, 1996.]*

(Emphasis supplied)

18. Therefore, though this Court has come to conclusion that the Collector had no authority to place the petitioner under suspension but still since the petitioner has spent more than 90 days in custody in connection with same allegations and the suspension order has been passed by the Collector on the



date of arrest, therefore, in view of Rule 9(2)(a), the petitioner is deemed to be placed under suspension by order of appointing authority from the date of arrest. Hence, despite holding that the order of Collector was without jurisdiction but since granting of relief in the present case would amounts to granting such a relief in violation of Rule 9(2)(a), therefore, this Court refrains from interfering in the order of suspension.

19. It is settled in law that even if order is issued without jurisdiction but if it does justice between the parties and the reversal of the order would amount to reviving the illegality then the Court would not interfere in the matter and revive illegality. Constitutional Courts should not blindly quash justified and proper orders which have done complete justice between the parties only for want of jurisdiction. This Court would not pass any order to subvert the ends of justice but is bound to ensure that the ends of justice are served. This court would not quash an order on mere technicality, if such quashment would revive an illegality, that an order, though without jurisdiction, has cured. Law on this question is well established. In the case of *Chandra Singh v. State of Rajasthan reported in (2003) 6 SCC 545*, the Hon'ble Supreme Court has held as under:-

*43. Issuance of a writ of certiorari is a discretionary remedy. (See Champalal Binani v. CIT [(1971) 3 SCC 20 : AIR 1970 SC 645] .) The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. [See S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd. [(2003) 4 Supreme 44] ] Such a relief can be denied, inter alia, when it would be opposed*



*to public policy or in a case where quashing of an illegal order would revive another illegal one. This Court also in exercise of its jurisdiction under Article 142 of the Constitution of India is entitled to pass such order which will do [ Corrected as per Official Corrigendum No. F.3/Ed. B.J./11/2004 dated 27-1-2004] complete justice to the parties.*

*45. This Court said that this principle applies to all kinds of appeals admitted by special leave under Article 136, irrespective of the nature of the subject-matter. So even after the appeal is admitted and special leave is granted, the appellants must show that exceptional and special circumstances exist, and that, if there is no interference, substantial and grave injustice will result and that the case has features of sufficient gravity to warrant a review of the decision appealed against on merits. So this Court may declare the law or point out the lower court's error, still it may not interfere if special circumstances are not shown to exist and the justice of the case on facts does not require interference or if it feels the relief could be moulded in a different fashion.*

20. In the case of *Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar* reported in (1999) 8 SCC 16, it has been held as under:-

*11. But in the Act, the authorities and their powers have been specified and we do not find any provision which vests power on the Board of Revenue, so we have to proceed on the assumption that the Board of Revenue has no power.*

*12. Therefore, the question is whether the order of the Member of Board of Revenue should be quashed on this ground. If the order is set aside, the result would be that the notice directing the appellant to refund the additional amount of compensation assessed at ten times of the net income would have to be quashed. In other words, the earlier reassessment of compensation made by giving ten times of the net income would revive. If under the law the appellant is not entitled to get compensation more than three times of the net income it would amount to restoring an illegal order.*

*13. In Gadde Venkateswara Rao v. Govt. of A.P. [AIR 1966 SC 828 : (1966) 2 SCR 172] this Court considered the action of the State Government under the Andhra Pradesh Panchayats Samithis and Zilla Parishads Act, 1959 and came to the conclusion that the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act but refused to interfere with the orders of the High Court on the ground that if the High Court had quashed the said order, it would have restored an illegal order and, therefore, the High Court rightly refused to exercise its extraordinary jurisdictional power.*

*14. In Mohd. Swalleh v. Illrd ADJ [(1988) 1 SCC 40 : AIR 1988 SC 94 : (1988) 1 SCR 840] similar view was also expressed by this Court. In that case the order passed by the prescribed authority under the U.P. (Temporary) Control of Rent and Eviction Act, 1947 was set aside by the District Judge in appeal though the appeal did not lie. The High Court came to the finding that the*



*order of the prescribed authority was invalid and improper but the District Judge had no power to sit in appeal. The High Court did not interfere with the orders of the District Judge. The order of the High Court was affirmed by this Court on the ground that though technically the appellant had a point regarding the jurisdiction of the District Judge but the order of the prescribed authority itself being bad, no exception can be taken against the refusal of the High Court to exercise powers under Article 226.*

*15. Therefore, in view of the above ratio laid down by this Court, we hold that even if the Member of Board of Revenue had no power to issue direction for giving notice for refund of the excess amount paid, no exception can be taken to the said order if it is found that legally the appellant was paid excess compensation under the Act.*

*38. For what has been stated above we hold that the order of the learned Member of Board of Revenue directing action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant.*

21. So far as the charge sheet and consequential enquiry is concerned, undoubtedly the Collector had no power to issue the charge sheet. It is settled in law that if the charge sheet is issued by the authority having no competence or there is defect in competence of the charge sheeting authority then if the order is passed by the competent authority then the defect of jurisdiction in the charge sheeting authority would be of no consequence.

Very recently, in *State of Jharkhand Vs. Rukma Kesh Mishra, 2025 SCC*

*Online SC 676*, the Hon'ble Supreme Court has held as under :-

*20. It would, therefore, be profitable to note what is the law declared by this Court on the point as to who can issue the charge-sheet.*

*21. As far back as in 1970, this Court in State of Madhya Pradesh v. Shardul Singh<sup>14</sup> held that Article 311(1) does not in terms require that the authority empowered by that provision to dismiss or remove an officer should initiate or conduct the inquiry. This decision could count as the parent decision on the topic, declaring the law in paragraphs '6' and '10'. The said paragraphs are quoted below for ease of understanding as to how Article 311(1) was construed:*

*"6. Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or holds civil post under the Union or State shall*



*be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. But it is said on behalf of the respondent that that guarantee includes within itself the guarantee that the relevant disciplinary inquiry should be initiated and conducted by the authorities mentioned in the Article. The High Court has accepted this contention. We have now to see whether the view taken by the High Court is correct.*

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*10. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants. Hence we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article".*

*(emphasis supplied)*

*22. Then came the decision in P.V. Srinivasa Sastry v. Comptroller and Auditor General<sup>15</sup>, where this Court reiterated that a departmental proceeding need not be initiated only by the appointing authority and that initiation by a subordinate authority, in the absence of rules, is not vitiated. We consider it appropriate to extract paragraph '4' hereunder:*

*"4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages : the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of*





*the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding*".

*(emphasis supplied)*

23. Yet again, in *Transport Commissioner v. A. Radhakrishna Moorthy*<sup>16</sup>, this Court clearly declared the law as follows:

*"8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal"*.

*(emphasis supplied)*

24. All these decisions were considered by this Court in *Inspector General of Police v. Thavasippan*<sup>17</sup>, and it was ruled as follows:

*"9. ... Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal". ...*

*(emphasis supplied)*

25. Later decisions of this Court in *Government of Tamil Nadu v. S. Vel Raj*<sup>18</sup> and *Commissioner of Police v. Jayasurian*<sup>19</sup> also declare the law in the same vein, albeit in respect of different discipline and appeal rules, that a charge-sheet need not be issued by the appointing authority; any other authority, who is the controlling authority, can initiate departmental proceedings by issuing a chargesheet.

26. At this stage, we are reminded of the Latin phrase *stare decisis et non queta movere* meaning, stand by what has been decided and



*do not disturb what has been settled. While it is true that courts are not restrained by any principle of law from expressing a different view on a point of law or to distinguish precedents (a topic we wish to advert to briefly a little later), stare decisis need not be disregarded to unsettle settled positions. We would read these precedents (referred to in paragraphs 21 to 25, supra) as settling the law that unless the relevant discipline and appeal rules applicable to an officer/employee of an authority within the meaning of Article 12 of the Constitution so require, disciplinary proceedings by issuance of a charge-sheet cannot be faulted solely on the ground that either the Appointing Authority or the Disciplinary Authority has not issued the same or approved it. These precedents have stood the test of time and having full application to the case at hand, could not have been lightly overlooked. A holistic consideration of all these precedents by the High Court was certainly the need of the hour. Thavasippan (supra) had considered the precedents in Shardul Singh (supra), P.V. Srinivasa Sastry (supra) and A. Radhakrishna Moorthy (supra) and P.V. Srinivasa Sastry (supra) was placed before the coordinate Bench in B.V. Gopinath (supra). We are anchored in a belief that had the High Court looked into these precedents, the conclusion would have certainly been otherwise.*

22. On facts, the conduct of the petitioner, as alleged is the gravest conduct in leaking the question paper of Board examination and circulating its solutions even before start of examination. The enquiry has been held and it is not proper to scuttle the enquiry, in view of judgment in the case of ***Rukma Kesh Mishra (Supra)***.

23. Therefore, this petition is **disposed of** with the following directions:

- (i) Challenge to suspension order Annex.P/1 is rejected. Suspension of petitioner is upheld.
- (ii) The charge sheet having been issued by the Collector without competence and authority, therefore, it is directed that the enquiry report Annex.P/6 shall be placed either before the Divisional Commissioner or before the Appointing Authority of the petitioner and the said Authority would take a decision whether to continue with the charges and if the authority comes to conclusion that the charge sheet has been properly issued



by the Collector, then the said authority shall issue notice to the petitioner asking his objections against the enquiry report and then pass appropriate order within 90 days.

24. No order as to costs.

**(VIVEK JAIN)**  
**JUDGE**

RS