SATISH MEHRA
v.
STATE OF N.C.T. OF DELHI & ANR.
(Criminal Appeal No. 1834 of 2012)

NOVEMBER 22, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Code of Criminal Procedure, 1973:

s.482 – Complaint of cheating and forgery in renewal and encashment of Foreign Currency Non-eResident Fixed Deposits – Charges framed against Chief Manager and Senior Manager of Bank and wife and father-in-law of complainant – Quashing of – Held: Power u/s 482, to interdict a criminal proceeding would be available for exercise not only at the threshold of the criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused – Framing of a charge against a person substantially affects his liberty – In the instant case, no positive role having been attributed to the Bank officials in facilitating any action of the other accused persons, proceedings against the said Bank officials are not maintainable – Constitution of India, 1950 – Art.21.

s.482 – Complaint by husband against his wife and father-in-law for causing renewal and encashment of Foreign Currency Non-Resident Fixed Deposits by cheating and forgery – Accused stated to have used an old Investment Renewal Form containing old signatures of the couple which had been misplaced – Held: The signatures and endorsement made by accused (father-in-law) on the said form had been found to be relatively fresh in comparison to the signatures of the couple on the said form – It prima facie discloses commission of offences u/ss 467, 468, 471 and 120-B IPC – Order of High Court quashing the said charges in respect of the said FD against the accused concerned is, clearly unsustainable, and is, therefore, set aside – Penal Code, 1860 – ss. 467, 468, 471 and 120-B.

Penal Code, 1860:

s.466 – 'Forgery' – Explained.

There was matrimonial discord between the appellant-complainant and his wife ('AM'). On 6.1.1994, the appellant filed a complaint with the police on the basis of which an FIR was registered. The case of the appellant was that he alongwith his wife had opened five Foreign Currency Non-Resident Fixed Deposits (FCNRFD); that his father-in-law, namely, 'SKK' forged his signatures on FD receipts and got them renewed in the sole name of 'AM' and the latter unauthorisedly encashed the same. The trial court framed charges against the Chief Manager and Senior Manager of the Branch of Canara Bank, for offences punishable u/ss. 120-B and 420 IPC in respect of FD Nos.22/91 and 9/92 of Canara Bank; and against the father-in-law (SKK) and the wife ('AM') of the complainant for offences punishable u/ss. 120-B, 420, 467, 468, 471 IPC in respect of all five FDs. All the accused approached the High Court for quashing of the charges. The High Court declined any relief to both the Bank Officials, but quashed the charges framed against 'SKK' for offences punishable u/ss.120B and 420 IPC in respect of FD Nos. 22/91 and 9/92 as well as the charges framed against him for offences punishable u/ss.467, 468 and 471 IPC read with s.120B IPC. The High Court further interfered with the charges framed against accused 'AM' for offences punishable u/ss. 467, 468 and 471 read with 120-B IPC. The rest of the charges against the said two accused were maintained. Aggrieved, the two Bank Officials filed appeals against the order of High Court declining relief to them and the complainant filed the other appeal against part relief granted to accused 'SKK'.

Disposing of the appeals, the Court

HELD: 1.1. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred u/s.482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. Such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact, the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused. [Para 14-15] [12-E-G; 13-G-H; 14-A-C]

R.P. Kapur vs. State of Punjab **1960 SCR 388 = AIR 1960 SC 866;** and *Padal Venkata Rama Reddy alias Ramu vs. Kovvuri Styanarayana Reddy and Ors.* **2011 (9) SCR 623 = 2011 (12) SCC 437 – relied on**

1.2. Framing of a charge against an accused substantially affects the person's liberty. The apparent and close proximity between the framing of a charge in criminal proceedings and the paramount rights of a person arrayed as an accused under Art. 21 of the Constitution can be ignored only with peril. In the instant case, neither in the FIR nor in the charge sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants-Bank Officials has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against them is that one was the Chief Manager of the Bank whereas the other, at the relevant time, was working as the Senior Manager. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the action of the other two accused. In such a situation to hold either of the Bank officials to be, even *prima facie*, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. Therefore, the criminal proceeding in the present form and on the allegations levelled are clearly not maintainable against either of the two Bank officials. [Para 19] [17-D-E, G-H; 18-A, D, G]

State of Karnataka vs. L. Muniswamy and others **1977 (3) SCR 113 = AIR 1977 SC 1489;** *Century Spinning & Manufacturing Co. vs. State of Maharashtra* **AIR 1972 SC 545 – relied on**

2.1. From the materials on record it appears that in so far as FD No. 22/91 is concerned, an endorsement on the reverse of the FD was made by accused 'SKK' that the said F.D. may be renewed in the name of 'AM'. However, renewal of the said FD was made by the Bank on the basis of a letter dated 09.10.1992 written by 'AM' to the Bank. Therefore, no liability in respect of the FD bearing No.22/91 can be fastened on accused 'SKK'. Neither is there any allegation against him with regard to receipt of the money against the said FD by accused 'AM'. Similarly, in respect of FD bearing No.9/92 there is no allegation that renewal of the said FD was made on the basis of any endorsement or request made by 'SKK'. Further, there is nothing on record to show that FD

Nos.22/91 and 9/92 of Canara Bank and FDS Nos.103402 and 103403 of Punjab and Sind Bank were renewed in the sole name of 'AM' on the basis of the endorsement made on the reverse of the FD receipts by accused 'SKK' to the said effect. In fact, the said FDs were renewed on the basis of the letters addressed to the Bank by accused 'AM'. Therefore, it cannot be held that the High Court committed any error in quashing the charges against accused 'SKK' for offences punishable u/ss.120B and 420 IPC in respect of FD Nos.22/91 and 9/92, as also for offences punishable u/ss.467, 468, 471 read with s. 120B IPC as regards FD Nos.22/91 and 9/92 of Canara Bank and FDS Nos.103402 and 103403 of Punjab and Sind Bank. [Para 20-21] [19-B-G]

2.2. However, in respect of FD No.0756223 of Vyasa Bank it appears that renewal of the said FD in the sole name of 'AM' was made on the basis of the Investment Renewal Form dated 22.03.1993 which was signed by both the complainant and 'AM'. The said form also contained an endorsement made under the signature of accused 'SKK' to the effect that the FD be renewed in the sole name of 'AM'. It has been found upon investigation and it has also been recorded by the trial court as well as by the High Court that the signatures of 'AM' and the complainant on the said Investment Renewal Form were old signatures and that the Investment Renewal Form had been misplaced by the complainant. The signature and the endorsement made by 'SKK' on the said form had been found to be relatively fresh in comparison to the signatures of 'AM' and the complainant on the said form. This is an additional fact that has to receive due consideration in the process of determination of the *prima facie* liability of accused 'SKK' u/ss. 467, 468 and 471 read with s. 120B IPC. As per the definition of "forgery" contained in s. 464, the action of accused 'SKK' in making the endorsement in the Investment Renewal Form dated

22.03.1993 of Vyasa Bank, in the light of the surrounding facts and circumstances, *prima facie*, would amount to making of a document with an intention of causing it to be believed that the same was made by or by the authority of the joint account holder, (the complainant). The said document having contained an endorsement that the FD be altered/renewed in the single name of accused 'AM' and the Bank having so acted, *prima facie*, the commission of offences u/ss. 467, 468 and 471 read with s. 120B IPC is disclosed against accused 'SKK'. The order of the High Court quashing the charges framed against 'SKK' u/ss. 467, 468 and 471 IPC read with s. 120B IPC in so far as the Investment Renewal Form dated 22.03.1993 and FD No.0756223 with Vyasa Bank, therefore, is clearly unsustainable. The said part of the order of the High Court in so far as the accused 'SKK' is concerned, is set aside. [Paras 21 and 22] [19-G-H; 20-A-H; 21-A-C]

Case Law Reference:

1960 SCR 388	**relied on**	**Para 14**
1977 (3) SCR 113	**relied on**	**Para 16**
AIR 1972 SC 545	**relied on**	**Para 17**
2011 (9) SCR 623	**relied on**	**Para 17**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1834 of 2012.

From the Judgment & Order dated 13.10.2011 of the High Court of Delhi at New Delhi in Crl. Rev. P.No. 299 of 2003.

WITH

Crl.A. Nos. 1836 & 1835 of 2012.

M.N. Krishnamani, Brijender Chhahar, P. Vishwanatha

Shetty, Mukul Gupta, Vishal Arun, Sanjay Chadha, Pradeep Kumar Bakshi, Shailesh Madiyal, Baldev Atrey, Shailendra Saini, B.V. Balaram Das, T.A. Khan, Harish, Rohit Bhardwaj, D.N. Goburdhan Respondent-in-Person for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. In a proceeding registered as FIR case No. 110/94 (P.S. Connaught Place) charges under different provisions of the Indian Penal Code were framed by the learned Trial Court, inter-alia, against the accused appellants G.K. Bhatt and R.K. Arora. In the revision petition filed before the High Court (Crl. Rev. P. No. 304/2003) for quashing of the charges framed, relief has been denied to the two appellants. However, part relief had been granted to two other accused i.e. Anita Mehra (petitioner in Crl. M.C. No. 2255/2003) and S.K. Khosla (Petitioner in Crl. Rev.P. No.299/2003). While denial of relief by the High Court by the impugned order dated 13th October, 2011 has been challenged in the appeals filed by the accused R.K. Arora and G.K. Bhatt, the grant of partial relief to one of the two co-accused i.e. S.K. Khosla has been challenged in the appeal filed by the complainant/ first respondent, Satish Mehra.

3. The facts giving rise to the present appeals may now be noted in some detail.

The appellant Satish Mehra and accused Anita Mehra were married some time in the year 1980. At the relevant point of time they were living in the USA. From about October, 1992, the relations between husband and wife became strained and both were locked in a series of litigations including litigations pertaining to custody of the children born out of the marriage.

4. On 06.01.1994, the appellant Satish Mehra lodged a complaint before the Additional Deputy Commissioner of Police

New Delhi that he along with his wife Anita Mehra had opened five Foreign Currency Non-Resident Fixed Deposits (FCNR FD) of the total value of about Rs.20,00,000/- in their joint names. According to the complainant, accused S.K. Khosla who is his father-in- law had forged his signatures on the F.D receipts and got the same renewed in the sole name of Anita Mehra who, thereafter, encashed the value thereof and unauthorisedly received the payments due. The details of the FCNR FD, according to the complainant, are as follows:

"(i) FCNR FD Nos.9/92 and 22/91 with Canara Bank;

(ii) FCNR FD Nos.103402 and 103403 with Punjab and Sind Bank and ;

(iii) FCNR FD No. 0756223 with Vyasa Bank."

5. On receipt of the aforesaid complaint, FIR No.110/94 was registered, on investigation whereof the following facts appear to have come to light:

(I) S.K. Khosla had made an endorsement on the reverse of the receipt pertaining to FCNR FD Nos.22/91 to the effect that the said FDR be renewed in the sole name of Anita Mehra;

(II) On 23.11.1992 and 12.03.1993 Canara Bank renewed FCNR FD Nos.22/91 and 9/92 respectively on the basis of the letters dated 09.10.1992 written by Anita Mehra to the Bank requesting for the said renewals. Pursuant to the said renewals made by the Bank, Anita Mehra encashed FD No. 22/91;

(III) Before FD No.9/92 could be encashed by Anita Mehra the Bank cancelled the renewal of the said FD in the sole name of Anita Mehra and re-renewed the same in the joint names of Anita Mehra and Satish Mehra;

(IV) On 09.11.1992 Punjab and Sind Bank renewed FDs

Nos. 103402 and 103403 in the sole name of Anita Mehra on the basis of an endorsement made by S.K. Khosla on the reverse of the receipt of each of the said FDs to the effect that the said FDs be renewed in the sole name of Anita Mehra;

(V) Punjab and Sind Bank claimed to have renewed the FD Nos. 103402 and 103403 in the sole name of Anita Mehra on the basis of a letter dated 09.10.1992 written by Anita Mehra to the Bank requesting for such renewal but the said letter seems to be a manipulated document as it was received by the Bank on 09.11.1993 which was much after the renewal of the said FDs; and

(VI) On 22.03.1993 Vyasa Bank renewed FCNR FD No. 0756223 on the basis of a Investment Renewal Form dated 22.03.1993 signed by both Satish Mehra and Anita Mehra; however Satish Mehra claimed that he had made no such request to Vyasa bank and that he had misplaced a blank Investment Renewal Form of Vyasa Bank which contained his signature.

(VII) There was an endorsement of the accused S.K. Khosla in the Investment Renewal Form to the effect that FD No. 0756223 of Vyasa Bank be renewed in the sole name of accused Anita Mehra as against the joint names of Anita Mehra and Satish Mehra. The signatures of Anita Mehra and Satish Mehra in the Investment Renewal Form appear to be old and faded whereas the endorsement made by S.K.Khosla on the said form is a fresh one. The passport number of Satish Mehra entered in the said Form is the old/surrendered passport of the said person.

6. In the light of the aforesaid facts revealed in the course of investigation of FIR No. 110/94, a cancellation report was filed before the learned trial court. The appellant Satish Mehra filed his objections to the said cancellation report. Thereafter, on a due consideration, the learned trial court directed further

investigation in the matter in the course of which the FD receipts in question; the letters dated 09.10.1992 purportedly of accused Anita Mehra to the Canara and Punjab and Sind Bank; the Investment Renewal Form dated 22.03.1993 submitted to Vyasa Bank and the admitted signatures of accused Anita Mehra, S.K. Khosla and the complainant Satish Mehra were sent to the Central Forensic Laboratory. On receipt of the report of the laboratory, charge sheet dated 28.08.1997 was filed by the investigating agency against the accused S.K. Khosla alone.

7. The learned trial court, however, directed summons to be issued to the two appellants G.K. Bhat, Chief Manager of the concerned Branch of Canara Bank and R.K. Arora, Senior Manager of the said Branch as well to one A.P. Singhna, Manager of Punjab and Sind Bank and also to the accused Anita Mehra (wife of the complainant) for trial for offences punishable under Sections 420, 468, 471 read with Section 120 B of the Indian Penal Code.

8. Against the aforesaid order of the learned trial court, the High Court of Delhi was moved by the accused for setting aside the order issuing summons and for quashing the proceeding as a whole. By order dated 23.10.2002, the High Court took the view that as all issues and contentions raised can be so raised before the learned trial court at the time of framing of charge, interference would not be justified. Thereafter, by order dated 21.12.2002 and 08.01.2003, the learned trial court framed charges against the accused appellants, G.K. Bhat and R.K. Arora under Sections 120B and 420 of the Indian Penal Code (in respect of FD Nos. 22/91 and 9/92 of Canara Bank). Charges were also framed against accused S.K. Khosla and Anita Mehra under Sections 120 B, 420, 467, 468, 471 IPC in respect of all five FDs.

9. Aggrieved by the aforesaid orders of the learned trial court, all the accused moved the High Court of Delhi for quashing of the charges framed against them and also for

interference with the Criminal proceedings pending against the accused before the learned trial court.

10. The High Court, by the impugned order dated 13.10.2011, while declining any relief to the appellants G.K. Bhat and R.K. Arora, set aside the charges framed against accused S.K. Khosla under Sections 120 B and 420 IPC in respect of FD Nos. 22/91 and 9/92 as well as the charges framed against the said accused under Sections 467, 468 and 471 IPC read with Section 120 B IPC. In so far as the accused Anita Mehra is concerned, the High Court interfered with the charges framed against the aforesaid accused under Sections 467, 468 and 471 read with Section 120 B. The rest of the charges in so far as the aforesaid two accused S.K. Khosla and Anita Mehra is concerned were maintained by the High Court.

11. Aggrieved, the present appeals have been filed by accused G.K. Bhat and R.K. Arora in so far as FD Nos. 22/91 and 9/92 are concerned. While the other accused have not challenged the order of the High Court declining full and complete reliefs as prayed for by them, it is the complainant/ first informant, Satish Mehra, who has instituted the connected appeal in so far as the part relief granted to accused S.K. Khosla is concerned.

12. We have heard S/Shri M.N. Krishnamani, Brijender Chhahr, P.V.Shetty and Mukul Gupta, learned senior counsel for the respective parties.

13. Learned counsel for the appellants G.K.Bhat and R.K. Arora has argued that no material whatsoever has been brought on record to, even prima facie, show the involvement of either of the accused – appellants with any of the offences alleged. Mere holding of the office of Chief Manager and Senior Manager of the concerned Branch of the Canara Bank, by itself, will not make the accused – appellants liable unless the positive

role of either of the appellants in the renewal of the FDs in the sole name of accused Anita Mehra or in the encashment of one of the FDs (FD No.22/91) by the aforesaid accused is disclosed. Learned counsel has also relied on the provisions of the Regulations/Guidelines, relating to Fixed Deposit, as in force in the Bank to contend that the action of accused – appellants has been in conformity with the mandate of the Banking Norms even if it is to be assumed that they had any role to play in the matter of renewal of the FDs in the sole name of the accused Anita Mehra and the subsequent encashment of FD No.22/91. On the other hand, learned counsel for the first informant /appellant, Satish Mehra has contended that the connivance of the Bank officials in the fraudulent renewal of the FDs is ex facie apparent and further that the endorsements made by accused S.K. Khosla on the reverse of the FDs and in the Investment Renewal Form of Vyasa Bank clearly attract the ingredients of the offence of 'forgery' as defined under Section 464 of the IPC. It is, therefore, submitted that the interference made by the High Court with the charges framed under Sections 467, 468, 471 and 120B IPC against accused S.K. Khosla is not tenable in law.

14. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this court in *R.P. Kapur vs. State of Punjab*[1] wherein the parameters of exercise of the inherent power vested by Section 561A of the repealed Code of Criminal Procedure, 1898, (corresponding of Section 482 Cr.P.C., 1973) had been laid down in the following terms :

1 AIR 1960 SC 866

" (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not

only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

16. The above nature and extent of the power finds an exhaustive enumeration in a judgment of this court in *State of Karnataka vs. L. Muniswamy and others*[2] which may be usefully extracted below :

" 7. The second limb of Mr Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:

. . . . .

This section is contained in Chapter XVIII called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an

2. AIR 1977 SC 1489.

accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

. . . . .

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it

would be impossible to appreciate the width and contours of that salient jurisdiction."

It would also be worthwhile to recapitulate an earlier decision of this court in *Century Spinning & Manufacturing Co. vs. State of Maharashtra*[3] *noticed in L. Muniswamy's* case (Supra) holding that the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the materials warrant the framing of the charge. It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be asked to face a trial.

17. While dealing with contours of the inherent power under Section 482 Cr.P.C. to quash a criminal proceeding, another decision of this court in *Padal Venkata Rama Reddy alias Ramu vs. Kovvuri Satyanarayana Reddy and others* reported in (2011) 12 SCC 437 to which one of us (Justice P.Sathasivam) was a party may be usefully noticed. In the said decision after an exhaustive consideration of the principles governing the exercise of the said power as laid down in several earlier decisions this court held that:

> 31. . . . . When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in *Bhajan Lal*[4]. The powers possessed by the High Court under Section 482 are very wide and at the

3. AIR 1972 SC 545.

4. 1992 Supp. (1) SCC 335.

same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution."

18. In an earlier part of this order the allegations made in the FIR and the facts disclosed upon investigation of the same have already been noticed. The conclusions of the High Court in the petitions filed by the accused for quashing of the charges framed against them have also been taken note of along with the fact that in the present appeals only a part of said conclusions of the High Court is under challenge and therefore, would be required to be gone into.

19. The view expressed by this Court in *Century Spinning's* case (supra) and in *L. Muniswamy's* case (supra) to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in *Century Spinning* and *Muniswamy* (supra). It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants, i.e., G.K. Bhat and R.K. Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of

the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No. 21/91 to Anita Mehra or in cancelling the FD No.9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge sheet filed before the court. There can be no manner of doubt that some particular individual connected with the Bank must have authorized the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused – appellant G.K. Bhat and R.K. Arora.

20. The next question that has to be addressed is whether

the criminal charges against accused S.K. Khosla under Sections 120B and 420 IPC in so far as FD Nos. 22/91 and 9/92 are concerned along with the charges under Sections 467, 468 and 471 read with Section 120B of the IPC had been rightly quashed by the High Court. From the materials on record it appears that in so far as FD No. 22/91 is concerned an endorsement on the reverse of the FD was made by accused S.K. Khosla that the said F.D. may be renewed in the name of Anita Mehra. However, renewal of the said FD was made by the Bank on the basis of a letter dated 09.10.1992 written by Anita Mehra to the Bank. If the above fact has been revealed in the course of investigation of the FIR no liability in respect of the FD bearing No.22/91 can be fastened on the accused S.K. Khosla. Neither is there any allegation against S.K. Khosla with regard to receipt of the money against the aforesaid FD by Anita Mehra. Similarly in respect of FD bearing No.9/92 there is no allegation that renewal of the said FD was made on the basis of any endorsement or request made by S.K. Khosla. In the light of above facts it cannot be held that the High Court had committed any error in quashing the charges under Sections 120B and 420 IPC against the accused S.K. Khosla in so far as the aforesaid two FDs, i.e. FD Nos.22/91 and 9/92, are concerned.

21. Coming to the charges under Sections 467, 468, 471 read with Section 120B IPC framed against accused S.K. Khosla, we do not find that FD Nos.22/91 and 9/92 of Canara Bank and FDS Nos.103402 and 103403 of Punjab and Sind Bank were renewed in the sole name of Anita Mehra on the basis of the endorsement made on the reverse of the FD receipts by accused SK Khosla to the above effect. In fact, the said FDs were renewed on the basis of the letters addressed to the Bank by accused – Anita Mehra. However, in respect of FD No.0756223 of Vyasa Bank it appears that renewal of the aforesaid FD in the sole name of Anita Mehra was made on the basis of the Investment Renewal Form dated 22.03.1993 which was signed by both Satish Mehra and Anita Mehra. The

said form also contained an endorsement made under the signature of accused SK Khosla to the effect that the FD be renewed in the sole name of Anita Mehra. It has been found upon investigation of the FIR and it has also been recorded by the learned trial court as well as by the High Court that the signatures of Anita Mehra and Satish Mehra on the aforesaid Investment Renewal Form were old signatures and that the Investment Renewal Form had been misplaced by Satish Mehra. The particulars of Satish Mehra entered in the said Investment Renewal Form, i.e., Passport number etc. being of the expired Passport can be understood to be facts supporting the allegations made in the FIR and the conclusion of the investigating agency that the accused S.K. Khosla had used an Investment Renewal Form signed by Satish Mehra which was misplaced by him. The signature and the endorsement made by S.K. Khosla on the said form had also been found, upon investigation, to be relatively fresh in comparison to the signatures of Anita Mehra and Satish Mehra on the said form. This is an additional fact that has to receive due consideration in the process of determination of the prima facie liability of the accused S.K. Khosla under Sections 467, 468 and 471 read with Section 120B of the Indian Penal Code.

22. Section 464 of Indian Penal Code which defines the offence of “forgery” encompasses a dishonest or fraudulent act of a person in making a document with the intention of causing it to be believed that such document was made, signed, sealed etc. by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed etc. If such an act of a person is covered by the definition of “forgery” contained in Section 464 of the Penal Code we do not see as to why the action of the accused S.K. Khosla in making the endorsement in the Investment Renewal Form dated 22.03.1993 of Vyasa Bank, in the light of the surrounding facts and circumstances already noted, cannot, prima facie, amount to making of a document with an intention of causing it to be believed that the same was made by or by

the authority of the joint account holder Satish Mehra. The said document having contained an endorsement that the FD be altered/renewed in the single name of accused Anita Mehra and the Bank having so acted, prima facie, the commission of offences under Sections 467, 468 and 471 read with Section 120B IPC, in our considered view, is disclosed against the accused S.K. Khosla. The order of the High Court quashing the charges framed against S.K. Khosla under Sections 467, 468 and 471 IPC read with Section 120B IPC in so far as the Investment Renewal Form dated 22.03.1993 and FD No.0756223 with Vyasa Bank, therefore, is clearly unsustainable. We therefore interfere with the aforesaid part of the order of the High Court in so far as the accused S.K. Khosla is concerned.

23. Consequently and in the light of the foregoing discussions we allow the Criminal Appeals arising out of Special Leave Petition (Crl) Nos. 3546 and 910 of 2012 and allow the Criminal appeal arising out of Special Leave petition (Crl) No. 569 of 2012 in part and to the extent indicated above.

R.P. Appeals disposed of.

SRI DEBENDRANATH NANDA
v.
SHRI CHANDRA SHEKHAR KUMAR
(Civil Appeal No. 8206 of 2012)

NOVEMBER 22, 2012.

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Contempt of Court:

Contempt proceedings – Order of State Government to adjust the appellant an Acharya Pandit in a Government Aided Institution against existing vacancy of Head Pandit in Government Sanskrit Institution – Not implemented by Department – High Court directing to consider the case of appellant following an earlier judgment – Non-compliance of – Contempt proceedings – Dropped by High Court observing that the appellant had completed the age of 58 years – Held: Court is fully satisfied that for one reason or the other, the appellant was dragged for nearly 14 years and by efflux of time, he has reached the age of 60 years – Therefore, as on date, there cannot be any positive direction for posting him at the appropriate place – Though the appellant has made out a case for contempt, no purpose will be served by taking action against the erring officials – Instead, appellant can be adequately compensated by way of monetary benefits – Accordingly, Commissioner-cum-Secretary, Higher Education Department is directed to assign suitable post to the appellant and corresponding monetary benefits w.e.f. 21.07.1999 – Service law.

The appellant, whose promotion as Acharya Pandit was approved by the State Government by its order dated 6.12.1994 w.e.f. 31.1.1987, was found surplus in the Government Aided Institution and, consequently, by State Government's order dated 16.3.1995, he was adjusted in

the vacancy of Head Pandit in Government Sanskrit Institution. The appellant represented before the State Government for his adjustment against the existing vacant post of Lecturer in Sanskrit Sahitya. During the pendency of the said representation, the State Government, by order dated 6.6.1996, cancelled the order dated 16.3.1995 and directed the appellant to join his former place of posting in the Aided Institution. The appellant unsuccessfully challenged the order before the State Administrative Tribunal and ultimately filed a writ petition before the High Court, which by order dated 21.7.1999 directed the State Government to consider the case of the appellant following the judgment in Kabita Manjari Kar's case (decided on 27.4.1995). However, in spite of several rounds of litigation, the order dated 21.7.1997 was not complied with and ultimately the appellant filed contempt proceedings, which were dropped by the High Court observing that the appellant had completed 58 years of age and the issue of his continuance beyond 58 years could not be considered in contempt proceedings.

Allowing the appeal, the Court

HELD: 1.1. The record shows that at the Government level the grievance of the appellant was properly taken care of and it is only at the Department level, the case of the appellant was dragged without giving him the posting at the appropriate place as directed by the Government. This Court is fully satisfied that for one reason or the other, the appellant was dragged for nearly 14 years and by efflux of time, now he has reached the age of 60 years, therefore, as on date, there cannot be any positive direction for posting him at the appropriate place. [para 10] [33-G-H; 34-A]

1.2. However, taking note of all the earlier orders of

the High Court, undertaking given by the standing counsel, affidavit filed by the Commissioner-cum-Secretary to Government and the decision of the Minister, School and Mass Education Department, this Court is satisfied that the appellant is entitled for equivalent monetary benefits as rightly observed by the State Government (Minister concerned) about the appellant's entitlement, posting and other benefits at par with the case of *Kabita Manjari Kar* **and the interpretation of the Department is unacceptable. [para 10] [34-B-C]**

Kabita Manjari Kar vs. State of Orissa & Ors. **(O.J.C. No. 1667 of 1992 disposed of on 27.04.1995) –** ***referred to***

1.3. Though the appellant has made out a case for contempt, no purpose will be served by taking action against the erring officials, instead the appellant can be adequately compensated by way of monetary benefits. Accordingly, the Commissioner-cum-Secretary, Higher Education Department is directed to assign suitable post to the appellant and corresponding monetary benefits from the date on which the Department was asked to consider, i.e., 21.07.1999, and settle the same within a period of 3 months. [para 11] [34-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8206 of 2012.

From the Judgment & Order dated 21.7.2011 of the High Court of Orissa at Cuttack in Contc. No. 923 of 2010.

Ambika Das, Rekha Pandey for the Appellant.

Radha Shyam Jena for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 21.07.2011 passed by the High Court of Orissa at Cuttack in CONTC No. 923 of 2010 whereby the Division Bench dropped the contempt proceeding filed by the appellant herein against the Respondent herein.

3. **Brief Facts:**

(a) On 03.02.1976, Sri Debendranath Nanda - the appellant herein was originally appointed as Sanskrit Pandit (Shastri Pandit) in Adarsa Ayurveda Vidyalaya, Cuttack, a Government Aided Institution. The appellant herein got promoted to the rank of Acharya Pandit w.e.f. 31.01.1987 in order to teach students of Acharya classes. His promotion to the post of Acharya Pandit was approved by the State Government vide Order dated 06.12.1994 w.e.f. 31.01.1987.

(b) In the year 1984, the State Government took a policy decision to introduce 10+2+3 pattern of education in Sanskrit Institutions functioning in the State of Orissa. Accordingly, Upa-shastri (+2 standard) was introduced in Acharya Institutions.

(c) In the year 1987, the State Government introduced Shastri courses (+3 degree course) in the Sanskrit Institutions in the State of Orissa and it was also decided that the Acharya Courses which is equivalent to M.A. Degree will be taught only in the Departments of Sanskrit University and the said decision was to be implemented w.e.f. Academic Session 1987-1988. In pursuance of the same, the State Government, vide order dated 19.10.1987, decided that the institutions where Acharya Courses were taught up to the Academic Session 1986-87 and the teachers having Acharya qualification which is equivalent to M.A. Degree will be adjusted against the post of Lecturers which will be created for Upa-Shastri and

Shastri courses in those institutions according to the staffing pattern prescribed by the Government.

(d) In the year 1988, Sri Jagannath Sanskrit Vishwa Vidyalaya (Sanskrit University) took a decision to abolish Acharya Courses from the Sanskrit Institutions and it was decided that the same will be taught at the University level only. In pursuance of the said decision, Acharya Courses were abolished from Sanskrit Institutions in the State of Orissa w.e.f. 1991. Consequently, the State Government took a decision to adjust surplus Acharya Pandits teaching Acharya Courses as Sanskrit Lecturers in Upa-Shastri and Shastri Institutions run by the State Government or in the Aided Institutions imparting 10+2+3 education in Sanskrit. Since the appellant herein was found to be surplus in the Adarsa Ayurveda Vidyalaya, Cuttack, the State Government, vide order dated 16.03.1995, adjusted him against the existing vacancy of Head Pandit in Government Sanskrit Institution, Baripada.

(e) The appellant herein represented before the State Government for his adjustment against the existing vacant post of Lecturer in Sanskrit Sahitya. Vide communication dated 29.09.1995, Addl. Secretary to Government of Orissa recommended his case to the Director, Secondary Education, Orissa for adjustment in the light of the order dated 19.10.1987 against the said vacancy. During the pendency of the said representation, vide Order dated 06.06.1996, the State Government cancelled the order dated 16.03.1995 and the appellant was directed to join his former place of posting at Adarsa Ayurveda Vidyalaya, Cuttack and the arrear dues payable on account of salary for the intervening period from 04.05.1995 to the date of joining in Government Sanskrit Institution, Baripada to the date of joining in Adarsa Ayurveda Vidyalaya, Cuttack had to be paid by the latter from out of the provisions of grant-in-aid and also that the above period will be treated as

service spent on duty in Adarsha Ayurveda Vidyalaya, Cuttack.

(f) Aggrieved by such cancellation and non-payment of salary for the abovesaid period, the appellant herein filed Original Application No. 1604 of 1996 before the Orissa Administrative Tribunal, Bhubaneshwar. The Tribunal, vide order dated 10.07.1996, admitted the O.A. and stayed the cancellation order dated 06.06.1996 and directed the appellant herein to continue in the Government Sanskrit Institution, Baripada. In pursuance of the said interim order, the State Government, vide order dated 21.11.1996, withdrew the departmental letter dated 06.06.1996 and requested the Director, Secondary Education, Bhubneshwar to hand over the charge of the office of the Head Pandit, Government Sanskrit Institution, Baripada to the appellant herein immediately. The Tribunal, vide final order dated 21.05.1997, dismissed OA No. 1604 of 1996 holding that a teacher of the Aided Educational Institutions cannot be promoted to the post in Government Educational Institutions even though the State Government is paying salary of a teacher under direct scheme and cancelled the promotion of the appellant herein.

(g) Being aggrieved by the said order, the appellant herein filed a petition being OJC No. 8397 of 1997 before the High Court. By order dated 21.07.1999, the High Court disposed off the petition directing the State Government to consider the case of the appellant herein following the judgment rendered in a similar case, viz., *Smt. Kabita Manjari Kar vs. State of Orissa & Ors.* (O.J.C. No. 1667 of 1992 disposed of on 27.04.1995) of the same High Court.

(h) After several rounds of litigation including filing of various applications before the High Court for the implementation of its order dated 21.07.1997, various

communication with the State Government, Department of School and Mass Education, filing of contempt proceedings before the High Court and lastly, the High Court, in CONTC No. 923 of 2010, by impugned order dated 21.07.2011, dropped the contempt proceeding against the respondent herein on the ground that the appellant herein has completed 58 years of age and the dispute as to whether the appellant herein has retired from service or has to continue beyond 58 years cannot be decided in a contempt proceeding.

(i) Aggrieved by the said decision, the appellant herein has preferred this appeal by way of special leave petition before this Court.

4. Heard Ms. Ambika Das, learned counsel for the appellant and Mr. Radha Shyam Jena, learned counsel for the respondent.

5. The only point for consideration in this appeal is whether the appellant has made out a case for any relief pursuant to the earlier orders of the High Court and decision at the level of the Government? Apart from this, we have to consider whether the High Court was justified in dropping the contempt proceeding filed by the appellant?

6. According to the appellant, though the State Government approved him in the post of Acharya Pandit, due to policy decision, he was found surplus and by order dated 16.03.1995, he was adjusted as Lecturer in Government Sanskrit Institution, Baripada (A Degree College) but the said order was cancelled by a subsequent order dated 06.06.1996. Challenging the same, the appellant filed an application being OA No. 1604 of 1996 before the State Administrative Tribunal, Bhubaneshwar. The Tribunal, vide order dated 21.05.1997, dismissed the application filed by the appellant herein. When this order was challenged by the appellant before the High Court

by filing a writ petition bearing O.J.C. No. 8397 of 1997, the same was disposed of by order dated 21.07.1997 directing the State Government to consider the case of the appellant following the judgment rendered in a similar case, viz., *Smt. Kabita Manjari Kar* (supra). It is the grievance of the appellant that in spite of such direction and subsequent orders reiterating the same as well as the decision of the State Government (Minister concerned), School & Mass Education, who considered his case and directed to give him a post equivalent to that he was holding at Government Sanskrit Institution, Baripada, he was neither given necessary posting nor paid any salary for the same which necessitated him for filing contempt petition bearing CONTC No. 923 of 2010 before the High Court. By impugned order dated 21.07.2011, the High Court disposed of the contempt petition by passing the following order:

> " 21.07.2011
>
> Heard learned counsel for the petitioner and learned counsel for the State.
>
> The dispute now arose as to whether the petitioner has retired from service or he has to continue beyond 58 years cannot be decided in a contempt proceeding.
>
> The contempt proceeding is according dropped.
>
> Sd/- B.P. Das,J.
> Sd/- SK Mishra,J."

Questioning the same, the appellant has approached this Court. Inasmuch as in the earlier part of our order, we have narrated the grievance of the appellant, various orders, directions etc., there is no need to repeat the same once again.

7. The claim of the appellant is mainly on the basis of the order dated 21.07.1999 passed by the High Court in OJC No. 8397 of 1997 filed by him which reads as under:

> "IN THE HIGH COURT OF ORISSA: CUTTACK
> ORDER SHEET
> O.J.C. NO. 8397 OF 1997
>
> Debendranath Nanda ....Petitioner
>
> Versus
>
> State of Orissa & Ors. ....Respondents
>
> **ORDER**
>
> 21.07.1999
>
> Heard learned counsel for petitioner and the learned counsel for State.
>
> We dispose of the writ application with a direction to opposite party nos. 1 and 2 to consider the petitioner's case in the light of decision of this Court in *Smt. Kabitamanjari Kar vs. State of Orissa and Others* (OJC No. 1667 of 1992 disposed of on 27.4.1995) after considering its applicability to the facts of petitioner's case. Let the exercise be undertaken within three months from the date of receipt of our order. The question of entitlement of the petitioner shall be decided while adjudicating his case in the light of Smt. Kabita Manjari Kar's case referred to above.
>
> Requisites along with copy of the judgment referred to above shall be filed for communication of our order to opp. Party nos. 1 and 2 by Monday.
>
> Sd/-
> A. Pasayat, A.C.J.
> Sd/-
> B.P.Das,J."

It is further seen that even after prolonged correspondence with the concerned Educational authorities, the said direction was not complied with and the appellant again mentioned the

matter before the High Court. On 19.07.2005, in the same petition, the High Court passed the following order:

"IN THE HIGH COURT OF ORISSA: CUTTACK
ORDER SHEET
O.J.C. NO. 8397 OF 1997

Debendranath Nanda ....Petitioner

Versus

State of Orissa & Ors. ....Respondents

ORDER

19.07.2005 O.J.C. NO. 8397 OF 1997

Heard Mr. B. Routray, learned counsel for the petitioner and Mr. Rath, learned Addl. Standing counsel for the School & Mass Education Department.

Considering the submissions made by both the parties, this Court directs the learned Addl. Standing counsel to file an affidavit in compliance of the order passed by this Court on 21.7.1999 within ten days.

List this case on 2nd August, 2005.

Sd/- I.M. Quddusi,J.
Sd/- Pradip Mohanty,J."

Pursuant to the direction of the High Court, Sri Gagan Kumar Dhal, Commissioner-cum-Secretary to Government of Orissa, School and Mass Education Department, Orissa, Bhubaneswar, Dist. Khurda filed an affidavit dated 01.08.2005 stating that the order of the High Court dated 21.07.1999 has been complied with. Since according to the appellant, he was not given proper relief as directed by the High Court, particularly, in the light of *Smt. Kabita Manjari Kar* (supra), he made a representation to the State Government, School & Mass Education Department. The State Government directed the

concerned educational authorities to pass appropriate orders as directed by the High Court in *Smt. Kabita Manjari Kar's* case expeditiously. Even after several years, in spite of the decision at the level of the Minister, School & Mass Education, according to the appellant, he was not given proper posting and arrears of salary.

8. It is also brought to our notice that the matter pertaining to the appellant was also placed before the High Court Level Permanent and Continuous Lok Adalat on 19.12.2009 and on the assurance of the learned counsel appeared on behalf of the School and Mass Education Department that the order, if not complied with, will be complied by the end of May, 2010, the contempt proceedings were dropped, which reads as under:

"ORDER
19.12.2009

This matter is placed before the High Court Level Permanent and Continuous Lok Adalat.

It is undertaken by the learned counsel appearing for the School and Mass Education Department that the order alleged to have been violated, if not complied with as yet, shall be complied with by the end of May, 2010 failing which it shall be construed to be contempt of this Court.

A copy of this order shall be furnished to the office of the learned Advocate General.

Accordingly, the contempt proceeding is dropped.

Urgent certified copy of this order be granted on proper application."

The appellant has also brought to our notice an affidavit filed by one Sri Madhusudan Padhi, Commissioner-cum-Secretary, Higher Education Department, Government of Orissa dated 20.07.2010 before the High Court. The following

information in paragraph 6 of that affidavit is relevant which reads as under:

> "6. That, it is most humbly submitted that after the said orders were passed by the Hon'ble Court, this deponent took sincere steps in the matter and necessary Govt. order has been obtained in posting the petitioner as Lecturer in Sanskrit in Sri Jaganath Veda Karmak and Mohavidyalaya, Puri. Relevant Govt. orders issued in favour of the petitioner in posting him as Lecturer in Sanskrit is appended as Annexure A/1 for kind perusal of the Hon'ble Court."

By explaining the same as mentioned above, the officer tendered unconditional apology for the delay in complying with the order of the High Court.

9. Apart from placing various communications/orders of the concerned Department, according to the appellant, he could not get any favourable order from the Department concerned. In such circumstance, as a last resort, the appellant moved the High Court by filing Contempt Petition being CONTC. No. 923 of 2010. The order dated 21.07.2011, passed by the High Court in the contempt case dropping the contempt proceeding has already been extracted in the earlier part of our order.

10. We have heard learned counsel appearing for the State and also perused the reply filed on behalf of the respondent. The copy supplied by the appellant relating to various orders issued by the Minister, School and Mass Education Department to the officer concerned shows that at the Government level the grievance of the appellant was properly taken care of and it is only at the Department level, the appellant was dragged from here and there by one reason or the other without giving him the posting at the appropriate place as directed by the Government. Since we have already highlighted all the details in the earlier part of our order, there is no need to traverse the same once again and we are fully

satisfied that for one reason or the other, the appellant was dragged for nearly 14 years and by efflux of time, now he has reached the age of 60 years, hence, as on date, there cannot be any positive direction for posting him at the appropriate place. However, taking note of all the earlier orders of the High Court, undertaking given by the standing counsel, affidavit filed by the Commissioner-cum-Secretary to Government and the decision of the Minister, School and Mass Education Department, we are satisfied that the appellant is entitled for equivalent monetary benefits as rightly observed by the State Government (Minister concerned) about the appellant's entitlement, posting and other benefits at par with the case of *Smt. Kabita Manjari Kar* (supra) and we hold that the interpretation of the Department is unacceptable.

11. In view of the above discussion, though the appellant has made out a case for contempt, we feel that no purpose will be served by taking action against the erring officials, instead the appellant can be adequately compensated by way of monetary benefits. Accordingly, we direct the Commissioner-cum-Secretary, Higher Education Department, Bhubaneswar, to assign suitable post to the appellant and corresponding monetary benefits from the date on which the Department was asked to consider, i.e., 21.07.1999 and settle the same within a period of 3 months from the date of receipt of the copy of this judgment.

12. The appeal is allowed to the extent mentioned above. The appellant is entitled to cost of Rs.25,000/- payable by the Education Department.

R.P. Appeal Allowed.

CHAIRMAN, LIC OF INDIA & ORS.
v.
A. MASILAMANI
(Civil Appeal No. 8263 of 2012)

NOVEMBER 23, 2012

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR, JJ.]

Service Law – Disciplinary proceedings – Punishment imposed in disciplinary proceeding set aside by Court/tribunal on technical grounds – Whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings, from the point that they stood vitiated – Held: Once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, it must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same.

Service Law – Disciplinary proceedings – Punishment imposed in disciplinary proceeding set aside by Court/tribunal on technical grounds – Opportunity to disciplinary authority, to take up and complete the proceedings, from the point that they stood vitiated – Whether may be denied on the ground of delay in initiation, or in conclusion of the disciplinary proceedings – Held: The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such power is de hors the limitation of judicial review – Same principle applicable in relation to there being a delay in conclusion of disciplinary proceedings – On facts, matter remitted to the disciplinary authority to enable it to take fresh decision, taking into consideration the gravity of the charges involved, as to whether it may still be required to hold a de novo enquiry, from the stage that it stood vitiated, i.e., after issuance of charge-sheet – In the event that the authority takes a view, that the facts and circumstances of the case require a fresh enquiry, it may proceed accordingly and conclude the said enquiry, most expeditiously – Life Insurance Corporation of India (Staff) Regulations, 1960 – Regulations 39(1) and 46(2).

Words and Phrases – "consider" – Meaning of – Dictionary meaning – Term "consider" postulates consideration of all relevant aspects of a matter – Clear connotation to the effect that there must be active application of mind.

The respondent was working with the appellant-Corporation as a Higher Grade Assistant. Disciplinary proceedings were initiated against him by the appellants. The proceedings were quashed by the High Court.

The High Court after reappreciating the entire evidence available on record, came to the conclusion that in the course of enquiry proceedings, certain witnesses had not been examined in the presence of the delinquent respondent, and that hence, no proper opportunity was given to him to cross-examine such witnesses; that moreover, the documents relied upon by the Enquiry Officer, were not properly proved by any witness and ultimately, the findings of the Enquiry Officer stood vitiated, for non-compliance with mandatory requirements of the applicable regulations as well as for violating of the principles of natural justice. The court further held that the Appellate Authority had not applied its mind to the case, and had failed to consider the case as required under Regulation 46(2) of the Life Insurance Corporation of India (Staff) Regulations, 1960. Thus, the court set aside the punishment imposed upon the respondent, and also refused to give the appellant any opportunity, to continue the enquiry from the point that it stood vitiated.

The appellants submitted before this Court that the High Court had exceeded its jurisdiction by quashing the disciplinary proceedings, as well as the punishment imposed, stating that the same did not fall within the scope of judicial review and that moreover, the decision to not remand the case for reconsideration at such a belated stage, could also not be justified.

The following questions therefore arise for consideration: 1) When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds, i.e., non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings, from the point that they stood vitiated and; 2) If the answer to question no.1 is, that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

Allowing the appeal, the Court

HELD: 1. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. [Para 9] [47-C]

Managing Director, ECIL, Hyderabad etc.etc. v. B. Karunakar etc.etc. **AIR 1994 SC 1074: 1993 (2) Suppl. SCR 576;** *Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls & Ors.* **(2002) 10 SCC 293;** *U.P. State Spinning C. Ltd. v. R.S. Pandey & Anr.* **(2005) 8 SCC 264: 2005 (3) Suppl. SCR 603 and** *Union of India v. Y.S. Sandhu, Ex-*

Inspector **AIR 2009 SC 161: 2008 (13) SCR 784 – relied on.**

2. Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/ tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds. The court/ tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is *de hors* the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings.The facts and circumstances of the case in question, have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion. [Para 10] [47-F-H; 48-A-C]

State of U.P. v. Brahm Datt Sharma & Anr. **AIR 1987 SC 943: 1987 (2) SCR 444;** *State of Madhya Pradesh v. Bani Singh & Anr.* **AIR 1990 SC 1308: 1990 Suppl. SCC 738;** *Union of India & Anr. v. Ashok Kacker* **1995 Supp (1) SCC 180;** *Secretary to Government, Prohibition & Excise*

Department v. L. Srinivasan **(1996) 3 SCC 157: 1996 (2) SCR 737;** *State of Andhra Pradesh v. N. Radhakishan* **AIR 1998 SC 1833;** *M.V. Bijlani v. Union of India & Ors.* **AIR 2006 SC 3475: 2006 (3) SCR 896;** *Union of India & Anr. v. Kunisetty Satyanarayana* **AIR 2007 SC 906: 2006 (9) Suppl. SCR 257 and** *The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha* **AIR 2012 SC 2250 – relied on .**

3. The word "consider", is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that, there must be active application of the mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. [Para 11] [48-F-H]

Director, Marketing, Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar **(2006) 11 SCC 147: 2006 (2) Suppl. SCR 880 and** *Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr.* **AIR 2008 SC 1771: 2008 (4) SCR 1051 – referred to.**

4. In the instant case, the impugned judgment cannot be sustained in the eyes of law and is therefore set aside. The matter is remitted to the disciplinary authority to enable it to take a fresh decision, taking into consideration the gravity of the charges involved, with respect to whether it may still be required to hold a *de novo* enquiry, from the stage that it stood vitiated, i.e., after issuance of charge-sheet. The disciplinary authority, while taking such a decision must bear in mind that charges are merely technical as the loan was taken for construction of a residential premises and the said loan was used effectually to construct the premises as per the sanctioned plan, and that it was only then that the said premises were put to commercial use. In the event that the authority takes a view, that the facts and circumstances of the case require a fresh enquiry, it may proceed accordingly, and conclude the said enquiry most expeditiously. [Para 12] [49-C-F]

Case Law Reference:

1993 (2) Suppl. SCR 576	**relied on**	**Para 9**
(2002) 10 SCC 293	**relied on**	**Para 9**
2005 (3) Suppl. SCR 603	**relied on**	**Para 9**
2008 (13) SCR 784	**relied on**	**Para 9**
1987 (2) SCR 444	**relied on**	**Para 10**
1990 Suppl. SCC 738	**relied on**	**Para 10**
1995 Supp (1) SCC 180	**relied on**	**Para 10**
1996 (2) SCR 737	**relied on**	**Para 10**
AIR 1998 SC 1833	**relied on**	**Para 10**
2006 (3) SCR 896	**relied on**	**Para 10**
2006 (9) Suppl. SCR 257	**relied on**	**Para 10**
AIR 2012 SC 2250	**relied on**	**Para 10**
2006 (2) Suppl. SCR 880	**relied on**	**Para 11**
2008 (4) SCR 1051	**relied on**	**Para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8263 of 2012.

From the Judgment & Order dated 10.01.2011 of the High Court of Judicature at Madras in Writ Appeal No. 7 of 2011.

Kailash Vasdev, Indra Sawhney for the Appellants.

V. Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. Leave granted.

This appeal has been preferred against the impugned judgment and order dated 10.1.2011, passed by the High Court of Judicature at Madras in Writ Appeal No. 7 of 2011, by way of which, the Division Bench affirmed the judgment and order dated 17.2.2010, passed by the learned Single Judge in Writ Petition No.11152 of 2002, by way of which, the disciplinary proceedings initiated by the appellants against the respondent have been quashed.

2. Facts and circumstances giving rise to this appeal are as under:

A. The respondent was working with the appellant-Corporation as a Higher Grade Assistant at its Namakkal Branch. He had applied for, and obtained, a housing loan on 20.6.1991 from the India Housing Finance & Development Ltd., Salem, for the purpose of construction of his house to the extent of 1095 sq.ft., and had also applied to the appellant-Corporation for a housing loan, under the Corporation's Individual Employees Housing Scheme for the purpose of completing construction of the said house. An amount to the tune of Rs.1,30,000/- was outstanding, against the loan availed by the respondent from the India Housing Finance & Development Ltd., as also a sum of Rs.48,000/- required for completion of the said construction. The said loan was sanctioned after completing all requisite formalities. However, it came to the notice of the appellant-Corporation that there had been certain irregularities and deviations with respect to the

construction of the said house, and that the loan had been obtained upon non-disclosure of facts in entirety. Thus, a charge sheet dated 6.1.1998 was issued to the respondent, for violating the provisions of Regulations 20, 21, 27 and 39(1) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as, the 'Regulations 1960').

B. The respondent submitted his reply to the said charges, denying all of them, vide reply dated 30.1.1998. The Disciplinary Authority, however, was not satisfied with the explanation furnished by the respondent and therefore, proceeded to conduct an enquiry, in relation to which, the Enquiry Officer submitted enquiry report dated 27.1.1999. The Disciplinary Authority served upon the respondent, a copy of the said enquiry report, alongwith a show-cause notice dated 26.4.1999 giving him a period of 15 days to reply, to which the respondent furnished his reply dated 17.5.1999.

C. The Disciplinary Authority, after considering the reply and the enquiry report, imposed a penalty of reduction in the basic pay of the respondent, to the minimum amount specified in the time scale applicable to him, in terms of Regulation 39(1)(d) of the Regulations, 1960, as had been proposed by it in the aforementioned show cause notice, vide order dated 31.5.1999.

D. Aggrieved, the respondent preferred an appeal under Regulation 40 of the Regulations, 1960, which was dismissed by the Appellate Authority, vide order dated 11.4.2000. Thereafter, the respondent preferred a Memorial to the Chairman, Life Insurance Corporation of India, in Bombay, which was dismissed vide order dated 20.9.2001.

E. Aggrieved, the respondent preferred a writ petition for the purpose of quashing of enquiry proceedings, the imposition of penalty, and also for re-imbursement of the amount that had been deducted from his salary, including all attendant benefits. The said writ petition was allowed by the learned Single Judge

of the High Court, vide order dated 17.2.2010, observing that the witnesses to the case, in the process of Departmental Enquiry, had been examined in violation of the statutory rules applicable herein, as well as in violation of the principles of natural justice. The delinquent was not accorded adequate opportunity to cross-examine the witnesses. The Appellate Authority also failed to consider whether the procedure followed by the Enquiry Officer, as well as that followed by the Disciplinary Authority, satisfied the requirements of Regulation 46(2)(a) of the Regulations, 1960. This is because, mere concurrence of the Appellate Authority, with the findings recorded by the Enquiry Officer, without provision of adequate reasoning, cannot be said to amount to adequate application of judicial mind by the Appellate Authority, for the purpose of imposing the said punishment.

F. Aggrieved, the appellant-Corporation filed an appeal, which was dismissed by the Division Bench.

Hence, this appeal.

3. Mr. Kailash Vasudev, learned senior counsel, alongwith Ms. Indra Sawhney, Adv. appearing for the appellants, has submitted that the High Court has exceeded its jurisdiction by quashing the disciplinary proceedings, as well as the punishment imposed, stating that the same does not fall within the scope of judicial review. Moreover, the decision to not remand the case for reconsideration at such a belated stage, could also not be justified. Therefore, the judgment and order of the High Court, are liable to be set aside.

4. Per contra, Mr. V. Ramasubramanian, learned counsel appearing for the respondent, has opposed the appeal, contending that the High Court had taken note of every fact, and if after doing so, the court had come to the conclusion that the said disciplinary proceedings, had in fact, been conducted in violation of the principles of natural justice and applicable statutory rules, then no interference is warranted. The fact that

the appellant was refused an opportunity, to complete the said enquiry *de novo,* on the ground of delay, is fully justified in law. Thus, no interference is called for, and the said appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties, and perused the record.

It may be pertinent to refer to the relevant statutory provisions involved herein:

Regulation 39(1) of the Regulations 1960 reads as under:

"39(1). Without prejudice to the provisions of other regulations, (any one or more of) "the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed (by the disciplinary authority specified in Schedule-I)" on the employee who commits a breach of regulations of the Corporation, or who display negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct -

(a) …………

(b) …………

(c) …………

(d) reduction to a lower service, or post, or to a lower time scale, or to a lower stage in a time-scale."

Regulation 46(2) of the Regulations 1960 read as under:

"In case of an appeal against the order imposing any of the penalties specified in Regulation 39, the appellate authority shall **consider**-

(a) Whether the procedure prescribed in these Regulations has been complied with, and if not, whether such non-compliance has resulted in failure of justice;

(b) Whether the findings are justified; and

(c) Whether the penalty imposed is excessive, adequate or inadequate, and pass orders ……

xxxx xxxx xxxx "

6. The charges framed against the respondent are as under:

(i) That in your letter dated 13.5.1994 requesting for release of Rs.26,000/- as second instalment of housing loan under M.L. No. 7803003 you had willfully omitted to bring to the notice of the Corporation that you had constructed the rear side of the house (comprising of kitchen, store, toilet and reading room) measuring 385 sq.ft.

(ii) That your above action tantamounts to breach of agreement.

(iii) That you submitted a letter dated 20.6.1994 giving false information that you had completed the house in all aspects whereas by your letters dated 10.11.94 and 29.11.94 you had informed us that the rear side of the house was not constructed. It was found that even as on 2.9.1997 the work to complete the construction was not commenced.

(iv) That you had drawn housing loan in excess by giving false statement as mentioned above.

(v) That you are putting the premises to commercial use without the knowledge and approval of the Corporation.

(vi) That you are carrying on manufacturing of Jute bags and Cotton floor mats business in the said premises without the knowledge of the Corporation.

7. In the present case, the High Court after reappreciating the entire evidence available on record, came to the conclusion that in the course of enquiry proceedings, certain witnesses had not been examined in the presence of the delinquent respondent, and that hence, no proper opportunity was given to him to cross-examine such witnesses. Moreover, the documents relied upon by the Enquiry Officer, were not properly proved by any witness and ultimately, it was held that the findings of the Enquiry Officer stood vitiated, for non-compliance with mandatory requirements of the regulations applicable herein, as well as for violating of the principles of natural justice. The court further held that the Appellate Authority had not applied its mind to the case, and had failed to consider the case as required under Regulation 46(2), of the Regulations, 1960. Thus, in light of the aforementioned observations, the court set aside the punishment imposed upon the respondent, and also refused to give the appellant any opportunity, to continue the enquiry from the point that it stood vitiated, consequently therefore, denying any opportunity to prove the documents relied upon, as also denying the respondent adequate opportunity to cross-examine the concerned witnesses etc., only on the ground that a long time had now passed.

8. In view of the issues raised by the learned counsel for the parties, the following questions arise for our consideration:

(i) When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds, i.e., non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings,

from the point that they stood vitiated and;

(ii) If the answer to question no.1 is, that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

9. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide: *Managing Director, ECIL, Hyderabad etc.etc. v. B. Karunakar etc.etc.* AIR 1994 SC 1074; *Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls & Ors.,* (2002) 10 SCC 293; *U.P. State Spinning C. Ltd. v. R.S. Pandey & Anr.,* (2005) 8 SCC 264; and *Union of India v. Y.S. Sandhu, Ex-Inspector* AIR 2009 SC 161).

10. The second question involved herein, is also no longer *res integra.*

Whether or not the disciplinary authority should be given an opportunity, to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. Thus, the court must examine, the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds.

The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is *de hors* the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of

judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion. (Vide: *State of U.P. v. Brahm Datt Sharma & Anr.,* AIR 1987 SC 943; *State of Madhya Pradesh v. Bani Singh & Anr.,* AIR 1990 SC 1308; *Union of India & Anr. v. Ashok Kacker,* 1995 Supp (1) SCC 180; *Secretary to Government, Prohibition & Excise Department v. L. Srinivasan,* (1996) 3 SCC 157; *State of Andhra Pradesh v. N. Radhakishan,* AIR 1998 SC 1833; *M.V. Bijlani v. Union of India & Ors.,* AIR 2006 SC 3475; *Union of India & Anr. v. Kunisetty Satyanarayana,* AIR 2007 SC 906; and *The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha,* AIR 2012 SC 2250).

11. The word “consider”, is of great significance. Its dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”.

Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term “consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: *Director, Marketing, Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar,*

(2006) 11 SCC 147; and *Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr.,* AIR 2008 SC 1771).

12. The instant case requires to be considered in the light of the aforesaid settled legal propositions.

After hearing the counsel for the parties, we are of the view that the impugned judgment and order dated 10.1.2011, in Writ Appeal No. 7 of 2011, as well as the order of the learned Single Judge dated 17.2.2010, passed in Writ Petition No. 11152 of 2002, cannot be sustained in the eyes of law and are therefore hereby, set aside. The present appeal is allowed. The matter is remitted to the disciplinary authority to enable it to take a fresh decision, taking into consideration the gravity of the charges involved, as with respect to whether it may still be required to hold a *de novo* enquiry, from the stage that it stood vitiated, i.e., after issuance of charge-sheet.

The disciplinary authority while taking such a decision must bear in mind that charges are merely technical as the loan was taken for construction of a residential premises and the said loan was used effectually to construct the premises as per sanctioned plan and only then the premises was put to commercial use.

In the event the authority takes a view, that the facts and circumstances of the case require a fresh enquiry, it may proceed accordingly and conclude the said enquiry, most expeditiously.

B.B.B. Appeal allowed.

BIHAR STATE GOVERNMENT SECONDARY SCHOOL TEACHERS ASSOCIATION
v.
BIHAR EDUCATION SERVICE ASSOCIATION & ORS.
(Civil Appeal Nos. 8226-8227 of 2012)

NOVEMBER 23, 2012

[SURINDER SINGH NIJJAR AND H.L. GOKHALE, JJ.]

Service Law:

Secondary School Teachers of Bihar Subordinate Education Service – Upgradation and merger of in Bihar Education Service – Notification dated 11.4.1977 and State Government Resolution dated 7.7.2006 – Held: The decision to merge the cadres is a matter of policy – It is for the State to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable – Resolution dated 7.7.2006 is well reasoned and justified and is upheld – It cannot be called arbitrary or unreasonable to be hit by Art. 14 of the Constitution – Judgment of Single Judge in CWJC No. 8679/2002 and impugned judgment of Division Bench of High Court are set aside – Consequently, the notification dated 19.11.2007 issued pursuant to the decision of Single Judge will also stand quashed – Constitution of India, 1950 – Art.14 – Administrative law – Policy decision.

Constitution of India, 1950:

Art. 141 – Law declared by Supreme Court to be binding on all courts – Held: High Courts cannot ignore Art. 141 – When the judgment of a court is confirmed by the higher court, the judicial discipline requires that court to accept the said judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment – The manner in which the Single Judge proceeded with Writ Petition

No.10091/2006 to reopen the entire controversy, and also the Division Bench in the LPA in approving that approach is far from satisfactory – If the orders passed by Supreme Court were not clear to the State Government or any party, it could have approached the Court for clarification – But it could not have set up a contrary plea in a collateral proceeding – Such an approach was not expected from State Government as also from High Court – Judicial discipline – Res Judicata.

Education:

Secondary School Teaches – Upgradation of – Not implemented – Held: Teachers have to be treated honourably and given appropriate pay and chances of promotion – It is certainly not expected of State Government to drag them to court in litigation for years together – The Court records its strong displeasure for the manner in which State Government kept on changing its stand from time to time.

In order to remove stagnation and open promotional avenues for Secondary School Teachers and other categories of employees, the State Government of Bihar, accepting the recommendation of Saran Singh Committee report, issued Notification dated 11.4.1977 to the effect that posts of teachers and Stadium Managers would be included in the Bihar Education Service Cadre. However, non-implementation of the said Notification gave rise to litigation and, ultimately, the Supreme Court by its order dated 19.04.2006, while dismissing the appeal filed by the State Government, directed it to implement the Notification dated 11.4.1977. Consequently, the State Government by its decision dated 3.7.2006 proposed to upgrade the posts of Subordinate Education Service with Bihar Education Service Class-II w.e.f. 1.7.1977. Accordingly, the Order of Governor of Bihar was issued on 7.7.2006 stating that teachers of Subordinate Service (Teaching Branch) were merged into Bihar Education Service Class-II w.e.f.

1.7.1977 in accordance with the Finance Department Notification dated 11.4.1977. Subsequently, Notification dated 9.10.2006 was issued giving effect to the Resolution dated 7.7.2006 with respect to three teachers. Thereupon Bihar Education Service Employees filed Writ Petition No. 10091/2006. The Single Judge, referring to the observations made by Supreme Court in its order dated 19.04.2006 that it was for the High Court to decide whether the notification of the State Government was implemented in the manner required, held that the Government decision accepting the recommendation of the Committee was with regard to miscellaneous cadre only and while doing that there was no occasion for the State Government to take a decision to merge the teaching branch of Bihar Subordinate Education Service with Bihar Education Service. The writ petition was allowed and the resolution dated 7.7.2006 was quashed. Accordingly, the State Government issued Notification dated 19.11.2007 quashing the resolution dated 7.7.2006. The L.P.As. filed by the Secondary School Teachers Association and the individual teachers were dismissed by the Division Bench of the High Court.

In the instant appeals, it was principally contended on behalf of the Secondary School Teachers Association that after the judgment dated 19.4.2006 passed by the Supreme Court, it was not permissible for the Single Judge of the High Court to re-open the entire controversy.

Disposing of the appeals, the Court

HELD: 1.1. It is significant to note that at the end of the first round of litigation, the petition filed by the appellant had been allowed by Single Judge, and that order had been left undisturbed in the appeals therefrom by the Division Bench of the High Court as well as by this

Court. In spite of the orders, the State Government did not take steps to implement the notification dated 11.4.1977, in the manner accepted as valid in the first round of litigation. This inaction led to filing of one more Writ Petition No.8679 of 2002 for the implementation of notification dated 11.4.1977, and the merger of subordinate teachers into the Bihar Education Service Class-II. Notings on the files of the Government clearly showed that the Education Department had understood that for the implementation of the notification, the merger of the two cadres was necessary, and had for that purpose prepared a draft resolution for the approval of the Finance Department. In view of this factual scenario, and also in view of the previous orders, the single Judge allowed the Writ Petition No.8679/2002, and directed steps to be taken for merger of the subordinate teachers into the Bihar Education Service. The appeal of State of Bihar was also dismissed by the Division Bench of the High Court by observing that the controversy had already attained finality with the orders of the Supreme Court. The order dated 19.4.2006 passed by this Court has to be read on this background. In the said order this Court has recorded that the non-implementation of the notification passed in 1977 for such a long time had shocked its conscience. The Court specifically recorded that the writ petitions filed in the High Court were allowed in favour of the teachers holding that such merger is contemplated in the Government notification concerned. All that remained to be looked into was whether the implementation has been done in the manner required by the notification. It is also relevant that before dismissing the civil appeal filed by the State Government, the Court recorded that the Government was also thinking of implementing the notification in the manner suggested by the appellants. Therefore, ultimately, the Court directed that the High Court will examine the matter and if satisfied that the notification has not been implemented, deal with

the contemnors in accordance with law. Therefore, the Court vacated the stay on the contempt proceedings forthwith. [Para 33-35] [79-D-H; 80-A-D-F-H; 81-A]

1.2. Thus, all that remained to be done was to decide the pending contempt petition in Writ Petition No.8679 of 2002. The state of Bihar understood the decisions so far correctly, and, therefore, passed the resolution dated 7.7.2006 accepting the view point, which had found favour with the High Court as well as this Court, recommending the merger of the two cadres and upgradation of the teachers. The resolution also recorded that the merger would not have any serious financial implications nor would it affect seniority of many employees since most of the employees, to be merged, had either retired or were on the verge of retirement. [Para 36] [81-B-C]

1.3. In this background when the Bihar Education Service employees filed Writ Petition No. 10091 of 2006, the State Government rightly defended its resolution dated 7.7.2006. However, the Single Judge failed to understand the import of the decision of this Court, and thought that he had the liberty to reopen the controversy despite the decisions rendered in the first two rounds. He, therefore, passed the order allowing that writ petition. The State Government once again changed its stand, and issued a Notification canceling the Resolution dated 7.7.2006. This was not expected from the State Government. Unfortunately, the Division Bench of the High Court also approved this re-opening of the controversy once again. [Para 37] [81-D-F]

1.4. The hierarchy of the courts requires the High Courts also to accept the decision of this Court, and its interpretation of the orders issued by the executive. Any departure therefrom will lead only to indiscipline and anarchy. The High Courts cannot ignore Art. 141 of the

Constitution which clearly states, that the law declared by this Court is binding on all courts within the territory of India. When the judgment of a court is confirmed by the higher court, the judicial discipline requires that court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. [Para 39] [82-E-F; 83-A-B]

State of West Bengal and others Vs. Shivananda Pathak and others **1998 (5) SCC 513;** *Fuzlunbi Vs. K. Khader Vali and another* **1980 (3) SCR 1127 = 1980 (4) SCC 125 – relied on**

1.5. As regards the notification dated 11.4.1977, the order dated 19.4.2006 passed by this Court at the end of the second round of the proceedings left no ambiguity whatsoever, and the State Government was expected to follow and honour the same. The Government resolution dated 7.7.2006 is well reasoned and justifiably issued to reduce the rigor of stagnation. Whether the resolution of the problem was seen as based on the notification of 11.4.1977 or independently under the resolution dated 7.7.2006, there was no reason to interfere therein. [Para 38] [82-B-D]

1.6. Even otherwise, although the rules do provide for a channel of promotion to the subordinate teachers, actually the chances of promotion for them are very less. There is a serious stagnation as far as the subordinate teachers are concerned. The Saran Singh Committee was essentially constituted to go into this very issue. The notification issued by the State Govt. on 11.4.1977 approved the recommendation of the Committee, but the wording used while approving the recommendation is bit different. It cannot be disputed that it was for the State Government to take appropriate decision on the recommendation. The recommendations made by the Committee will of course have to be seen as the material

placed before the Government. However, ultimately, it is the decision of the Government which is relevant and, therefore, one has to look at the wording in the notification of the State Government. The approved recommendation in the wording used by the State Government is, *"Various Posts such as Teacher and the posts of Stadium managers etc should be included in the Bihar Education Service cadre and the Officers of the cadre should be appointed on these posts."* **This notification was clearly understood by the Education Department. The State Government had also rightly passed the resolution 7.7.2006 (in concurrence with the Finance Department) after the decision of this Court at the end of the second round of litigation. [Para 40-41] [83-D-E-G-H; 84-A-E]**

1.7. The decision to merge the cadre is a matter of policy. It is for the state to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable. The resolution dated 7.7.2006 is well reasoned and justified, and cannot be called arbitrary or unreasonable to be hit by Art. 14 of the Constitution. It deserved to be upheld. It is possible that the merger may affect the prospects of some employees but this cannot be a reason to set-aside the merger. Once the State Government has taken the necessary decision to merge the two cadres in a given case, the State Govt. is expected to follow it by framing the necessary rules. All the posts in subordinate service other than those classified as Class-I and Class-II State Services are mentioned at Item 119 in Appendix-16 of the Bihar Service Code, 1952. Therefore, it cannot be said that the subordinate teachers did not belong to the State Service. [Para 42-43] [84-F-H; 85-A-B-C]

S.P. *Shivprasad Pipal Vs. Union of India and others* **1998 (4) SCC 598 – relied on.**

1.8. The Single Judge who heard the petition CWJC

No.10091/2006, which began the third round of litigation filed on behalf of the Bihar Education Service Association, should not have re-opened the entire controversy, even otherwise. The State Govt. had already passed a resolution dated 7.7.2006 after the order of this Court dated 19.4.2006. While examining the legality of that resolution (which was defended by the State Govt. at this stage before the Single Judge) the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res-judicata or principles analogous thereto, does not permit any such re-examination, and the Judge clearly failed to recognize the same. The judgment dated 21.5.2010 passed by the Division Bench of the High Court in LPA No. 418 of 2009 and that of the Single Judge dated 31.10.2007 in CWJC No.10091/2006 are set-aside and the said writ petition is dismissed. Consequently, the notification dated 19.11.2007 issued pursuant to the decision of the Single Judge will also stand quashed and set-aside. The State Government Resolution dated 7.7.2006 is upheld. The state shall proceed to act accordingly. [Para 44-45] [85-D-H; 86-A-B]

2. The attitude of the State Government in this matter has caused unnecessary anxiety to a large number of teachers. The State Government must realise that in a country where there is so much illiteracy and where there are a large number of first generation students, the role of the primary and secondary teachers is very important. They have to be treated honourably and given appropriate pay and chances of promotion. It is certainly not expected of the State Government to drag them to the court in litigation for years together. This Court records its strong displeasure for the manner in which the State of Bihar kept on changing its stand from time to time. This is not expected from the State Government. The manner

in which the Single Judge proceeded with Writ Petition No.10091/2006 to reopen the entire controversy, and also the Division Bench of the High Court in LPA No.418/2009 in approving that approach is also far from satisfactory. If the orders passed by this Court were not clear to the State Government or any party, it could have certainly approached this Court for the clarification thereof. But it could not have setup a contrary plea in a collateral proceeding. Such an approach was not expected from the State Government and least from the High Court. [Para 46 and 47] [85-C-H]

Case Law Reference

1998 (5) SCC 513	**relied on**	**Para 39**
1980 (3) SCR 1127	**relied on**	**Para 39**
1998 (4) SCC 598	**relied on**	**Para 42**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8226-8227 of 2012.

From the Judgment & Order dated 21.5.2010 of the High Court of Patna in CWJC No. 8679 of 2002 & LPA No. 418 of 2009.

WITH

Conmt. Pet. (C) No. 386-387 of 2011 in SLP (C) No. 26675-26676 of 2010.

P.S. Patwalia, Debal K. Banerjee, Nagendra Rai, Amit Pawan, Rajiv Kumar Sinha, Kumar Prashant, Samir Ali Khan, Manish Kumar, Gopal Singh, Akhilesh Kumar Pandey, Shalini Chandra, Sudhanshu Saran, Swati Chandra, Arun Kumar, B.K. Chaudhary, Rameshwar Prasad Goyal, Tapesh K. Singh for the appearing parties.

The Judgment of the Court was delivered by

H.L. GOKHALE J. 1. Leave granted.

2. These two Civil Appeals by Special Leave raise the question with respect to the approach the High Courts and the State Governments are expected to adopt towards the orders passed, and the interpretations of Govt. resolutions rendered by this Court. The question arises in the context of litigation concerning the promotional avenues for the teachers in Bihar Government Service.

The relevant facts:-

3. The facts leading to the two Civil Appeals herein are as follows:-

The State of Bihar, which is respondent No.66 in these two appeals, set up a three member committee, in March 1976, with Shri Saran Singh, Member Board of Revenue, and Administrative Reforms Commissioner, as its Chairman. The terms of reference of this Committee were as follows:-

> *"**To hasten the avenues for promotion in the Bihar Civil Services,** the government has approved junior selection grade 20%, senior selection grade 12.50% and posts of senior Deputy Collector 2.5%. The same percentage has been applied for junior selection grade and senior selection grade in the Bihar Engineering Service. On this basis, requests have been coming from various state services associations that due to lack of opportunity for promotion in their cadres, there is stagnation, which must be removed.*
>
> *1.2. Hence, keeping in view the strength and present promotional avenues in various State service cadres, **to analyse the problem of stagnation and to recommend means to tackle this problem and promotional opportunities**, a committee of the following officers is constituted:-*
>
> *(1) Member, Board of Revenue-Chairman*
>
> *(2) Chairman, Public Grievances Bureau- Member*
>
> *(3) Finance Commissioner- Member"*

4. The committee drew its conclusions on the basis of the facts and figures furnished by various departments. As stated in the report, the approach of the committee was to find out:-

(a) what relatively, is the extent of stagnation in different services, and the present prospects of promotion, and

(b) how the stagnation can be removed and promotional opportunities enlarged.

5. The committee noted that all the service associations staked claims for the same percentage of the promotional posts as allowed to Bihar Civil Service and Bihar Engineering Service. Two of the reasons for stagnation noted by the committee were: (i) relatively heavy recruitment of officers of the same age group in certain years, (ii) and lack of adequate number of promotional posts at different levels of the organizational hierarchy. The recommendations of the committee with respect to various services are in part III of its report. As far as Bihar Education Service is concerned, it has been discussed in para (9), thereof. To begin with, the committee dealt with the promotional chances of Class-II officers into Class-I. Then in sub-para B it has dealt with the posts in specialized institutes like those teaching Sanskrit, Prakrit and Persian. Thereafter in sub-para C it has dealt with the Miscellaneous Cadre. The analysis in this part and the recommendations read as follows:-

> "*C. Miscellaneous cadre*
>
> 11.10. This service consists of 59 posts of different

categories like teachers, engineers, Doctors, Stadium Manager, etc. and excepting the teachers of Netarhat School who have adequate prospects of promotion within the cadre, most of the members of the cadre hold isolated posts with no definite prospect of promotion. No promotional posts can be provided for because of the isolated nature of their job.

In order, however, to minimize the hardships in their case, the committee would like to make the following suggestion for consideration of the Education Department:-

(1) Education department may get the posts of engineers included in the cadre of the Public Works Department and obtain their services on deputation basis.

(2) The two posts of the doctors may also be got included in the Health service and service of doctors obtained on deputation basis.

(3) The remaining posts should be included in the General cadre and manned by officers of the Bihar Educational Service as far as practicable."

The committee suggested that the proposals should come into effect from 1st January, 1977.

6. The recommendations of the committee were accepted by the State Government, and the State Government (Finance Department) issued a notification dated 11.4.1977, which was subsequently published in the Gazette Extra-Ordinary on 27.4.1977. The decision with respect to the recommendations was contained in Schedule-1 of the notification. As far as the education department and the miscellaneous cadre are concerned, the decision notified reads as follows:-

Schedule-1

Sr. No.	Para No. of committee report	Page No.	Department	Name of service	Recommendation the Committee	Govt. Decision
1	2	3	4	5	6	7
7	1.10	25	Education Department	Misc. Cadre	1) kindly merge the post of the Engineers of the Education Department into Bihar engineering Services Cadre and take the Services of the Engineers by means of Deputation	Approved
					2) The posts of doctors should be included in the Bihar Health Services cadre and as per the requirement their service should also be taken on deputation	Approved
					3) **Various Posts such as Teacher** (except the teachers of Netarhat) and the posts of Stadium managers etc **should be included in the Bihar Education Service cadre and the Officers of the cadre should be appointed on these posts**	Approved

(emphasis supplied)

First round of litigation

7. It is the case of the petitioner Secondary School Teachers Association that, though this notification was issued by the State Government on 11.4.1977, the State Government took no steps to implement the same. They represented for its implementation from time to time, but that was without any effect. They learnt that one provisional gradation list was prepared in the year 1986, but it was never circulated or made known to the Petitioner association. Another gradation list was prepared in 1995, and they found that the same had left out the members of the Petitioner association. Two representations were once again made, including one on 25.5.1998, but that was also without any effect. Therefore, they were constrained to file the **Writ Petition, bearing No.12122 of 1998**, against the State of Bihar and the concerned officers. In this petition they specifically claimed (a) that the aforesaid notification of 11.4.1977 contemplated a merger of their cadre into Bihar Education Service which consists of class-II employees, and (b) that any appointment and further promotions are to be made from the combined cadre. The petition therefore prayed:-

(1) for a direction to implement the decision contained in the notification dated 11.4.1977.

(2) for a direction to prepare a combined gradation list of the Bihar Education Service Class II after placing the members of the Petitioner association in their appropriate places along with other constituents.

(3) to restrain the respondents from acting upon the defective gradation list of 1995

(4) for the consequential reliefs, which meant increase in salary and allowances pursuant to the recommendations of the Pay Revision Committees appointed from time to time.

8. It is relevant to note that in this petition they specifically pleaded in para 5 that they were also selected through Public

Service Commission/ Central Selection Board, and that they also had qualifications of being graduates with necessary training, and further that from 1965 onwards they also had to have a Master's degree. In para 6 of the petition they submitted that the Saran Singh committee had recommended the merger, despite which the defective gradation lists were prepared, first on 19.7.1986 and thereafter on 13.11.1995, contrary to the notification of 11.4.1977.

9. Another **Writ Petition bearing CWJC No.8147/1999** was filed by some teachers viz. Smt. Ratan Prabha and Ors. This petition drew attention to the issue of pay anomaly. They also relied upon the notification of 11.4.1977, and prayed for preparation of a common seniority list for Bihar Education Service. Both the Writ Petitions were heard together. The State Government did not file any counter in spite of adequate time having been granted. The learned Single Judge of Patna High Court, observed in his order that it appears that the orders of merger had not been issued, and the matter was pending with the State Government, though in the meantime separate gradation list had been published for one or the other teaching cadre. The learned single judge therefore, passed the following order dated 2.2.2000:-

> *"In the circumstances, I direct the commissioner cum Secretary, Secondary, Primary and Mass Education, government of Bihar to act upon the government decision contained in Resolution dated 11.4.1977 so far it relates to the Education Service of the Education Department."*

10. The State of Bihar felt aggrieved by this common order passed in the two Writ Petitions, and therefore filed two **Letters Patent Appeals No.980 and 998 of 2000**. The State Government contended that there was no proposal to merge the sub-ordinate teachers into the Bihar Education Service Class-II. It was further pointed out that 50% posts of Bihar Education Service Class-II were filled by the promotion of the

subordinate teachers. This was however, denied by the appellants herein by pointing out that factually however, hardly any such promotions had taken place. They also pointed out that the notification dated 11.4.1977 had been implemented in other services in the manner in which they were canvassing. The Division Bench dismissed these two appeals by order dated 27.11.2000, wherein it observed:-

> *"In our view, since this court by order dated 2.2.2000 has specifically directed the Government to take a decision in terms of the resolution dated 11.4.1977, there appears no reason for the State to be aggrieved by such order."*

11. The State Government carried the matter further to this Court in **SLP Nos.4937-4938/2001**, and this Court dismissed the two SLP's by its order dated 16.4.2001 which reads as follows:-

> "CORAM:
>
> Hon'ble Mr. Justice B.N Kripal
>
> Hon'ble. Mrs Justice Ruma Pal
>
> "*Upon hearing the counsel the court made the following*
>
> ORDER
>
> It is clear that the final direction which has been given to the Petitioner to implement the resolution dated 27th April, 1977 in the manner it is meant to be implemented. The petitions are disposed of."

<u>Second round of litigation</u>

12. It is, however, seen that inspite of the orders passed as above, State of Bihar did not issue the necessary orders for merger of the subordinate cadre of teachers into the Bihar Education Service, and consequential rise in pay. This led a subordinate-service teacher, one Shri Janardan Rai, to file a fresh **Writ Petition, being CWJC No.8679 of 2002**. He referred to the orders passed above, and prayed for consequential benefits along with fixation of pay in terms of the State Government Notification dated 11.4.1977, and in terms of the order dated 2.2.2000 passed in above referred CWJC No.12122 of 1998, which had been upheld by the Supreme Court.

13. This petition was opposed by the Additional Finance Commissioner of the State of Bihar, by filing an affidavit. In para 13, he specifically stated that the decision contained in the aforesaid notification is not at all related to the non-gazetted cadre of teachers of Government High Schools, and therefore, implementation of the order of the Hon'ble Court does not require merger of the Subordinate Education Service with the Bihar Education Service. In para 25, he contended that the word 'teachers' mentioned in Item No.7 of Schedule-1 of the notification of 1977 referred to those isolated posts of teachers who had been part of the umbrella service, namely, Bihar Education Service, but who did not have any proper cadre, and therefore had no opportunities of promotion available to them. In para 26 he contended that the Saran Singh Committee report had made clear that the report was exclusively about the cadres within the Gazetted State Services.

14. The Director (Administration) cum Deputy Secretary, the Department of Secondary, Primary and Mass Education of Government of Bihar, filed two affidavits. In the first affidavit, he stated in para 4(c) that in the notification there is no mention of 59 posts, and hence the confusion arose. He further stated that the Government had, therefore, decided to locate those 59 posts by an advertisement and call for information. In para 6/A of the second affidavit, however, he stated that there was no mention of any merger in the notification.

15. The learned Single Judge who heard the petition referred to the earlier orders up to the Supreme Court, and then

observed that, in view thereof, the matter should have attained finality. He further observed that it was really unfortunate that the state had again started giving its own different meaning to interpret the aforesaid orders, rather going to the extent of even stating that some shadow-boxing had been done in the High Court and the Supreme Court, to obtain certain orders. He stated that it appeared from the notings on the files of the State Government that the Education Department had, in fact, taken a decision to implement the aforesaid notification, and prepared a draft notification for the approval of the Finance Department, so that the orders of the High Court, for implementing the notification of 11.4.1977, are complied with. He also recorded that the said draft notification speaks of about 2465 sanctioned/ created posts. He stated-

> "...*The said draft clearly goes to show that the Education Department has found that the petitioner and other similarly situated persons were also required to be merged in the Bihar Education Service, in view of the aforesaid resolution. However, final approval of the Finance Department was sought for, before final direction was issued in this regard. The said resolution speaks about 2465 sanctioned/created posts. As such it appears that the only obstacle which remains in non-implementation of the resolution is concerned is the functionaries of the Finance Department, who are giving a different meaning to the said resolution."*

16. The Learned Judge, therefore, heard the arguments of the counsel for the Finance Department exhaustively, and observed that if the meaning, which is tried to be given to the notification dated 11.4.1977, is to be accepted, the whole notification relating to the Bihar Education Service would become redundant. That apart, he observed "today it does not lie in the mouth of authorities to give it any other interpretation rather they are sitting over the orders of the High Court, as well as the Supreme Court." He, therefore, directed them to implement the notification of 1977 in its totality, within a period

of six weeks, failing which, they would be liable to be proceeded for violation of the said order and the order dated 2.2.2000, as well as the orders of the LPA Bench and the Supreme Court of India. He granted liberty to the petitioner to bring a petition before the Court in that very writ application itself, so that, if necessary erring respondents can be proceeded against in accordance with law.

17. This order was again challenged by the State Government in **LPA No.65/2003**. Additional grounds were raised in the LPA. One of them was that if the interpretation of the term 'teachers' accepted by the learned single judge was approved, it will lead to the teachers other than those in Government service claiming the benefits of Bihar Education Service Class-II. Secondly, it was contended that the subordinate education service was not a state service. The Division Bench of the High Court however, dismissed the LPA by its order dated 10.3.2003, observing that the controversy had already attained finality with the order of the Supreme Court and nothing more was required to be recorded before passing this order. However, in the meanwhile Division Bench had also passed an order dated 27.1.2003 directing the Chief Secretary, Government of Bihar and Director Administration of Bihar to remain present in the appeal to explain the non-implementation.

18. These two orders led the State Government to file **Civil Appeal No.4466/2003**, wherein the earlier grounds were reiterated. A counter was filed on behalf of Janardhan Rai & Ors. by the Gen. Secy. Of the Bihar State Government Secondary School Teachers Association which had been impleaded as a respondent by an order passed by this Court. Therein it was specifically stated in paragraph 13 as follows:-

> *"...... Thus, since the members of the Respondent Association belonged to a clearly identifiable cadre known as "B.S.E.S Cadre" and were not part of any isolated post and also since their posts were not declared "Gazetted"-then, they clearly fell within the purview of*

those State services covered by the Saran Singh Committee. It is also relevant to mention here that the term "State Service" used by the Petitioners has not been defined anywhere. This is evident from the Fitment Committee report, Government of Bihar published in 1998. Thus in the absence of any special definition, the words "State Service" would mean Government Service of the State regulated by State Service Code."

The Civil Appeal was dismissed by this Court by its order dated 19.4.2006 which we quote in the entirety:-

"IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4466 OF 2003

STATE OF BIHAR & ORS. ...APPELLANTS

VERSUS

JANARDAN RAI & ANR ...RESPONDENTS

ORDER

Heard learned counsel on both sides.

That a Government Resolution passed in 1977 has not yet been implemented and continues to be the subject matter of a spate of litigation, despite 14 orders of different Courts, is something that shocks the conscience of this Court.

The Order of the High Court in Letters Patent Appeal, which has resulted in the present Appeal is a short (one paragraph) order, but the background appears to be voluminous. Learned counsel on both sides have taken us through the various documents on record. After patiently plodding through the record and the various orders, the only point that needs to be considered is, whether the Resolution No 3521 F2 dated 11th April,

1977 of the State Government has been implemented in respect of the Members of the Bihar Subordinate Education Service comprising Male and Female teachers. According to the Respondents, its implementation would mean merger of the cadre of teachers belonging to the Bihar Subordinate Education Service with the Bihar Education Service Class 2; the stand of the State Government is that this Resolution, which accepts and implements the report of the Saran Singh Committee (Paragaph 11.10), has nothing to do with the Members of the Bihar Subordinate Education Service Cadre.

Writ Petitions were filed before the High Court of Patna and they were allowed in favour of the teachers holding that such merger is contemplated in the concerned Government Resolution. *A contempt petition was also taken out alleging non-implementation of the High Court's order, which had directed the State specifically to implement the concerned Resolution dated 11th April, 1977.*

The contempt petition is still pending before the High Court and has been stayed in the present appeal.

At the end of the day, we are satisfied that whether the implementation has been done in the manner required by the Resolution or not is for the High Court to decide since the High Court is in seisin of the contempt petition. Hence, we feel that it is not necessary for us to interfere in the matter, particularly since our attention has been drawn to the statements made on the floor of the legislative assembly that the Government itself is thinking of implementing the Resolution in the manner that is being suggested by the Respondents. In any event, since the contempt petition is pending, the High Court will examine the matter and, if satisfied that the Resolution has not been implemented, deal with the contemnors according to law. In this view of the matter,

we do not think that it is necessary for us to interfere at all.

Civil Appeal is dismissed. No order as to costs. Stay of the contempt proceedings is vacated forthwith.

.........................J.
(B.N. Srikrishna)
.................................J.
(Lokeshwar Singh Panta)

New Delhi April 19, 2006"

19. It appears that in view of this judgment of this Court in the second round of litigation, the State Government ultimately moved to take the decision as canvassed by the subordinate teachers. The Cabinet took the necessary decision on 3.7.2006. The memorandum prepared by the administration for the consideration of the Council of Ministers referred to the earlier developments in the first 10 paragraphs. Paragraphs 11 to 18 of this memorandum which was approved by the Cabinet read as follows:-

"*11. The department prepared an estimate of financial burden involved. According to a provisional estimate the estimated amount difference is near about Rs. 64 crore. But because almost all the beneficiaries have got the benefit of first ACP therefore on this count after deducting a moderate amount it comes to near about Rs. 48 crores 62 lakhs. In additional to this, so many of the beneficiaries are entitled to get the benefit of 2nd ACP. If they are granted, the 2nd ACP then the estimates amount will further come down.*

12. In the year 1977 the No. of total created/ sanctioned post of the male and female teachers were 2465 against which total working strength was 1336, which decreased to 880 by the years 2006, out of this if 301 units belonging to Jharkhand is deducted it comes to 579 only.

13. It is to be noted that in view of the provisions contained in resolution No.3521 dated 11.04.1977 several departments have merged the lower scales with the higher ones. But the incumbents of this cadre of the Education Deptt. have been denied their promotions after 1977 which was otherwise due. Whereas the incumbents of Inspecting Branch of this cadre are reported to have been promoted upto 2001.

14. The officers of the Bihar Education Service in their representation against this merger are apprehending that this merger will harm their interest. But the Deptt. has no such knowledge about them to be an intervener or a party in CWJC, LPA and SLP filed in this regard. ***Most of the beneficiaries of this merger are on the verge of retirement therefore there is no possibility of a major harm to be caused to the officers of the Bihar Education Service.***

15. Therefore consequent upon-complying the orders of the Hon'ble Courts ***it is proposed to upgrade 2465 created/sanctioned posts of teachers of subordinate education service male and female cadre with Bihar Education Service Class-2 w.e.f 01.07.77.***

16. ***The concurrence of Finance Deptt. has been obtained.***

17. The approval of the Departmental Minister has been obtained in the proposal.

18. The approval of the council of ministers in the proposal contained in para 15 of the memorandum is solicited."

(emphasis supplied)

20. Accordingly, necessary resolution was issued under the order of the Governor of Bihar on 7.7.2006, stating that the

teachers of the Subordinate Education Service (Teaching Branch) male and female cadre, are merged into Bihar Education Service Class II w.e.f. 1.1.1977, in accordance with the Finance Department Notification dated 11.4.1977, and that appropriate orders will follow after evaluating personal benefits arising out of the order. A notification was also subsequently issued on 9.10.2006 giving effect to the above resolution with respect to three teachers mentioned specifically in that notification.

Third round of litigation

21. Now, it was the turn of the Bihar Education Service to file their **Writ Petition bearing CWJC No.10091/2006**, wherein, they challenged the Government resolution dated 7.7.2006 providing for the merger of the Bihar Subordinate Education Service into the Bihar Education Service Class-II. It was contended that the Bihar Subordinate Education Service, to which the secondary teachers belonged was quite different from the Bihar Education Service Class-II. This was on the footing that their modes of recruitment and minimum qualifications were different. It was submitted that the merger will affect their seniority and therefore the decision is arbitrary and violative of Article 14 of the Constitution. The State Government opposed this petition by filing an affidavit. It was pointed out by the State Government that the Govt. resolution dated 7.7.2006 had been issued in view of the judgments of the High Court as approved by the Hon'ble Supreme Court. The opinion of the Advocate General was also tendered that the Govt. had no option but to implement the notification of 11.4.1977 as regards the merger of the two services. The intervener Bihar Education Service Association also opposed this petition and pointed out that the earlier Writ Petitions were allowed by the High Court in favour of the teachers holding that the merger was contemplated in the Govt. notification and the SLP therefrom had been dismissed.

22. The learned Single Judge, however, referred to the

observation of this Court in its order dated 19.4.2006, that it was for the High Court to decide whether the notification of the State Govt. has been implemented in the manner required by the notification, and therefore examined the legality of the resolution dated 7.7.2006 by re-examining the earlier notification dated 11.4.1977. He took the view that the Govt. decision accepting the recommendation of the committee as recorded at Serial No.7 of Schedule 1 was concerning the miscellaneous cadre only, and while doing that there was no occasion for State to take a decision about Bihar Education Service and to merge the teaching branch, male and female, of the Bihar Subordinate Education Service with the Bihar Education Service. He therefore allowed CWJC No.10091/2006 by his judgment and order dated 31.10.2007 and quashed the resolution dated 7.7.2006.

23. Along with the above writ petition, the learned Single Judge heard another Writ Petition bearing **CWJC No.14678/2006** which was filed by 51 subordinate teachers who on the other hand claimed the benefit of the very Govt. resolution dated 7.7.2006. The learned Judge disposed of that petition with same common order, but directed the Govt. to consider their cases if they are in any way situated similar to the miscellaneous cadre.

24. It is relevant to note that after this judgment and order of learned Single Judge dated 31.10.2007, the Govt. of Bihar came out with a consequential notification dated 19.11.2007 quashing the above Resolution No.1209 dated 7.7.2006 (which had merged the teachers of subordinate services into Bihar Education Service Class-II), and withdrawing the financial benefits flowing therefrom.

25. Some of the individual teachers who felt aggrieved by this judgment and order dated 31.10.2007, filed LPAs Nos.941/2007, 946/2007, 947/2007 and 974/2007. As far as the Secondary School Teachers Association is concerned it directly filed an SLP to this Court against the order dated 31.10.2007,

bearing SLP No.8031/2008, but this Court vide its order dated 16.3.2009 noted that those individual LPAs were pending before the High Court, and therefore granted liberty to the association to approach the High Court by way of LPA. Accordingly, the petitioner association filed **LPA No.418/2009**. All those LPAs were heard together.

26. The appellant association as well as the Bihar Education Service Association reiterated their positions before the Division Bench. The appellant association principally contented that after the decision of the Supreme Court dated 19.4.2006, it was not permissible for the learned Single Judge to re-open the entire controversy, otherwise there would never be any finality. The decision of the learned Single Judge was however defended by the Bihar Education Service Association by contending that no definite decision had been arrived at in the earlier proceedings. As noted earlier the State of Bihar had defended, before the learned Single Judge, the Resolution dated 7.7.2006 approving the merger. However, the State changed its stand before the Division Bench. As can be seen from para 38 of the judgment of the Division Bench, it was contended on behalf of the State Govt. that neither in the notification of the Finance Department dated 11.4.1977 nor in any order of this Court except in CWJC No.8679 of 2002 (the contempt petition wherein was being heard with these appeals) it had even remotely been decided as regards the merger of the teachers of SES in BES. Thereafter, the para records the stand of the State Govt. as follows:-

> *"As with regard to the order passed by the learned Single Judge in CWJC No.8679 of 2002, it was sought to be explained by the learned Advocate General that since that case itself was being heard along with these appeals as per the order of the Apex Court dated 19.4.2006, the same could not be treated as a binding precedent".*

27. The Division Bench took the view that the State Govt.

had issued the resolution 7.7.2006 under the threat of contempt, though the judgment does not record any such submission on behalf of the State Govt. The judgment indicates that in the opinion of the Division Bench the order of this Court dated 19.4.2006 did not prohibit the learned Single Judge from going into the entire controversy. The Division Bench accepted that unless rules were framed, there could not be any merger since there was no parity in the pay of the subordinate teachers and the Bihar Education Service Class-II employees. After referring to the report of the Saran Singh Committee, the Division Bench formed the opinion that the notification of the State Govt. dated 11.4.1977 will have to be confined only to 59 posts in the miscellaneous cadre.

28. The LPAs were therefore dismissed by the Division Bench by the impugned judgment and order dated 21.5.2010. The Division Bench by the same order also dropped the contempt matter then pending in CWJC No.8679/2002. The orders passed by the learned Single Judge as well as by the Division Bench have led to the present two **Civil Appeals (arising out of SLP (C) Nos.26675-76 of 2010)**, which is the third occasion when this controversy is coming up to this Court.

29. When the Special Leave Petitions leading to these appeals came up for consideration, initially a notice was issued on 7.3.2011, and lateron after hearing the counsel for respondents, the operation of the judgment and orders passed by the learned Single Judge as well as by the Division Bench came to be stayed by an order passed on 4.7.2011. The State of Bihar has now moved **IA Nos. 19-20 of 2011** to vacate the order of stay. The appellants on the other hand have contended that in view of the stay granted by this Court, the State of Bihar and its officers are expected to take steps to implement the Resolution dated 7.7.2006, and since that was not being done they have filed the Contempt Petition (Civil) No.386-387 of 2011 against the Chief Secretary of the Govt. of Bihar and its other officers. The Civil Appeals, the I.A for vacating the stay order and the Contempt Petitions have been heard, and are

being decided together. Shri Patwalia, learned Senior Counsel has appeared for the appellants, Shri Nagendra Rai, learned Senior Counsel has appeared for the State of Bihar and its officers, and learned counsel Shri Akhilesh Kumar Pandey has appeared for the Bihar Education Service Association and its members.

Submission of the rival parties

30. It was submitted on behalf of the appellants that the learned Single Judge and the Judges of the Division Bench who have passed the impugned order have failed to grasp the true import of the order passed by this Court on 19.4.2006. All that remained to be done thereafter was to monitor the contempt proceedings in Writ Petition No.8679/2002. This limited scope was exceeded by them to re-open the entire controversy. If this is approved, there would never be any end to the litigation. It was submitted by Mr. Patwalia, learned senior counsel for the appellants, that the fact of stagnation in the services of the subordinate teachers was not being disputed. What was being contended was that the recommendation of Saran Singh Committee was concerning only 59 miscellaneous posts and that was approved by the State Govt. in the notification of 11.4.1977. In his submission, this reading of the recommendation was not correct. In any case, the notification of 11.4.1977 has to be read on its own. Besides, in the present matter the Court is concerned with the challenge to the Govt. Resolution dated 7.7.2006. The implementation of this notification was not going to cause any serious financial burden on the State Govt. The State Govt. was to upgrade the posts, and thus the subordinate teachers were to carry their own posts in the Bihar Education Service Class-II, though not many of those teachers were going to benefit since most of the beneficiaries have already retired or are on the verge of retirement as stated in the resolution. As far as seniority is concerned, he submitted that the subordinate employees who remain in service will get seniority from 1977, and naturally those who joined the service subsequently will be placed

thereafter. Mr. Patwalia therefore submitted that these appeals should be allowed, and the challenge to the resolution dated 7.7.2006 be repelled. He, however, fairly stated that he was not pressing for the action in contempt.

31. As against this, it was submitted on behalf of the employees of the Bihar Education Service that the Subordinate Education Service is a feeder cadre for promotion to the Bihar Education Service. Their pay is different, and the merger, as proposed in the resolution dated 7.7.2006, will affect their seniority retrospectively. In their submission, the State Govt. notification of 11.4.1977 has basically to be read in the light of the Saran Singh Committee report, which according to them did not extend the recommendations to the cadre of the subordinate teachers. Mr. Akhilesh Kumar Pandey learned counsel, appearing for them, therefore submitted that the SLPs should be dismissed.

32. On behalf of the State of Bihar submissions were advanced by Mr. Nagendra Rai, learned senior counsel. He submitted that the notification passed by the State Govt. on 11.4.1977 ought to be read as confined to the Saran Singh Committee report only. There was no merger contemplated in the Govt. notification, and the order of this Court dated 19.4.2006 should not be read as confined only to the hearing of the Contempt Petition by the High Court. He submitted that the subordinate service employees have otherwise also prospects of promotions under their service rules. The Saran Singh Committee Report was only for the employees of the State Service and the subordinate service did not form part of the State Service. The report was meant for only those who did not have scope for promotion in the State Service, and therefore the SLPs be dismissed.

Consideration of the rival submissions

33. We have considered the submissions by the counsel for the rival parties. The above narration of the facts and legal

submissions shows that when the first Writ Petition No.12122 of 1998 was filed by the appellant, the State Government did not even care to file a counter. The learned Single Judge went through the material on record and noted that the order for merger had yet not been passed, and the matter was pending before the Govt. The learned Judge, therefore, passed the order directing the Secretary, Education Department to act on the Govt. resolution dated 11.4.1977. The State of Bihar chose to file an appeal before the Division Bench where for the first time it stated that there was no proposal for merger. The Division Bench which heard the appeal noted that the direction of the Single Judge was to act in terms of the Govt. resolution and therefore there was no reason for the State to feel aggrieved. When the State Govt. filed the SLP, this Court observed that the final direction given to the State was to implement the resolution in the manner it was meant to be implemented, and disposed of the SLP. Thus, it was clear at the end of the first round of litigation that the petition filed by the appellant had been allowed by learned Single Judge, and that order had been left undisturbed in the appeals therefrom by the Division Bench as well as by this Court.

34. As is seen from the further events that in spite of these orders the State Government did not take the steps to implement the notification dated 11.4.1977, in the manner accepted as valid in the first round of litigation. This inaction led Shri Janardhan Rai and some other teachers to file one more Writ Petition being CWJC No.8679 of 2002 for the implementation thereof, and the merger of subordinate teachers into the Bihar Education Service Class-II. It is however seen that, at this stage there was a difference of opinion between the Finance Department and the Education Department of the State Govt. The Finance Department continued to maintain that the subordinate Education Service could not be merged into the Bihar Education Service Class-II. The Education Department however in its first affidavit, in this Writ Petition, recorded that the notification of 11.4.1977 did not state that it

is concerning only 59 posts. Notings on the files of the Govt. clearly showed that the Education Department had understood that for the implementation of the notification, the merger of the two cadres was necessary, and had for that purpose prepared a draft resolution for the approval of the Finance Department. In view of this factual scenario, and also in view of the previous orders, the learned single judge allowed the CWJC No.8679/2002, and passed the order directing the steps for merger of the subordinate teachers into the Bihar Education Service. The appeal of State of Bihar was also dismissed by the Division Bench by observing that the controversy had already attained finality with the orders of the Supreme Court.

35. The order passed by this Court, thereafter, in the Civil Appeal filed by the State Govt. bearing No.4466 of 2003 dated 19.4.2006 has to be read on this background. In the very first para this Court has recorded that the non-implementation of the notification passed in 1977 for such a long time had shocked its conscience. In the second paragraph, the Court has recorded the submissions of the rival parties. In the third para, the Court specifically recorded that the writ petitions filed in the High Court were allowed in favour of the teachers holding that such merger is contemplated in the concerned Government notification. All that is recorded thereafter is concerning the Contempt Petition, which was pending in the High Court, and which was concerning the non-implementation of High Court's order, which had directed the implementation of the Govt. notification dated 11.4.1977. As the further paragraphs of this order record, all that remained to be looked into was whether the implementation has been done in the manner required by the notification. It is also relevant that before dismissing the Civil Appeal filed by the State Govt., the Court recorded that the Govt. was also thinking of implementing the notification in the manner suggested by the respondents before the Court (that is the appellants herein). Therefore, ultimately the Court directed that High Court will examine the matter and if satisfied that the notification has not been implemented, deal with the

contemnors in accordance with law. Therefore, the Court vacated the stay on the contempt proceedings forthwith.

36. Thus, all that remained thereafter to be done was to decide the pending Contempt Petition in Writ Petition CWJC No.8679 of 2002. The state of Bihar understood the decisions so far correctly, and therefore passed the resolution dated 7.7.2006 accepting the view point, which had found favour with the High Court as well as this Court, recommending the merger of the two cadres and upgradation of the teachers. The resolution also recorded that the merger would not have any serious financial implications nor would it affect seniority of many employees since most of the employees, to be merged, had either retired or were on the verge of their retirement.

37. In this background when the Bihar Education Service employees filed their Writ Petition being No.CWJC 10091 of 2006, the State Government rightly defended its resolution dated 7.7.2006. However, the learned Single Judge failed to understand the import of the decision of this Court, and thought that he had the liberty to reopen the controversy despite the decisions rendered in the first two rounds. He, therefore, passed the order allowing that Writ Petition. Now what we find is that the State Government once again changed its stand, and issued a Notification canceling the Resolution dated 7.7.2006. And when the appellants preferred their LPA, the State Government continued to maintain its changed position. To say the least this was not expected from the State Government. Unfortunately enough, the Division Bench also approved this re-opening of the controversy once again.

38. In the present appeals we are concerned with the legality of the Govt. Resolution dated 7.7.2006 which the State Govt. defended before the single judge but gave up the defence in the appeal before the Division Bench. The State Govt. went to the extent of contending that the decision in CWJC No.8679/2002 could not be treated as binding, although it had been confirmed by Division Bench and by this Court. Unfortunately

enough we must record that the Division Bench also failed to interfere with this digression on the part of the State Govt. and the learned Single Judge. The Division Bench ignored that, assuming that perhaps two views could be canvassed earlier while interpreting the notification dated 11.4.1977, the order dated 19.4.2006 passed by this Court at the end of the second round of these proceedings left no ambiguity whatsoever, and the State Govt. was expected to follow and honour the same. The State Govt. did act accordingly, and issued the Govt. resolution dated 7.7.2006 to honour the judgments. But immediately after the decision of the single judge in CWJC 10091 of 2006, went to the other extreme to rescind the same, and not to defend it in appeal. We have noted the contents of the Govt. resolution dated 7.7.2006. In our view it is well reasoned and justifiably issued to reduce the rigour of stagnation. Whether the resolution of the problem was seen as based on the notification of 11.4.1977 or independently under the resolution dated 7.7.2006, there was no reason to interfere therein.

39. The hierarchy of the Courts requires the High Courts also to accept the decision of this Court, and its interpretation of the orders issued by the executive. Any departure therefrom will lead only to indiscipline and anarchy. The High Courts cannot ignore Article 141 of the Constitution which clearly states, that the law declared by this Court is binding on all Courts within the territory of India. As observed by this Court in para 28 of the *State of West Bengal and others Vs. Shivananda Pathak and others* reported in 1998 (5) SCC 513:-

> *"If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment.........."*

In the same vein we may state that when the judgment of a Court is confirmed by the higher court, the judicial discipline requires that Court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. We may as well note the observations of Krishna Iyer, J. in *Fuzlunbi Vs. K. Khader Vali and another* reported in 1980 (4) SCC 125:-

> *"…….No judge in India, except a larger Bench of the Supreme court, without a departure from judicial discipline can whittle down, wish away or be unbound by the ratio of the judgment of the Supreme Court."*

40. That apart, even if one looks to the merits of the rival contentions, there is no dispute that although the rules do provide for a channel of promotion to the subordinate teachers, actually the chances of promotion for them are very less. There is a serious stagnation as far as the subordinate teachers are concerned. The Saran Singh Committee was essentially constituted to go into this very issue. As can be seen from the report of the committee, the various service associations in the State were clamouring for appropriate provision for promotion on par with the Bihar Engineering Service. It is true that the report of the committee does refer to the 59 posts in the miscellaneous cadre while examining the problem. However, after directing the shifting of the engineers in the Education Department to the Public Works Department, and the doctors to the Health Services in sub-clause (1) and (2) of para 11.10, the committee recommended in sub-clause (3) that "the remaining posts should be included in the general cadre and manned by officers of Bihar Education Service as far as possible". The notification issued by the State Govt. on 11.4.1977 approved the recommendation of the committee, but the wording used while approving the recommendation is bit different.

41. It cannot be disputed that it was for the State Govt. to take appropriate decision on the recommendation. The

recommendations made by the committee will of course have to be seen as the material placed before the Govt. However, ultimately, it is the decision of the Govt. which is relevant and therefore one has to look at the wording in the notification of the State Govt. Here the approved recommendation in the wording used by the State Govt. is as follows:-

> ***"Various Posts such as Teacher*** *(except the teachers of Netarhat) and the posts of Stadium managers etc* ***should be included in the Bihar Education Service cadre and the Officers of the cadre should be appointed on these posts."***

(emphasis supplied)

This notification was clearly understood by the Education Department. Earlier it had prepared the draft resolution for the approval of the Finance Department recommending the merger of the two cadres. And later the State Govt. had also rightly passed the resolution 7.7.2006 (in concurrence with the Finance Department) after the decision of this Court at the end of the second round of litigation.

42. Much emphasis was laid by the Bihar Education Service Association on the absence of common service rules, to oppose the merger of the subordinate service employees into the State Service Class-II. In this context we must note that the decision to merge the cadre is a matter of policy as held by this Court in *S.P. Shivprasad Pipal Vs. Union of India and others* reported in 1998 (4) SCC 598. It is for the state to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable. As stated earlier, the resolution dated 7.7.2006 is well reasoned and justified, and cannot be called arbitrary or unreasonable to be hit by Article 14. It deserved to be upheld. It is possible that the merger may affect the prospects of some employees but this cannot be a reason to set-aside the merger. Once the State Govt. has taken the necessary decision to merge the two cadres in a given

case, the State Govt. is expected to follow it by framing the necessary rules.

43. One of the pleas raised by the employees of the Bihar Education Service was that the subordinate teachers did not belong to the State Service. We may note at this stage that in their list of dates and events of the Civil Appeals, the appellants have specifically referred to the fact that these subordinate services are included in Appendix-16 of the Bihar Service Code, and therefore, it is contended that it will be incorrect to state that the subordinate service is not a part of the State Service. If we refer to the code we find that all the posts in subordinate service other than those classified as Class-I and Class-II State Services are mentioned at Item 119 in Appendix-16 of the Bihar Service Code, 1952. Thus, there is no merit in this objection as well.

44. This entire discussion leads us to only one conclusion that the learned Single Judge who heard the petition CWJC No.10091/2006, which began the third round of litigation filed on behalf of the Bihar Education Service Association, had no business to re-open the entire controversy, even otherwise. The State Govt. had already passed a resolution dated 7.7.2006 after the order of this Court dated 19.4.2006. While examining the legality of that resolution (which was defended by the State Govt. at this stage before the learned Single Judge) the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res-judicata or principles analogous thereto, does not permit any such re-examination, and the learned Judge clearly failed to recognize the same.

45. For the reasons stated above, these appeals (arising out of SLP Nos.26675-76 of 2010) are allowed. The judgment and order passed by the Division Bench of Patna High Court in LPA No.418/2009 and other LPAs dated 21.5.2010, and that of the learned Single Judge dated 31.10.2007 in CWJC No.10091/2006 are set-aside and the said Writ Petition is hereby dismissed. Consequently the notification dated

A B C D E F G H

19.11.2007 issued pursuant to the decision of the Single Judge will also stand quashed and set-aside. The State Govt. Resolution dated 7.7.2006 is upheld. The state shall proceed to act accordingly. I.A. Nos.19-20/2011 are dismissed. As stated by Mr. Patwalia, learned senior counsel for the appellants, the appellants no longer press for the action for contempt arising out of CWJC No.8679/2002. Contempt Petition Nos. 386-387/2011, will also accordingly stand disposed of, as not pressed.

46. The attitude of the State Govt. in this matter has caused unnecessary anxiety to a large number of teachers. The State Govt. must realise that in a country where there is so much illiteracy and where there are a large number of first generation students, the role of the primary and secondary teachers is very important. They have to be treated honourably and given appropriate pay and chances of promotion. It is certainly not expected of the State Govt. to drag them to the Court in litigation for years together.

47. Though the appeals stand disposed of as above, we do record our strong displeasure for the manner in which the State of Bihar kept on changing its stand from time to time. This is not expected from the State Govt. The manner in which the learned Single Judge proceeded with the Writ Petition No.1009/2006 to reopen the entire controversy, and also the Division Bench in LPA No.418/2006 in approving that approach is also far from satisfactory. If the orders passed by this Court were not clear to the State Govt. or any party, it could have certainly approached this Court for the clarification thereof. But it could not have setup a contrary plea in a collateral proceeding. We do not expect such an approach from the State Govt. and least from the High Court. Having stated this, although we have expressed out displeasure about the approach of the State Government, we refrain from passing any order as to costs.

R.P. Appeals disposed of.

A B C D E F G H

ALOK KUMAR PANDIT
v.
STATE OF ASSAM & ORS.
(Civil Appeal No. 8499 of 2012)

NOVEMBER 26, 2012

[G.S. SINGHVI AND GYAN SUDHA MISRA, JJ.]

Service Law:

Reservation – Option of choice/preference on selection – Reserve category candidate securing higher position on merit than general category candidates – Option of choice/ preference against posts earmarked for reserved category – Held: A reserved category candidate who is adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/ preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category – On his appointment to the service/cadre/post of his choice/preference, the reserved category candidate cannot be treated as appointed against the open category post."

State of Bihar v. M. Neethi Chandra **1996 (5) Suppl. SCR 696 = (1996) 6 SCC 36;** *Anurag Patel v. U.P. Public Service Commission* **2004 (4) Suppl. SCR 888 = (2005) 9 SCC 742 – relied on**

Union of India v. Ramesh Ram **2010 (6) SCR 698 = (2010) 7 SCC 234 – followed**

Indra Sawhney v. Union of India **1992 (2) Suppl. SCR 454 = 1992 Supp. (3) SCC 217;** *R. K.S abharwal v. State of Punjab* **1995 (2) SCR 35 =(1995) 2 SCC 745;** *Ritesh R. Sah v. Dr. Y. L. Yamul* **1996 (2) SCR 695 = (1996) 3 SCC 253;** *Union of India v. Ramesh Ram* **(2009) 6 SCC 619;** *Union of India v. Satya Prakash* **2006 (3) SCR 789 = (2006) 4 SCC 550; and** *M. Nagaraj v. Union of India* **2006 (7) Suppl. SCR 336 = (2006) 8 SCC 212 – referred to.**

Case Law Reference:

1996 (5) Suppl. SCR 696	**relied on**	**para 9**
2004 (4) Suppl. SCR 888	**relied on**	**para 9**
2010 (6) SCR 698	**followed**	**para 9**
1992 (2) Suppl. SCR 454	**referred to**	**para 10**
1995 (2) SCR 35	**referred to**	**para 10**
1996 (2) SCR 695	**referred to**	**para 15**
2009 (6) SCC 619	**referred to**	**para 16**
2006 (3) SCR 789	**referred to**	**para 18**
2006 (7) Suppl. SCR 336	**referred to**	**para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8499 of 2012.

From the Judgment & Order dated 17.8.2010 of the High Court of Guwahati at Guwahati in Writ Petition No. 1040 of 2010.

Ravi C. Prakash, Purushottam Sharma Tripathi for the Appellant.

Avijit Roy, Manish Goswami for the Respondents.

The following order of the Court was delivered

<u>O R D E R</u>

1. Leave granted.

2. The questions which arise for consideration in this appeal filed against the order of the Division Bench of the Guwahati High Court dismissing the writ petition filed by the appellant for quashing the selection made by the Assam Public Service Commission (for short, 'he Commission') are whether a candidate of reserved category, who is adjudged more meritorious than open/general category candidates, is entitled to be appointed in the service/cadre/post of his choice/ preference against the post earmarked for the reserved category to which he belongs and whether while computing the quota/percentage of reservation, such candidate should be treated to have been allotted a post in the open category.

3. On a requisition received from the State Government, the Commission issued advertisement No.6/2006 dated 10.8.2006 for 116 posts of Assam Civil Service Class-I (Junior Grade), Assam Police Service (Junior Grade), Labour Officer, Assistant Registrar of Cooperative Societies, Inspector of Labour, Inspector of Taxes and Inspector of Excise. These included 11 backlog posts of reserved categories of Scheduled Castes, Scheduled Tribes (P) and Scheduled Tribes (H). The appellant, who belongs to OBC applied for recruitment against the advertised posts. After clearing the preliminary and final examination, the appellant was called for interview. The list of selected candidates was published by the Commission on 15.6.2009.

4. As the appellant's name did not figure in the merit list, he submitted an application under the Right to Information Act, 2005 for supply of the details of marks awarded to him in various papers and interview. Vide reply dated 16.7.2009, the Commission informed the appellant that he had secured 840 marks (669 in the main examination and 141 in the interview). The appellant then filed Writ Petition No.3590/2009 for quashing the entire selection and for issue of a mandamus to the Commission to prepare fresh select list in accordance with the recruitment rules and the reservation policy framed by the State

Government. Some other unsuccessful candidates also filed writ petitions questioning the selection made by the Commission. The Division Bench of the High Court disposed of all the petitions by common order dated 1.9.2009 and directed the Commission to prepare fresh select list.

5. In compliance of the direction given by the High Court, the Commission prepared fresh select list which was notified on 18.2.2010. The appellant's name did not find place even in the fresh list. He, therefore, filed Writ Petition No.1040/2010 and prayed for issue of a mandamus to the Commission to again revise the select list by contending that more meritorious candidates of the reserved category of OBC who should have been adjusted against the open category posts were illegally appointed against the posts earmarked for the OBC. He pleaded that the Commission committed serious error by allotting the posts in Assam Civil Service to OBC candidates who, keeping in view their overall merit, should have been appointed against the open category posts and, in any case, for the purpose of computing quota of reservation for OBC, such appointments should be treated as having been made against open category posts.

6. The Division Bench of the High Court considered the case of one Manjit Barkakoti, who had secured 952 marks and was placed at Sl.No.25 in the overall merit, but could not be appointed to the Assam Civil Service against the open category post because his marks were less than other open category candidates and held that no illegality was committed by appointing him to that service against the post earmarked for the reserved category. The Division Bench further held that appointment of the candidates of the reserved category, who were adjudged more meritorious than some of the open category candidates against the posts earmarked for the particular reserved category did not result in usurpation of the quota earmarked for that category. All this is evinced from the following portions of the impugned order:

"5. The contention advanced by the petitioner that Manjit Barkakoti being at Sl. No.25 of the over all merit list should be treated was a general category candidate has dangerous portents with the law cannot countenance. If Manjit Barkakoti is to be treated as a general category candidate, he will not make it to the Assam Civil Service even with lesser marks will qualify as an OBC candidate for the Assam Civil Service to the exclusion of a more meritorious OBC candidates. Such a situation cannot be allowed to prevail.

6. The perception of the petitioner is capable of being analysed from another standpoint. According to the petitioner, by treating such meritorious candidates as reserved category candidates, the actions of the Public Service Commission have reduced the posts available for reserved category candidates. The aforesaid perception of the petitioner is not correct on facts. Along with a general merit list, the Public Service Commission has prepared separate select list for each of the service for which advertisement was issued. The number of posts available in each service and the distribution thereof amongst the general candidates and each of the reserved category candidate is mentioned in the select list published. 29 posts in all for all the different services in question were available. A reading of the select list for each service as prepared by the Commission clearly indicates that 29 OBC candidates have been appointed. If that be so, the concept of usurping the quota for OBC candidates, as sought to be so, the concept of usurping the quota for OBC candidates, as sought to be urged, will have no basis. Above all, it is not the case of the petitioner that any OBC candidate securing less than 840 marks (secured by the petitioner) has been appointed in any service."

7. Learned counsel for the appellant referred to the provisions of the Assam Scheduled Castes and Scheduled

Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, Assam Public Service Combined Competitive Examination Rules, 1989 and office memo No.ARP-338/83/14 dated Dispur, the 4th January, 1984 issued by the State Government and argued that the reserved category candidates, who were more meritorious than open category candidates, but were appointed against the reserved category posts should be deemed to have been appointed against the posts earmarked for the open category and they cannot be treated as appointed against the posts earmarked for the reserved category, which is constitutionally and legally impermissible. He submitted that if migration is allowed to more meritorious candidates of the reserved category, who, as per their overall merit should be appointed against the general category posts then the quota earmarked for reserved category will be reduced and that would be clearly contrary to the provisions of the rules framed under proviso to Article 309 of the Constitution, the reservation policy framed by the State Government and Articles 14 and 16 of the Constitution.

8. Learned counsel for the State of Assam supported the impugned order and argued that the view taken by the High Court on the entitlement of more meritorious candidates of reserved category to opt for the reserved category posts is in consonance with the law laid down by this Court and the appellant who is less meritorious reserved category candidate cannot claim appointment to the State services because that would amount to violation of the rights of more meritorious candidates of his own category.

9. We have considered the argument/submission of the learned counsel for the parties. In our view, the questions framed in the opening paragraph of this order are no longer *res integra* and must be answered in affirmative in view of the judgments of this Court in *State of Bihar v. M. Neethi Chandra* (1996) 6 SCC 36, *Anurag Patel v. U.P. Public Service Commission* (2005)9 SCC 742 and *Union of India v. Ramesh Ram* (2010) 7 SCC 234.

10. However, before adverting to aforesaid judgments we consider it proper to notice two other judgments in *Indra Sawhney v. Union of India* 1992 Supp. (3) SCC 217 and *R.K.Sabharwal v. State of Punjab* (1995) 2 SCC 745. In the first of these cases, the nine Judges Bench considered the constitutional validity of O.M.s dated 13.8.1990 and 25.9.1991 issued by the Government of India on the issue of reservation of socially and educationally backward classes. B.P.Jeevan Reddy, J., wrote the majority opinion on his own behalf and on behalf of Chief Justice M.H. Kania and M.N. Venkatachaliah and A.M. Ahmadi, JJ. S. Ratnavel Pandian, T.K.Thommen, Kuldip Singh, P.B.Sawant and R.M.Sahai, JJ., wrote separate opinions. In his detailed judgment B.P. Jeevan Reddy, J. answered several questions. In paragraph 811 of the judgment he made the following observations:

> "811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

11. In the second case, the Constitution Bench held that the State cannot count a reserved candidate selected in the open category against the vacancies in the reserved category.

12. If the proposition laid down in *Indra Sawhney v. Union of India* (supra) and *R.K.Sabharwal v. State of Punjab* (supra) are considered in abstract, it may be possible to say that once a reserved category candidate secures higher merit than open category candidates, he can be considered for appointment only against open category post and the quota of the particular reserved category cannot be reduced by treating his appointment as one made against the post earmarked for the reserved category to which he belongs. However, literal

application of this proposition can lead to serious anomaly and discrimination inasmuch as more meritorious candidate of the particular reserved category could be deprived of the service/cadre/post of his choice/preference and less meritorious candidate of the reserved category could get appointment on the post which would otherwise be available to more meritorious candidate. This can be illustrated by the following example: -

> 'X' and 'Y' are members of reserved category. They compete for selection for recruitment to All-India Services, which includes, IAS, IPS, IRS, etc. In the merit list prepared by the Commission 'X' is placed higher than some of the open category candidates but on the basis of his overall inter se merit with the open category candidates he could get appointment only to IRS. 'X' can get the post of his choice/preference i.e. IAS provided his case is considered for appointment against the posts earmarked for the particular reserved category to which he belongs. If he is not allowed to do so, then why who is less meritorious than 'X' within the reserved category will get appointment to IAS against the reserved post. In this manner 'X' will, despite his better merit within the reserved category, stand discriminated in the matter of appointment against the post for which he had given his preference.

13. The anomaly of the type mentioned above was not countenanced in *Indra Sawhney v. Union of India* (supra) and *R.K.Sabharwal v. State of Punjab* (supra) and, therefore, the Court did not have the occasion to deal with the same. However, we are convinced that appointment of less meritorious candidate of the reserved category against the service/cadre/post of his choice and denial of such appointment to more meritorious candidate of that category would result in blatant violation of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

14. In *State of Bihar v. M. Neethi Chandra* (supra), this Court considered the question whether the candidates of the

reserved categories who had secured more marks than open category candidates could be placed in a disadvantageous position because they were allotted branches which were not of their choice. If they were allotted branches as per their merit among the reserved category candidates then they would have got the branches of their choice. The writ petitions filed by more meritorious candidates of the reserved categories were disposed of by the High Court by directing that the seats should be first offered to the candidates of reserved category on merit and once all the reserved seats are filled, the remaining seats should be offered to the general category. The High Court made a further arrangement for the reserved category of girls, who could get seats on merit on their own reservation as girls as well as on reserved seats as scheduled casts/scheduled tribes etc. The girls were to be considered first for admission against the seats reserved for them. If any girl belonged to scheduled casts/scheduled tribe, etc., she was to be given a choice of one of the two reservations and the girls in excess of the reserved vacancies could then seek admission on general merit. While partly reversing the order of the High Court, this Court observed:

> "Let us take a situation in which in a particular reserved category there are × number of seats but the candidates qualifying according to criteria fixed for that category are x+5 with the best among them also qualifying on merit as general candidates. According to the arrangement made by Circular No. 20, the first candidate gets a choice along with the general category candidate but being not high enough in the list, gets a choice lesser than what he could secure in the reserved category to which he was entitled. The × number of seats could then be filled up with the four qualifying candidates being denied admission for want of seats. This would have been harsh for the best candidate as well as violative of Articles 14 and 16 of the Constitution. On the other hand, if the direction of the High Court is followed, the first × number of candidates get seats according to merit against the reserved seats but the remaining 5 will also have to be 'adjusted' against the open seats for regular candidates. These 5 will be those who are not qualified according to the general merit criteria and so will necessarily displace 5 general candidates who would be entitled to seats on merit.
>
> At the same time, as pointed out above, all is not well with the Government Circular No. 20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of Circular No. 20 is to give full benefit of reservation to the candidates of the reserved categories. <u>However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject."</u>
>
> (emphasis supplied)

15. In *Anurag Patel v. U.P. Public Service Commission* (supra) this Court was called upon to consider whether more meritorious candidates of reserved category who were adjusted against the posts earmarked for general category were not entitled to make a choice of the post earmarked for reserved category. The facts as noticed by this Court were that the 3rd respondent, i.e., Rajesh Kumar Chaurasia in CA No. 4794 of 1998, who secured 76th place in the select list, filed Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in CA No. 4794 of 1998, i.e., Nanku Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the 3rd respondent, had secured 97th rank in the select list, a rank lower than him. Similarly, 8

persons, all belonging to Backward Classes, who find their names in the select list filed Writ Petition No. 22753 of 1993 alleging that they were entitled to get postings in higher cadre of service as the persons who secured lower rank in the select list were given appointment to higher posts. The first petitioner in the writ petition i.e. Shri Rama Sanker Maurya and the 2nd petitioner i.e. Shri Abdul Samad were at Serial Nos. 13 and 14 in the select list. According to these petitioners, persons lower in rank who got appointment in the reserved category were given postings on the ground that those posts were earmarked for being appointed in Class II services. After noticing the judgments in *Ritesh R. Sah v. Dr. Y. L. Yamul* (1996) 3 SCC 253 and *State of Bihar v. M. Neethi Chandra* (supra), the Court observed:

> "In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later."

16. A somewhat similar question came up before the three Judge Bench in *Union of India v. Ramesh Ram* (2009) 6 SCC 619. Some candidates belonging to OBC had filed an application before Madras Bench of the Central Administrative Tribunal challenging Rule 16(2) of the Civil Services

Examination Rules, 2005. They pleaded that adjustment of more meritorious OBC candidates against the OBC quota was illegal. According to them, such candidate should be adjusted against the unreserved/general category posts and allow more OBC candidates, who were lower in rank, to be recommended for the posts earmarked for that category. The Tribunal held that the OBC candidates who were selected on merit must be adjusted against the general category posts. It further held that in terms of the judgment of this Court in *Anuraj Patel vs. U.P. Public Service Commission* (supra), the allocation of service should be in accordance with rank-cum-preference with priority given to meritorious candidates. The three Judge Bench noticed the judgments in *Ritesh R. Sah v. Dr. Y.L. Yamul* (supra), *Anurag Patel v. U.P. Public Service Commission* (supra) and *R. K. Sabharwal v. State of Punjab* (supra) and referred the matter to the Constitution Bench.

17. When the matter was placed before the Constitution Bench (the judgment of the Constitution Bench is reported as Union of India v. Ramesh Ram (2010) 7 SCC 234), the following question was framed:

> *"Whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category."*

18. The Constitution Bench referred to the rules, the judgments of this Court in *Union of India v. Satya Prakash* (2006) 4 SCC 550, *Ritesh R. Sah v. Dr. Y.L. Yamul* (supra), *State of Bihar v. M. Neethi Chandra* (supra), *Indra Sawhney v. Union of India* (supra), *M. Nagaraj v. Union of India* (2006) 8 SCC 212, *Anurag Patel v. U.P. Public Service Commission* (supra) and observed:

> "The decision in Anurag Patel rectified the anomaly which

had occurred since U.P. PSC had allotted services of lower preference to the candidates of Backward Classes who were meritorious enough to qualify as per the criteria laid down for general category candidates. Such meritorious candidates were disadvantaged on account of qualifying on merit which was patently offensive to the principles outlined in Articles 14 and 16 of the Constitution. This Court had reached such conclusion to ensure that allocation of service is in accordance with the rank-cum-preference basis with priority given to meritorious candidates for service allocation.

The decision in Anurag Patel in turn referred to the earlier decision in *Ritesh R. Sah v. Dr. Y.L. Yamul*. However, we have already distinguished the judgment in Ritesh R. Sah. That decision was given in relation to reservation for admission to postgraduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by UPSC. The ultimate aim of civil services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others."

(emphasis supplied)

19. The Constitution Bench noticed the judgment in *R.K. Sabharwal v. State of Punjab* (supra) and distinguished the same by making the following observation:

"Reference was also made to *R.K. Sabharwal v. State of Punjab*, this Court had declared that the State shall not

count a reserved category candidate selected in the open category against the vacancies in the reserved category. However, by this it could not be inferred that if the candidate himself wishes to avail a vacancy in the reserved category, he shall be prohibited from doing so. After considering the counsel's submissions and deliberations among ourselves, we are of the view that the ratio in that case is not applicable for the purpose of the present case. That case was primarily concerned with the Punjab Service of Engineers in the Irrigation Department of the State of Punjab. The decision was rendered in the context of the posts earmarked for the Scheduled Castes/Scheduled Tribes and Backward Classes on the roster. It was noted that once such posts are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant in a cadre thereafter, is to be filled from the category reserved or general due to retirement or removal of a person belonging to the respective category. Unlike the examinations conducted by UPSC which includes 21 different services this case pertains to a single service and therefore the same cannot be compared with the examination conducted by UPSC. The examination conducted by UPSC is very prestigious and the topmost services of this nation are included in this examination. In this respect, it is obvious that there is fierce competition amongst the successful candidates as well to secure appointments in the most preferred services. This judgment is strictly confined to the enabling provision of Article 16(4) of the Constitution under which the State Government has the sole power to decide whether there is a requirement for reservations in favour of the backward class in the services under the State Government. However, the present case deals with positions in the various civil services under the Union Government that are filled through the examination process conducted by UPSC. Therefore, the fact-situation in *R.K. Sabharwal* case is clearly distinguishable.

20. In view of the above discussion and the law laid down in *State of Bihar v. M. Neethi Chandra* (supra), *Anurag Patel v. U.P. Public Service Commission* (supra), which has been approved by the Constitution Bench in Union of India v. Ramesh Ram, we hold that the official respondents did not commit any illegality by appointing more meritorious candidates of OBC to Assam Civil Service for which they had given preference and the High Court did not commit any error by dismissing the writ petition.

21. As a sequel to the above, the questions framed in this appeal are answered in the following terms:

> "(1) A reserved category candidate who is adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/ preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category.
>
> (2) On his appointment to the service/cadre/post of his choice/preference, the reserved category candidate cannot be treated as appointed against the open category post."

22. In the result the appeal is dismissed. The parties are left to bear their own costs.

R.P. Appeal dismissed.

CIPLA LTD.
v.
UNION OF INDIA & ORS.
(Civil Appeal Nos. 8479-8480 of 2012)

NOVEMBER 27, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Natural Justice – Application for revocation of patent – Patent revoked by Controller – By placing reliance on the recommendation of the Opposition Board, but without giving copy of the report of the Opposition Board to either of the parties – Held: The order of the Controller is vitiated for violation of principles of natural justice – Therefore, order of Controller set aside – Recommendations of Opposition Board now available with the parties – Direction to Controller to dispose of the matter afresh after hearing all the parties and also affording them opportunity to raise contentions for and against the recom High mendation of the Opposition Board – Patents Act, 1970 – s. 25(2).

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8479-8480 of 2012.

From the Judgment & Order dated 8.10.2012 and 12.10.2012 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 6361 of 2012 and in L.P.A. No. 695 of 2012 respectively.

Harish Salve, T.R. Andhyarujina, Pratibha M. Singh, Saya Chowdhry, Bitika Sharma, Surbhi Mehta, Varun Tikmani, Gaurav Sharma, Pravin Anand, Hari Shankar K., Archana Shanker, Aditya Gupta, Vikas Singh Jangra, Aditya Verma, C. Mukund, P.V. Saravana Raja, Ekta Bhasin, Gagan Gupta for the Appearing Parties.

The following Order of the Court was delivered

ORDER

1. Leave granted.

2. Sugen Inc. USA and Pharmacia and Upjohn Company USA filed an application on 9.8.2002 for the grant of patent. The application was recommended for grant of patent on 23.8.2007 and was finally alloted the patent No.209251, which was published in the Patent Office Journal under Section 43(2) of the Patents Act, 1970 (for short. "the Act"). Cipla Ltd. filed an application under section 25(2) of the Act on 1.9.2008 for revocation of the said patent, before the Assistant Controller of Patent and Design (in short, "the Controller"), who vide his order dated 24th September, 2012 revoked the patent which gave rise to this litigation.

3. Heard Mr. Harish Salve, learned senior counsel appearing for the appellant and Mr. T.R. Andhyarujina, learned senior counsel appearing for Respondent Nos.2 and 3 at length. Detailed arguments were addressed with regard to the correctness or otherwise of the order passed by the Controller as well as by the High Court and the consequences thereof.

4. We find it unnecessary to examine all those contentions since we are sending this matter back to the Controller for fresh consideration in accordance with law. The main controversy raised in the case is on the non-furnishing of the copy of the recommendation of the Statutory Board constituted under Section 25(4) of the Act to the parties.

5. Chapter V of the Patents Act, 1970 (for short, "the Act") deals with the Opposition Proceedings to grant of patents. Section 25(1) of the Act enables any person to represent by way of Opposition to the Controller against the grant of patent, but before a patent has not been granted. Sub-section (2) of Section 25 enables any person interested to give notice of opposition to the Controller at any time after the grant of patent, but before the expiry of period of one year from the date of

publication of grant of the patent. Clauses (a) to (k) of this sub-section are the grounds which can be taken by any person. It is specifically made clear that in sub-sections (1) and (2) of Section 25 of the Act that no other grounds are available to be taken by any person.

6. Section 25(3)(b) of the Act deals with the constitution of the Opposition Board for examination and submission of its recommendations to the Controller. Clause (c) of Section 25(3) says that every Opposition Board constituted under clause (b) shall conduct examination in accordance with such procedure as may be prescribed. Chapter VI of the Patent Rules, 2003 (for short, "the Rules") deals with the Opposition proceedings to grant of patents. Rule 56 deals with the constitution of Opposition Board and its proceeding. Rule 56 is given below for easy reference:

> "56. Constitution of Opposition Board and its proceeding-
>
> (1) On receipt of notice of opposition under rule 55A, the Controller shall, by order, constitute an Opposition Board consisting of three members and nominate one of the members as the Chairman of the Board.
>
> (2) An examiner appointed under sub-section (2) of section 73 shall be eligible to be a member of the Opposition Board.
>
> (3) The examiner, who has dealt with the application for patent during the proceeding for grant of patent thereon shall not be eligible as member of Opposition Board as specified in sub-rule (2) for that application.
>
> (4) The Opposition Board shall conduct the examination of the notice of opposition along with documents filed under rule 57 to 60 referred to under sub-section (3) of section 25, submit a report with reasons on each ground taken in the notice of opposition with its joint recommendation within

three months from the date on which the documents were forwarded to them."

7. Rule 57 deals with filing of written statement of opposition and evidence. Rule 58 deals with filing of reply statement and evidence. Rule 59 deals with filing of reply evidence by opponent. Rule 60 says that no further evidence shall be delivered by either party except with the leave or directions of the Controller.

8. The aforesaid provisions indicate that the Opposition Board has to conduct an examination of notice of opposition along with the documents filed under Rules 57 to 60 and then to submit a report with reasons on each ground taken in the notice of opposition. The Opposition Board has, therefore, to make recommendation with reasons after examining documents produced by the parties as per Rules.

9. Section 25(4) of the Act says that on receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the Controller shall order either to maintain or to amend or to revoke the patent. The procedure to be followed by the Controller is provided in Rule 62 of the Rules, which reads as follows:

"62. Hearing - (1) On the completion of the presentation of evidence, if any, and on receiving the recommendation of Opposition Board or at such other time as the Controller may think fit, he shall fix a date and time for the hearing of the opposition and shall give the parties not less than ten days' notice of such hearing and may require members of Opposition Board to be present in the hearing.

(2) If either party to the proceeding desires to be heard, he shall inform the Controller by a notice along with the fee as specified in the First Schedule.

(3) The Controller may refuse to hear any party who has not given notice under sub-rule (2).

(4) If either party intends to rely on any publication at the hearing not already mentioned in the notice, statement or evidence, he shall give to the other party and to the Controller not less than five days' notice of his intention, together with details of such publication.

(5) After hearing the party or parties desirous of being heard, or if neither party desires to be heard, then without a hearing, and after taking into consideration the recommendation of Opposition Board, the Controller shall decide the opposition and notify his decision to the parties giving reasons therefor."

10. Sub-rule (1) of Rule 62 confers power on the Controller to require members of Opposition Board to be present in the hearing after receiving recommendation of the Opposition Board. The Controller, after hearing the parties if they so desire and after taking into consideration the recommendation of the Opposition Board, has to decide the opposition giving reasons. Provisions of the Act and the Rules, therefore, clearly indicate that the Opposition Board has to make its recommendations after considering the written statement of opposition, reply statement, evidence adduced, by the parties with reasons on each ground taken by the parties. Rule 62 also empowers the Controller to take into consideration the reasons stated by the Opposition Board in its Report. In other words, the Report of the Opposition Board has got considerable relevance while taking a decision by the Controller under Section 25(4) of the Act read with Rule 62(5) of the Rules.

11. The Opposition Board in a given case may make a recommendation that the patent suffers from serious defects like lack of novelty, lack of inventive steps etc., so also it can recommend that the patent shall be granted since the invention has novelty, inventive steps etc. Such recommendations are

made after examining the evidence adduced by the parties before it. Unless the parties are informed of the reasons, for making such recommendations they would not be able to effectively advance their respective contentions before the Controller. Section 25(3)(b) read with Rule 56(4) cast no obligation on the Opposition Board to give a copy of the Report to either of the parties. So also no obligation is cast under Section 25(4) or under Rule 62 on the Controller to make available the report of the recommendation of the Opposition Board. But considering the fact that the Report of the Opposition Board can be crucial in the decision making process, while passing order by the Controller under Section 25(4), principles of natural justice must be read into those provisions. Copy of the Report/recommendation of Opposition Board, therefore, should be made available to the parties before the Controller passes orders under Section 25(4) of the Act.

12. We have gone through the order passed by the Controller and we notice that Controller has placed reliance on the recommendation of the Opposition Board, but without giving copy of the report to either of the parties. Hence, order is vitiated for violation of principle of natural justice. Order passed by the Controller on 24.9.2012 is, therefore, set aside. Since we have set aside order passed by the Controller on the ground of violation of principles of natural justice, the order passed by learned Single Judge of the High Court on 8.10.2012 in Writ Petition No.6361 of 2012 as well as the order passed by the Division Bench of the High Court on 12.10.2012 in Letters Patent Appeal No.695 of 2012 also would stand set aside.

13. Recommendation made by Opposition Board is now available with the parties, hence we direct the Controller to dispose of the matter afresh after hearing all the parties and also affording them an opportunity to raise their contentions for and against the recommendation of the Opposition Board. The Controller would dispose of the matter within a period of one

month from the date of communication of copy of this order. Since the matter is remitted to the Controller, the Writ Petition No.6361 of 2012, pending before the Delhi High Court also stands disposed of.

14. The Civil Appeal is disposed of as above with no order as to costs. We make it clear that we are not expressing any opinion on the various contentions raised by the parties before us and are left to be decided by the Controller.

K.K.T. Appeal disposed of.

RAJU @ BALACHANDRAN & ORS.
v.
STATE OF TAMIL NADU
(Criminal Appeal No. 1614 of 2009)

NOVEMBER 27, 2012

[SWATANTER KUMAR AND MADAN B. LOKUR, JJ.]

Penal Code, 1860 – ss.302, 326 and 341 and s.302 r/w s.34 – Homicidal attack on the brother and mother of PW5 leading to their death – Testimony of PW5 – Conviction of appellants by Courts below on that basis – Challenge to – Held: PW5's description of the events was simple and straightforward and the cross-examination did not demolish his version of the events – Facts evident from record lead to the clear conclusion that PW5 was present at the place of occurrence and was an eye witness to the incident – His testimony supported in its essential details by testimony of the other witnesses – Evidence of PW5 credible notwithstanding that he was a related and interested witness – Conclusion arrived at, by the Courts below not shown to be perverse nor shown to be deserving reversal – Conviction of appellants accordingly upheld.

Witness – Evidence of related and interested witness having enmity with the accused – Appreciation of – Held: A court should examine the evidence of such a witness with greater care and caution than the evidence of a third party disinterested and unrelated witness – Where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny – However, this is only a rule of prudence and not one of law.

Witness – Different categories of witnesses – 1) A third

party disinterested and unrelated witness (such as a bystander or passer-by); 2) a third party interested witness (such as a trap witness); 3) a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; and 4) a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused.

The brother and mother of PW5 were victims of a homicidal attack. PW5's brother died on the spot while his mother was grievously injured and died subsequently. The trial Court and the High Court believing the testimony of PW-5 held that his brother and mother were murdered by the appellants and convicted them. Appellant no.1 was convicted under Sections 302, 341 and 326. The other two appellants were convicted under Section 302 r/w Section 34 IPC.

In the instant appeal, two contentions were advanced by the appellants - firstly, that since PW-5 was a related and interested witness, his evidence must be closely scrutinized, and if his testimony is put to close scrutiny, it will be quite clear that he ought not to be believed and secondly, that the prosecution case was doubtful since there was no evidence except the unreliable testimony of PW-5.

Dismissing the appeal, the Court

HELD: 1.1. For the time being, this Court is concerned with four categories of witnesses – a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the

wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required. [Para 33] [121-B-D]

1.2. In the present case, PW5 is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution. [Para 34] [121-E]

1.3. The evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law. [Para 38] [124-C-D]

1.4. On going through the evidence of PW-5 by applying the discerning scrutiny standard, it is difficult to overturn the view expressed by both the Courts in their acceptance of his evidence. His description of the events is simple and straightforward and the cross-examination does not demolish his version of the events. In fact, the cross-examination is directed more at proving that one 'S' may have been the assailant since the brother of PW5 had an illicit relationship with S's first wife. This was ruled out by PW-5 who did not want to

shield the real assailant and put the blame for the occurrence on someone else. [Para 39] [124-F-H]

1.5. Both the Trial Court and the High Court have concurrently held that PW-5 was an eye witness to the murder of his brother and mother. The conclusion arrived at by both the Courts has not been shown to be perverse in any manner whatsoever nor has it been shown deserving of reversal. [Para 40] [125-A-B]

1.6. The presence of PW-5 at the place of occurrence cannot be doubted in view of the FIR lodged by PW-1 and his testimony. Even though PW-1 may have turned hostile, the fact remains that a report was made to the police about the homicidal attack on the brother and mother of PW5. That there was a homicidal attack on them is not in dispute. This is confirmed even by the witnesses who turned hostile. It is also not in dispute that the brother of PW5 died on the spot and that PW5's mother was grievously injured. This too is confirmed by the witnesses who turned hostile. That PW-5 took his mother to the hospital immediately after she was attacked is confirmed by PW-1. On the basis of these facts, which are evident from the record, there is no option but to accept the conclusion of both the Courts that PW-5 was present at the place of occurrence and was an eye witness to the incident. His testimony is not unreliable and is supported in its essential details by the testimony of the other witnesses. [Para 41] [125-C-F]

1.7. The evidence of PW-5 is found to be credible notwithstanding that he was a related and interested witness. Accordingly, the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court is upheld. [Para 42] [124-G]

State of Rajasthan v. Kalki **(1981) 2 SCC 752: 1981 (3) SCR 504 – doubted.**

Dalip Singh v. State of Punjab **1954 SCR 145 and** *Sarwan Singh v. State of Punjab* **(1976) 4 SCC 369 – relied on.**

State of Bihar v. Basawan Singh **AIR 1958 SC 500: 1959 SCR 195;** *Darya Singh v. State of Punjab* **(1964) 3 SCR 397;** *Waman v. State of Maharashtra* **(2011) 7 SCC 295: 2011 (6) SCR 1072;** *Balraje v. State of Maharashtra* **(2010) 6 SCC 673: 2010 (6) SCR 764;** *Prahlad Patel v. State of Madhya Pradesh* **(2011) 4 SCC 262: 2011 (3) SCR 471;** *Israr v. State of Uttar Pradesh* **(2005) 9 SCC 616: 2004 (6) Suppl. SCR 695;** *S. Sudershan Reddy v. State of Andhra Pradesh* **(2006) 10 SCC 163: 2006 (3) Suppl. SCR 743;** *State of Uttar Pradesh v. Naresh* **(2011) 4 SCC 324: 2011 (4) SCR 1176;** *Jarnail Singh v. State of Punjab* **(2009) 9 SCC 719: 2009 (13) SCR 774 and** *Vishnu v. State of Rajasthan* **(2009) 10 SCC 477 – referred to.**

Case Law Reference:

1981 (3) SCR 504	**doubted**	**Para 30**
1959 SCR 195	**referred to**	**Para 31**
1954 SCR 145	**relied on**	**Paras 35, 38**
(1964) 3 SCR 397	**referred to**	**Para 36**
2011 (6) SCR 1072	**referred to**	**Para 37**
(1976) 4 SCC 369	**relied on**	**Para 38**
2010 (6) SCR 764	**referred to**	**Para 37**
2011 (3) SCR 471	**referred to**	**Para 37**
2004 (6) Suppl. SCR 695	**referred to**	**Para 37**
2006 (3) Suppl. SCR 743	**referred to**	**Para 37**
2011 (4) SCR 1176	**referred to**	**Para 37**
2009 (13) SCR 774	**referred to**	**Para 37**
(2009) 10 SCC 477	**referred to**	**Para 37**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1614 of 2009.

From the Judgment & Order dated 02.8.2006 of the High Court of Judicature of Madras at Madurai in Criminal Appeal No. 4 of 2005.

R.V. Kameshwaran for the Appellants.

M. Yogesh Kanna for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The issue before us is whether the Trial Court and the High Court were both right in believing the testimony of PW-5 Srinivasan, a related and interested witness, that his brother Veerappan and his mother Marudayi were murdered by the appellants. Whether such an issue is of such public importance that it requires a decision from this Court is moot. But, be that as it may, we find no reason to disbelieve the witness and agree with both the Courts that his evidence should be accepted.

2. Accordingly, we uphold the conviction and sentence of the appellants for having committed the murder of Veerappan and Marudayi.

The facts:

3. Appellant No. 1 (Raju @ Balachandran) is the father of appellant No. 2 (Rajkumar) and of appellant No. 3 (Sekar).

4. The case of the prosecution was that there was some enmity between the appellants and Veerappan relating to a ritual called "Mandu Vettal" performed before worshipping God

in their village. The enmity dated back to about 4 or 5 years prior to the incident that we are concerned with.

5. On 4th May 2003 at about 5.30 a.m. Veerappan had gone to the tea shop of PW-7 Kamaraj and was returning along with PW-1 Thangavel and PW-5 Srinivasan (brother of Veerappan) who were following him. As Veerappan approached his house, the appellants stopped him in the middle of the road and attacked him. Raju dealt a sickle blow on his right leg below the knee. This was followed by sickle blows inflicted on his shoulder, neck and head by Raj Kumar and Sekar. Veerappan died instantaneously, his head having almost been severed from the body.

6. On hearing some shouting, Veerappan's mother Marudayi came out of her house. When she saw what was happening, she came to rescue Veerappan and confront the appellants. At that time, Raju dealt her blows with his sickle on her neck, shoulder and head. Marudayi succumbed to her injuries a short while later en route to the hospital, where she was being taken by PW-5 Srinivasan.

7. A First Information Report (FIR) of the incident was lodged by PW-1 Thangavel and thereafter investigations were started by the police.

8. According to the prosecution PW-1 Thangavel and PW-5 Srinivasan were eye witnesses to the incident. Also, when the attack on Veerappan and Marudayi took place, PW-2 Smt. Thangammal (wife of Srinivasan), PW-3 Rajagopal and PW-4 Smt. T. Vasugi came out of their house and witnessed the incident.

9. The appellants fled away after attacking Veerappan and Marudayi. Later on they surrendered in the local Court. When the investigating officer came to know of this, he sought their custody by moving an application in the Court. He was granted custody of the appellants on 14th May 2003. According to the

prosecution, their confessional statement led to the recovery of the sickles used in the attack on the deceased. The clothes worn by the appellants were also recovered.

10. On the conclusion of investigations, a challan was filed alleging that the appellants had murdered Veerappan and Marudayi. In Sessions Case No.76/2004 before the Additional District & Sessions Judge (Fast Track Court), Tiruchirapally, the appellants pleaded not guilty and claimed trial. The prosecution examined seventeen witnesses while the defence examined two witnesses.

Decision of the Trial Court:

11. During the trial, PW-1 Thangavel, the author of the FIR, PW-3 Rajagopal and PW-4 Smt. Vasugi turned hostile. The Trial Judge was of the view that PW-2 Smt. Thangammal and PW-5 Srinivasan were eye witnesses and believed the testimony of PW-2 Smt. Thangammal (in part) and that of PW-5 Srinivasan (in full).

12. The Trial Judge held that PW-2 Smt. Thangammal generally stated that all the appellants caused injuries to the deceased without being specific. Consequently, her testimony relating to the sickle blows was not accepted.

13. As regards PW-5 Srinivasan, it was held that he was specific in saying that Raju injured Veerappan with a sickle on the right leg below the knee, while the other two appellants injured him on his shoulder and neck. The nature of injuries was confirmed by the doctor PW-8 Dr. Sumathi Paul Raj. The evidence on record showed that Veerappan's head was almost severed from his body and his death was instantaneous. The Trial Judge also accepted the evidence of PW-5 Srinivasan that Marudayi was grievously injured by Raju on the head, neck and shoulder. Again, the nature of injuries was confirmed by the doctor PW-8 Dr. Sumathi Paul Raj who stated that Marudayi died as a result of the injuries.

14. The Trial Judge rejected the contention that since PW-5 Srinivasan was the elder brother of Veerappan and son of Marudayi, his evidence was that of an interested witness and therefore should not be accepted. He also rejected the contention that since the evidence of PW-5 Srinivasan was not corroborated, his evidence should not be accepted.

15. PW-6 Marudai, father of Veerappan and husband of Marudayi testified to the enmity between the parties as a result of the ritual "Mandu Vettal".

16. PW-7 Kamaraj the owner of the tea shop visited by Veerappan also turned hostile. He denied that Veerappan was followed by PW-1 Thangavel and PW-5 Srinivasan, but he did not deny that Veerappan had visited his tea shop on the fateful morning.

17. The other witnesses examined by the prosecution were the doctors who conducted the post mortem, the officers who investigated the occurrence and some others whose testimony is not of much significance.

18. The Trial Judge rejected the testimony of the two defence witnesses as not credible. DW-1 Murugesan stated that the appellants had come to his house on 3rd May 2003 and had stayed with DW-2 Smt. S. Vasantha. However, this witness was not aware about when the appellants had come to his house and after they left for the house of DW-2 Smt. S. Vasantha when did they return.

19. DW-2 Smt. S. Vasantha was not believed since she stated that the appellants had gone to a temple festival in her village but there was nothing to support this statement.

20. Based principally on the evidence of PW-5 Srinivasan and the recoveries made, the Trial Court, by its judgment and order dated 26th November 2004 convicted Raju for offences punishable under Section 341 of the Indian Penal Code (for short 'IPC') and Section 326 of the IPC in respect of Veerappan

and Section 302 of the IPC for the murder of Marudayi. Rajkumar and Sekar were convicted of offences punishable under Section 302 of the IPC read with Section 34 thereof for the murder of Veerappan.

Decision of the High Court:

21. In Criminal Appeal No.4/2005 filed by the appellants before the Madras High Court it was contended that since PW-1 Thangavel, PW-3 Rajagopal and PW-4 Smt. Vasugi had turned hostile, there was no credible evidence against the appellants, more so, because the author of the FIR PW-1 Thangavel had turned hostile. As such, the very basis of the case could not be relied upon.

22. It was further submitted that the Trial Court had not fully believed PW-2 Smt. Thangammal and the only witness who came out in support of the case of the prosecution was PW-5 Srinivasan. It was submitted that there were some discrepancies in his evidence and as per the FIR he was not present at the place of occurrence. Therefore, it was submitted, the evidence of PW-5 Srinivasan could not be relied upon.

23. On the credibility of PW-5 Srinivasan, it was contended that the medical evidence did not match with his oral evidence and it would be unsafe to rely on his oral description of the events. In addition, it was submitted that since PW-5 Srinivasan was a related and interested witness, his testimony should be closely scrutinized and on such close scrutiny it would turn out that he was not a reliable witness.

24. The High Court rejected all the contentions urged on behalf of the appellants. It was held that there was no doubt that Veerappan and Marudayi died as a result of homicidal violence. It was further held that on an examination of the evidence of PW-5 Srinivasan it could not be said that he was an unreliable witness. While there may have been some minor discrepancies in his description of the events, he was believed

by the Trial Judge and there was no reason for the High Court to disbelieve him.

25. The High Court noted that on a reading of the FIR it was clear that PW-5 Srinivasan was present at the place of occurrence. In addition thereto, the FIR also mentioned that PW-1 Thangavel had asked PW-5 Srinivasan to take Marudayi to the hospital for treatment. Consequently, the presence of PW-5 Srinivasan at the place of occurrence could not be doubted.

26. The High Court also held that there was some enmity between the appellants and Veerappan and on an overview of the entire case, the conviction handed down by the Trial Court must be accepted.

27. Accordingly, the High Court, by its judgment and order dated 2nd August 2006 dismissed the appeal filed by the appellants.

Discussion:

28. Before us, only two contentions were advanced by learned counsel for the appellants. Firstly, it was contended that since PW-5 Srinivasan was a related and interested witness, his evidence must be closely scrutinized, and if his testimony is put to close scrutiny, it will be quite clear that he ought not to be believed. Secondly, it was contended that the prosecution case was doubtful since there was no evidence except the unreliable testimony of PW-5 Srinivasan.

29. The first contention relates to the credibility of PW-5 Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW-5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

30. What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan v. Kalki,* (1981) 2 SCC 752. It was held that:

> "True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

31. In light of the Constitution Bench decision in *State of Bihar v. Basawan Singh,* AIR 1958 SC 500 the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In *Basawan Singh*, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held:

> "The correct Rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

32. The wife of a deceased (as in *Kalki*), undoubtedly related to the victim, would be interested in seeing the accused person punished – in fact, she would be the most interested in

seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in *Kalki* is too narrow and generalized and needs a rethink.

33. For the time being, we are concerned with four categories of witnesses – a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

34. In the present case, PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution.

35. In *Dalip Singh v. State of Punjab,* 1954 SCR 145 this Court observed, without any generalization, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused – each case has to be considered on its own facts. This is what this Court had to say:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

36. ow the evidence of such a witness should be looked at was again considered in *Darya Singh v. State of Punjab,* (1964) 3 SCR 397. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said:

> "There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that

naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it........ [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

37. More recently, in *Waman v. State of Maharashtra,* (2011) 7 SCC 295 this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon *Sarwan Singh v. State of Punjab,* (1976) 4 SCC 369, *Balraje v. State of Maharashtra,* (2010) 6 SCC 673, *Prahlad Patel v. State of Madhya Pradesh,* (2011) 4 SCC 262, *Israr v. State of Uttar Pradesh,* (2005) 9 SCC 616, *S. Sudershan Reddy v. State of Andhra Pradesh,* (2006) 10 SCC 163, *State of Uttar Pradesh v. Naresh,* (2011) 4 SCC 324, *Jarnail Singh v. State of Punjab,* (2009) 9 SCC 719 and *Vishnu v. State of Rajasthan,* (2009) 10 SCC 477 it was held:

"It is clear that merely because the witnesses are related

to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care."

38. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh* and pithily reiterated in *Sarwan Singh* in the following words:

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

39. We have gone through the evidence of PW-5 Srinivasan by applying the discerning scrutiny standard and find it difficult to overturn the view expressed by both the Courts in their acceptance of his evidence. His description of the events is simple and straightforward and the cross-examination does not demolish his version of the events. In fact, the cross-examination is directed more at proving that one Subramaniam may have been the assailant since Veerappan had an illicit relationship with Subramaniam's first wife Periammal. This was ruled out by PW-5 Srinivasan who did not want to shield the real assailant and put the blame for the occurrence on someone else.

40. As far as the second contention is concerned, it overlaps with the first. Both the Trial Court and the High Court have concurrently held that PW-5 Srinivasan was an eye witness to the murder of Veerappan and Marudayi. The conclusion arrived at by both the Courts has not been shown to be perverse in any manner whatsoever nor has it been shown deserving of reversal.

41. The presence of PW-5 Srinivasan at the place of occurrence cannot be doubted in view of the FIR lodged by PW-1 Thangavel and his testimony. Even though PW-1 Thangavel may have turned hostile, the fact remains that a report was made to the police about the homicidal attack on Veerappan and Marudayi. That there was a homicidal attack on them is not in dispute. This is confirmed even by the witnesses who turned hostile. It is also not in dispute that Veerappan died on the spot and that Marudayi was grievously injured. This too is confirmed by the witnesses who turned hostile. That PW-5 Srinivasan took Marudayi to the hospital immediately after she was attacked is confirmed by PW-1 Thangavel. On the basis of these facts, which are evident from the record, there is no option but to accept the conclusion of both the Courts that PW-5 Srinivasan was present at the place of occurrence and was an eye witness to the incident. His testimony is not unreliable but is supported in its essential details by the testimony of the other witnesses.

Conclusion:

42. We find the evidence of PW-5 Srinivasan credible notwithstanding that he was a related and interested witness. Accordingly, we uphold the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court.

43. The appeal is dismissed.

B.B.B. Appeal dismissed.

GURPAL SINGH
v.
HIGH COURT OF JUDICATURE FOR RAJASTHAN
(Writ Petition (Civil) No. 200 of 2006)

NOVEMBER 27, 2012.

[SURINDER SINGH NIJJAR AND H.L. GOKHALE, JJ.]

Rajasthan Service Rules, 1951:

r.54 – Salary and allowances for the period under suspension – Judicial Officer faced criminal trial – Placed under suspension pending trial and appeal – Acquittal – Suspension continued during departmental proceedings after dismissal of criminal appeal – Held: Suspension of petitioner cannot be said to have been rendered wholly unjustified upon acquittal by trial court and during pendency of appeal before High Court – However, in view of findings of trial court and High Court, petitioner's continued suspension after decision in criminal appeal was wholly unjustified – Petitioner entitled to full pay and allowances from the date of decision in criminal appeal – Charges in departmental proceedings having not been proved and petitioner having been exonerated and the period of suspension having been treated as period spent on duty, he is entitled to be considered for promotion notionally from the date when an officer junior to him was promoted and allowed all consequential benefits accordingly, with 6% interest from the date of decision of criminal appeal – Service law – Judicial officer – Suspension - Costs.

The petitioner, a Judicial Magistrate First Class in Rajasthan, was arrested on 20.12.1985, pursuant to a complaint dated 11.12.1985 made by the wife of an advocate who was found dead on 24.11.1985. She alleged that her husband was asking the petitioner to refund the money which he had taken to get the former

appointed as a member of Board of Revenue. By an order dated 22.12.1985, the petitioner was suspended w.e.f. 20.12.1985. The criminal trial, which had been transferred to Delhi, culminated in acquittal of the petitioner on 1.5.2002. The appeal filed by CBI was also dismissed by the Delhi High Court on 27.9.2005. During the pendency of the trial and the appeal, the petitioner remained under suspension for about 20 years. When the petitioner came to know that instead of revoking the suspension order, the High Court was proposing to initiate disciplinary proceedings against him, he filed the instant writ petition for revocation of the order of suspension and for consequential benefits. In the Inquiry Report dated 27.2.2008, the petitioner was exonerated of the charges, and by order dated 26.3.2008, he was reinstated and was given posting on 12.5.2008. On 30.6.2008, he retired from service on attaining the age of superannuation.

On 24.1.2009, an order was issued by the High Court to the effect that the period of suspension of the petitioner would be treated on duty but without salary except subsistence allowances already paid to him and he would not be entitled for any promotion. Consequent upon the direction of the Supreme Court to pass appropriate orders under Rule 54 of the Rajasthan Service Rules, 1951, the High Court passed the order dated 16.5.2011 stating that the period during which the petitioner remained under suspension could not be said to be wholly unjustified under sub-r. (2) of r.54 and reiterated its earlier order dated 24.1.2009.

Partly allowing the writ petition, the Court

HELD: 1.1. In order to determine the issue relating to the entitlement of the petitioner to the salary and other allowances upon reinstatement, the matter needs to be examined at the different stages/point of time. The first

stage commenced at the time when the petitioner was initially suspended on 22.12.1985 w.e.f. 20.12.1985. The petitioner cannot legitimately protest against his suspension, at the initial stage, when he had remained in police custody for more than forty eight hours, though unfortunately for circumstances for which he was not responsible. This suspension was naturally continued when he was facing the trial for murder.The next stage is when he was acquitted by the trial court on 1.5.2002. However, it cannot be said that as soon as the trial court had acquitted the petitioner, the Rajasthan High Court was required to forthwith revoke the order of suspension. Undoubtedly, the petitioner could have been given a non-sensitive posting, not involving judicial functions. But, it was not imperative for the High Court to revoke the suspension, at that stage. It is a matter of record, that the prosecution agency decided to file and, in fact, filed an appeal which remained pending till it was decided on 27.9.2005. Therefore, the conclusions recorded by the trial court, were not final. They were liable to be reversed in appeal by the High Court. Thus, during the said period/stage, it cannot be said that the continuance of the suspension of the petitioner was *wholly unjustified*. The Rajasthan High Court was placed in a very piquant situation till the petitioner's acquittal was reiterated in the criminal appeal. The High Court had no option but to place and keep the petitioner under suspension, The petitioner, who was on a very high pedestal in society as a judicial officer, was facing a trial for the offence of murder, a crime of highest moral turpitude. Therefore, the decision of the High Court to continue the suspension of the petitioner can not be said to be *wholly unjustified* till his acquittal in the criminal appeal. [para 32-35] [151-C-F; 153-E-H; 154-A-B-D-E]

*Daya Shankar Vs. High Court of Allahabad & Ors. Through Registrar & Ors.*1987 (3) SCC 1*; and C.*

Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors., **1995 (3) Suppl. SCR 319 = 1995 (5) SCC 457 - referred to**

1.2. As regards the stage after the dismissal of the criminal appeal, the acquittal of the petitioner having been affirmed, it was necessary for the High Court of Rajasthan to take a decision: (a) whether to revoke the order of suspension and permit the petitioner to perform judicial functions; (b) whether to hold a departmental enquiry with regard to the alleged receipt of money by him from the deceased; (c) as to how the period of suspension was to be treated; (d) whether the petitioner was entitled to full salary, part salary or no salary at all for the period of suspension. [para 39] [157-C-E]

1.3. It is significant to note that the judgment of the trial court clearly indicates that the evidence produced does not reach even the bare minimum standard required for establishing the guilt of the petitioner. It disbelieved the very foundation of the prosecution case. The alleged motive has been found to be without any basis.The trial court categorically observed that in the peculiar circumstances of the case, the delay in registration of the FIR was *fatal* **to the case of the prosecution. The trial court was left with a definite impression that the evidence had been "*doctored*". It categorically observed that "***the investigation conducted smack of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused*". **These observations would bring the instant case within the realm of those cases which are often described as cases of** "*no evidence*". **Further, the High Court dismissed the appeal as having absolutely no merit, holding that the prosecution failed to prove, firstly, that there was any murder and, secondly, that the accused was the one who committed it. [para 33 and 38] [152-F-G; 153-A-D; 157-C]**

1.4. In view of the findings recorded by the trial court,

and reiterated by the High Court in criminal appeal, the decision to continue the petitioner under suspension, thereafter, was rather harsh. It is true that the suspension of the petitioner was continued as the High Court had decided to hold a departmental enquiry against the petitioner on the charges that he had wrongly extracted certain money from the deceased. But it is a matter of record that both the trial court as well as the High Court had found the entire story with regard to the alleged receipt of money to be false. The enquiry was founded on the same facts and the same evidence which have had been examined by the trial court as well as the High Court. In such circumstances, it was necessary for the High Court to examine the findings of the trial court as well as the High Court in detail before taking a decision to initiate departmental proceedings against the petitioner, founded on the same set of facts and the evidence. It is apparent from the record that no such examination of the judgment was undertaken by the High Court. In the case of *Corporation of the City of Nagpur*, **it is observed that it may not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, where the accused has been acquitted honourably and completely exonerated of the charges. [para 27 and 40] [149-B; 157-E-H; 158-A-B]**

Corporation of the City of Nagpur, Civil Lines, Nagpur & Anr. Vs. Ramchandra & Ors. **1981 (3) SCR 22 =1981 (2) SCC 714;** *Commissioner of Police, New Delhi Vs. Narender Singh,* **2006 (3) SCR 872 = 2006 (4) SCC 265*; and*** *Jasbir Singh Vs. Punjab & Sind Bank & Ors.* **2006 (8) Suppl. SCR 62 = 2007 (1) SCC 566 – referred to.**

1.5. Even after taking a decision to initiate departmental proceeding against the petitioner, it was no longer imperative to continue the petitioner under suspension. The petitioner was no longer charged with

any criminal offence as both the trial court as well as the High Court had concluded that the charges against the petitioner had been concocted. The petitioner had been subjected to continued suspension since 22.12.1985. During the period of departmental proceedings, even if the petitioner was not to be assigned any judicial work, the High Court could have conveniently given him suitable posting on the administrative side. In *O.P. Gupta's* ***case,*** **this Court emphasised that long, continued suspension affects the government servant injuriously. Since the order of suspension entitles the government employee only to "subsistence allowance", resulting in penal consequences, it should not be lightly passed. The court also emphasised that the expression "life" does not merely connote animal existence or a continued drudgery through life. [para 30 and 40] [150-E-G; 158-B-D]**

O.P. Gupta Vs. Union of India & Ors. **1988 (1) SCR 27 = 1987 (4) SCC 328 – relied on**

1.6. Again it is a matter of record, that even in the departmental enquiry the charges against the petitioner were not proved and he was ***exonerated*** **of the same. Thereafter the suspension of the petitioner was revoked on 26.3.2008, but without giving any direction as to how the period of suspension was to be treated. It was only subsequently that the matter with regard to regularization of his period of suspension was considered by the Full Court in the meeting held on 29.11.2008 and a resolution was passed that the period of suspension shall be treated as period spent on duty, but without salary except for the subsistence allowance already paid. On the basis of the said resolution, the High Court passed the order dated 24.1.2009. So even by order dated 24.1.2009, the petitioner was granted only part relief. [para 41] [158-E-F-H; 159-A]**

1.7. This Court is of the considered opinion, having regard to the sequence of events, that it would be unjust

to deny the salary to the petitioner with effect from the date the appeal against acquittal was dismissed by the High Court of Delhi. Whilst exercising the jurisdiction under Rule 54, it was necessary for the High Court to pass a detailed and reasoned order as to whether the period of suspension was *wholly unjustified*. **Undoubtedly, the power under Rule 54 is discretionary but such discretion has to be exercised reasonably and by taking into consideration the material relevant to the decision. Upon acquittal of the petitioner from the criminal charges, it was no longer necessary to keep him under suspension during the pendency of the departmental enquiry. The High Court failed to exercise its jurisdiction properly under Rule 54, as directed by this Court in the order dated 5.4.2011. The suspension of the petitioner ought to have been revoked upon acquittal by the High Court even during the pendency of the departmental enquiry. [para 42] [159-C-G]**

1.8. In the circumstances, from the time of dismissal of the appeal by the Delhi High Court, the continued suspension of the petitioner was *wholly unjustified.* **The petitioner is, therefore, entitled to full pay and allowances from 27.9.2005, i.e. the date of the judgment rendered by the Delhi High Court onwards. [para 40 and 46] [158-D; 160-H; 161-A]**

2.1. It is a matter of record that upon exoneration in the departmental enquiry, the petitioner was reinstated in service. No punishment was inflicted on him at all. However, during the pendency of the criminal trial as also the departmental proceedings, he was not considered for promotion, when the cases of persons junior to him were considered. The High Court erred in directing in the Full Court Resolution dated 29.11.2008, and the communication dated 24.1.2009 that the petitioner shall not be entitled to any promotion. The petitioner was

entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. The High Court, is, therefore, directed to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the rules) from the date when a person junior to him was considered and promoted to the next higher post. The petitioner would be entitled to all consequential benefits, such as salary and other allowances by treating him on duty with effect from the date the appeal against acquittal was dismissed by the Delhi High Court and after fixing his last pay drawn correctly. The consequential benefits shall be paid to him with 6% interest from the date of dismissal of the appeal by the High Court on 27.9.2005. [para 45-46] [160-D-F; 161-A-D]

Union of India & Ors. Vs. K.V. Jankiraman & Ors. **1991 (3) SCR 790 = 1991 (4) SCC 109 – relied on**

Shri Manni Lal Vs. Shri Parmai Lal & Ors. **1971 (1) SCR 798 = 1970 (2) SCC 462 ,** *Muhammad Ayoob Khuhro Vs. Emperor* **AIR (33) 1946 SIND 121,** *Robert Stuart Wauchope Vs. Emperor* **(1933) 61 ILR 168,** *Vidya Charan Shukla Vs. Purshottam Lal Kaushik* **1981 (2) SCR 637 = 1981 (2) SCC 84,** *R.P. Kapur Vs. Union of India & Anr.* **(1964) 5 SCR 431,;** *The Divisional Superintendent, Northern Railway & Anr. Vs. R.B. Hanifi* **(1976) Lab. I.C. 1403,** *Govind Prasad Vs. Union of India,* **(1980) RLW 258;,** *Union of India & Ors. Vs. Sangram Keshari Nayak* **2007 (5) SCR 896 = 2007 (6) SCC 704;** *Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors.* **1994 (4) Suppl. SCR 119 = 1994 (3) Suppl. SCC 674,** *State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai* **2007 (5) SCR 251 = 2007 (6) SCC 524,** *Union of India & Ors. Vs. Lt. Gen. Rajendra Singh Kadyan & Anr.* **2000 (1) Suppl. SCR 722 = 2000 (6) SCC 698;** *Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal* **1993 (3) Suppl. SCR 586 = 1994 (1) SCC 541;** *Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Ors.* **1997 (2) SCR 591 = 1997 (3) SCC 636;** *K. Ponnamma (Smt.) Vs. State of Kerala & Ors.* **1997 (2) SCR 1149 = 1997 (9) SCC 36;** *Dhananjay Vs. Chief Executive Officer, Zilla Parishad, Jalna* **2003 (1) SCR 744 = 2003 (2) SCC 386 ,** *Union of India & Ors. Vs. Jaipal Singh* **2003 (5) Suppl. SCR 115 = 2004 (1) SCC 121,** *Baldev Singh Vs. Union of India & Ors.* **2005 (4) Suppl. SCR 961 = 2005 (8) SCC 747;** *N. Selvaraj Vs. Kumbakonam City Union Bank Ltd. & Anr.* **2006 (9) SCC 172,** *Banshi Dhar Vs. State of Rajasthan & Anr.* **2006 (8) Suppl. SCR 78 = 2007 (1) SCC 324,** *Divisional Controller, Gujarat SRTC Vs. Kadarbhai J. Suthar* **2007 (2) SCR 550 = 2007 (10) SCC 561,** *Union of India Vs. B.M. Jha.* **2007 (11) SCR 661 = 2007 (11) SCC 632 – cited**

Case Law Reference:

1971 (1) SCR 798	**cited**	**para 20**
AIR (33) 1946 SIND 121	**cited**	**para 20**
(1933) 61 ILR 168	**cited**	**para 20**
(1976) Lab. I.C. 1403	**cited**	**para 20**
(1980) RLW 258	**cited**	**para 20**
1981 (2) SCR 637	**cited**	**para 20**
1988 (1) SCR 27	**relied on**	**para 20**
(1964) 5 SCR 431	**cited**	**para 20**
2006 (3) SCR 872	**referred to**	**para 20**
1981 (3) SCR 22	**referred to**	**para 20**
2006 (8) Suppl. SCR 62	**referred to**	**para 20**
1991 (3) SCR 790	**relied on**	**para 20**
2007 (5) SCR 896	**cited**	**para 20**

1994 (4) Suppl. SCR 119	**cited**	**para 20**
2007 (5) SCR 251	**cited**	**para 20**
2000 (1) Suppl. SCR 722	**cited**	**para 20**
1993 (3) Suppl. SCR 586	**cited**	**para 24**
1997 (2) SCR 591	**cited**	**para 24**
1997 (2) SCR 1149	**cited**	**para 24**
2003 (1) SCR 744	**cited**	**para 24**
2003 (5) Suppl. SCR 115	**cited**	**para 24**
2005 (4) Suppl. SCR 961	**cited**	**para 24**
2006 (8) Suppl. SCR 78	**cited**	**para 24**
2007 (2) SCR 550	**cited**	**para 24**
2007 (11) SCR 661	**cited**	**para 24**
1987 (3) SCC 1	**cited**	**para 36**
1995 (3) Suppl. SCR 319	**cited**	**para 36**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 200 of 2006.

Under Article 32 of the Constitution of India.

M.R. Calla, Amit Kumar Singh, P.D. Sharma for the Petitioner.

Pallav Shishodia, Annesh Mittal (for Sunil Kumar Jain) for the Respondent.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. In this petition, under Article 32 of the Constitution of India, the petitioner seeks a writ in the nature of Certiorari for quashing the order of suspension

dated 20th December, 1985 by declaring the same to be void-ab-initio. The petitioner also claims a declaration that the order dated 24th January, 2009 is void and that the petitioner is entitled to all benefits for the period of suspension from 20th December, 1985 till 26th March, 2008, when he was reinstated in service.

2. We may briefly advert to the relevant facts on the basis of which the petitioner claims the aforesaid relief.

3. On 28th December, 1979, the petitioner was selected by the Rajasthan Public Service Commission (R.P.S.C.) for the post of Assistant Public Prosecutor Grade II. He served on the said post till 28th July, 1980. On the very next day, i.e. 29th July, 1980, he was selected for appointment to the Rajasthan Judicial Service and joined as Judicial Magistrate First Class. For sometime, he remained posted at Banswara as Judicial Magistrate. During this period, his judgments were graded as above average and integrity as "beyond doubt". In the inspection report, it was further remarked that "his behaviour with members of the Bar, litigants and the persons coming to the Court needs improvement". It appears that he was not on best of terms with the local Bar, which led to his transfer.

4. On 24th November, 1985, at about 10.30 p.m., a dead body was found near Ajmer Pulia on the railway track in the city of Jaipur. The dead body was identified as that of one Mr. Suresh Chand Gupta, Advocate. A 'Marag' (death) case was registered on 24th November, 1985, at Serial No. 35/85 at Police Station GRP, Jaipur. It appears that the local bar association of which the deceased was a member protested that proper investigation was not being conducted about the manner in which Mr. Suresh Chand Gupta was found dead on the railway track. The members of the Bar Association insisted that his death was result of some foul play. On 11th December, 1985, that is about 20 days after the incident, wife of the deceased gave a written complaint, alleging that the Petitioner

was involved in the murder of her husband. In her written complaint, she alleged that her husband had informed her about three months prior to the incident that the petitioner had demanded a sum of Rs.1 lac for exercising his influence with the high-ups, in securing the appointment of the deceased as a member of Board of Revenue. She claimed that the money which was paid to the petitioner was arranged by her deceased husband by selling a plot of land. He had also borrowed money from her father and other relatives. Inspite of having paid the aforesaid money, her husband was not provided any appointment. Consequently, her husband had been insisting that the petitioner return the amount unnecessarily paid to him. She claimed that the petitioner had agreed to return the money and asked her husband to meet at a pre-arranged place. Her husband left home at 5.00 p.m. on 24th November, 1985 and did not return. She, therefore, concluded that the petitioner must have killed her husband on account of the dispute over money.

5. Upon coming to know about the complaint made by the wife of the deceased, the petitioner himself went to the Police Station on 18th December, 1985 and offered to join the investigation. He requested the police to complete the investigation as soon as possible, as in the meantime, he has been transferred and had to join at Vallabhnagar. In the meantime, the local bar association continued the agitation against the inaction of the police. The lawyers resorted to strike and the work at the Courts was paralysed for many days to come. The situation was so grave that when the application of the petitioner for anticipatory bail came up for hearing before the High Court on 20th December, 1985, members of the Bar Association did not allow the advocate of the petitioner to argue the case. The petitioner relies on the order passed by M.B. Sharma, J. on 20th December, 1985, which is as under:-

"20.12.1985

Mr. M.I. Khan, Public Prosecutor for the State.

The bail application was fixed for orders at 2.00 p.m. and the Public Prosecutor had sought time to get the case diary from the Investigating Officer. I am in the court for last 15 minutes, but the entry to the Court has been blocked by the advocates and others. It is for the members of the August profession to consider how far it is justified. The advocate for the petitioner could not come to the court because of that blockade. Hence the case cannot be taken up. I have no option but to retire to the Chamber. The case is adjourned to January 2, 1986.

Sd/- Sharma, M.B."

6. Thereafter, the High Court was closed for winter break on 21st December, 1985. On 20th December, 1985, the petitioner was formally arrested and taken into custody by the police (CBI, Jaipur). He was placed under suspension on 22nd December, 1985 w.e.f. 20th December, 1985. Since the petitioner had already been arrested, the anticipatory bail application was dismissed as having become infructuous on 2nd January, 1986. In view of the volatile atmosphere, the petitioner apprehended that he would not get a fair trial in the Criminal Case No. 3/86 pending before the Sessions Judge, Jaipur against him. He, therefore, approached this Court with a prayer for transfer of the criminal trial. By Order dated 4th August, 1986, this Court transferred the trial in the aforesaid criminal case to a Court of competent jurisdiction in Delhi. Thereafter, the trial was duly conducted at Delhi. By judgment and order dated 1st May, 2002, the petitioner was acquitted by the Additional Session Judge, Delhi.

7. Upon acquittal by the trial court, the petitioner submitted a joining report on 6th May, 2002 to the Registrar General, Rajasthan High Court. The request made by the petitioner remained under consideration of the High Court from the said date. The decision was deferred to await the result of the appeal, if any, preferred against the acquittal of the petitioner. It appears that an appeal was filed by the CBI, which, however,

came to be dismissed by a Division Bench of the Delhi High Court on 27th September, 2005.

8. The petitioner submitted his joining report on 3rd October, 2005. However, no action was taken by the High Court. It was only on 17th November, 2005 that he was directed to mark his attendance at the office of the District and Session Judge, Jaipur. By this time, the petitioner had been under suspension for a period of 20 years. He, therefore, submitted another representation on 2nd March, 2006 setting out the grievances and seeking permission to appear in person before the Chief Justice.

9. In the meantime, the petitioner came to know that instead of revoking the order of suspension, the High Court may initiate disciplinary proceedings against him. At that stage, the petitioner was only about 2 years short of the age of superannuation. He, therefore, moved the present Writ Petition, seeking immediate revocation of the order of suspension and consequential benefits. On 8th May, 2006, it was brought to the notice of this Court that after filing of the writ petition, the High Court has initiated the departmental proceedings against the petitioner, but no fresh order of suspension has been passed. It was, therefore, submitted that direction be issued to the High Court to reinstate the petitioner forthwith. This Court issued notice on the Writ Petition and also on the application for ex-parte stay. Subsequently, the matter came up for hearing on 25th January, 2007 when this Court directed that the matter be posted for final disposal in the last week of March, 2007. On 4th January, 2008, it was submitted on behalf of the respondent that the enquiry proceedings were in progress against the petitioner. Therefore, this Court directed the High Court to complete the enquiry within a period of eight weeks and submit its report.

10. The enquiry was duly completed. In the Enquiry Report dated 27th February, 2008, the petitioner was exonerated of the charges levelled against him. It was only at that stage, that

he was reinstated with immediate effect, by order dated 26th March, 2008. The orders passed by the respondent were placed on the record of these proceedings with the affidavit dated 22nd April, 2008 filed by the Registrar (Writs). The petitioner was, thereafter, given the posting order at Vijai Nagar on 12th May, 2008. He retired from service on attaining the age of superannuation on 30th June, 2008.

11. It appears that the trials and tribulations of the petitioner did not come to an end, even after retirement. In fact on 24th January, 2009, an order was issued on the basis of the resolution passed by the Full Court in its meeting held on 29th November, 2008, wherein it was resolved as under:-

"RAJASTHAN HIGH COURT, JODHPUR

ORDER

No. Estt. (RJS) 15/2009 Date :- 24.01.2009

WHEREAS SHRI GURPAL SINGH, RJS presently retired was placed under suspension vide this office Order No. Estt. (RJS) 199/85 dated 22.12.1985.

AND WHEREAS it was decided that regular disciplinary proceedings under rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 be initiated against Shri Gurpal Singh, RJS presently retired.

AND WHEREAS Hon'ble the Chief Justice in exercise of the powers conferred by Rule 13 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 read with Full Court Resolution dated October 30, 1971 was pleased to order that on account of initiation of a regular enquiry under rule 16 of Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 the suspension of Shri Gurpal Singh shall continue.

AND WHEREAS Departmental Enquiry under rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 was initiated against said Shri Gurpal Singh vide Memorandum No. Estt. B2(iii) / /2006/ 1544 dated 20.04.2006.

AND WHERAS in the above departmental enquiry said Shri Gurpal Singh has been exonerated vide order No. Estt. (RJS) 25/2008 dated 26.03.2008.

AND WHEREAS, Shri Gurpal Singh has been reinstated with immediate effect as Civil Judge (Jr. Div.) & Judicial Magistrate in the RJS vide order No. Estt. (RJS) 26/2008 dated 26.03.2008.

AND WHEREAS the matter regarding regularization of suspension period of Shri Gurpal Singh was considered by the Hon'ble Full Court in its meeting held on 29.11.2008 and it was resolved as under:-

"Perused office note and relevant record. RESOLVED that period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect **(sic)** his pensionary benefits but he will not be entitled for any promotion."

NOW THEREFORE, the period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect **(sic)** his pensionary benefits but he will not be entitled for any promotion.

BY ORDER

Sd/ 24.01.2009
REGISTRAR (ADMN.)"

12. The petitioner, therefore, sought amendment of the writ petition through I.A. No. 6 of 2009. The aforesaid application

for amendment was allowed by this Court on 27th February, 2009. After the amendment, the counter affidavit was filed by the respondents to the amended writ petition. The matter was heard by this Court on a number of occasions. On 5th April, 2011, this Court passed the following order:-

"Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the High Court is given an opportunity to pass appropriate orders under Rule 54 of the Rules. Therefore, the matter is remitted to the High Court on its administrative side to pass appropriate orders under Rule 54. The High Court shall issue notice to the petitioner and afford him an opportunity of hearing by calling upon him to file reply to the notice. The High Court shall thereafter consider the reply and pass a reasoned order under Rule 54 of the Rules of 1951. This exercise shall be completed as early as possible and without any avoidable delay but in any case not later than six weeks from today. The High Court to file the order which may be passed by it in the present proceedings."

13. Pursuant to the aforesaid direction, it appears that a Committee was constituted by the Rajasthan High Court (hereinafter referred to as 'Committee') to examine the case of the petitioner, in terms of Rule 54 of the Rajasthan Service Rules, 1951 (hereinafter referred to as "1951 Rules") for determining "whether his suspension was wholly justified or *wholly unjustified* or partly justified and to what extent, he was entitled for salary and/or full salary during period of suspension?"

14. In this respect, a notice dated 25th April, 2011 was sent to the petitioner by the Registrar (Admn.), directing him to file a reply, and remain present before the aforesaid Committee on 5th May, 2011. In response to the said notice, the petitioner submitted a detailed reply dated 2nd May, 2011 and appeared before the Committee on 5th May, 2011. Thereafter on 16th May, 2011, the Committee passed the following order:

"THEREFORE, in the present facts & circumstances (Supra), period during which Shri Gurpal Singh remained under Suspension cannot be said to be wholly unjustified and sub-rule (2) of R. 54 of RSR in negative form where the authority has to examine as to whether suspension was wholly unjustified. However, after going through complete material on record (supra), the Court is of the view that in the given facts & circumstances (supra), suspension of Shri Gurpal Singh cannot be said to be wholly unjustified and what he was entitled for under law has been paid to him in terms of Resolution of Full Court dt.29.11.2008 (supra) conveyed vide order dt. 24.01.2009."

15. It becomes clear from the perusal of the aforesaid order that the Rajasthan High Court after giving an opportunity of hearing to the petitioner, reiterated the Resolution of the Full Court dated 29th November, 2008, communicated vide order dated 24th January, 2009.

16. We have heard the learned counsel for the parties at length.

17. Very elaborate submissions have been made by the learned counsel for the parties. We may, however, briefly notice the very crux of the submissions.

18. Mr. M.R. Calla, learned senior counsel appearing for the petitioner, submitted that the respondent has to justify the suspension order on the day it was passed, i.e. on 20th December, 1985. Further, since the suspension of the petitioner had continued for 22 years, 3 months and 7 days, the respondent would have to satisfy the court that such a prolong suspension was also justified. Whether or not the order of suspension was justified, partly justified or *wholly unjustified* would have to be seen in the light of result of not only the trial in criminal case but also of the departmental enquiry where the petitioner was proceeded against by the department. According to the learned senior counsel, whilst taking a

decision under Rule 54 of the 1951 Rules, the disciplinary authority was required to keep in mind the outcome of the criminal trial and the departmental proceeding.

19. Relying on some judgments of this Court, Mr. Calla had submitted that an employee who is suspended due to the pendency of the criminal investigation/trial has to be reinstated upon acquittal. Further upon reinstatement, he would be entitled to full salary and allowances for the period he is kept under suspension. According to the learned senior counsel, an acquittal either by trial court or by the appellate court would relate back to the date on which the order of suspension was passed. Mr. Calla then submitted that in the facts of this case, the petitioner was suspended due to the registration of the criminal case against him. At the time when the petitioner was acquitted he was entitled to be reinstated. However, since an appeal was filed against the acquittal by the CBI, the petitioner was neither reinstated nor his suspension was revoked. Even when the aforesaid appeal was dismissed by the High Court, the request of the petitioner for reinstatement was not considered. This, according to Mr. Calla, was a second stage when the appellant was entitled to reinstatement and to the payment of full salary and allowances. Mr. Calla further pointed out that even after acquittal, the appellant was unjustly subjected to a departmental enquiry. The charges in the departmental enquiry were based on the facts, which were alleged to be the motive for the murder. Since the petitioner was acquitted in the criminal trial, the departmental proceedings against him were *wholly unjustified*. Therefore, according to Mr. Calla, the continuation of suspension was also *wholly unjustified*.

20. Even at this stage, the respondent did not pass any order under Rule 54 of the 1951 Rules. It was only on the directions issued by this Court on 5th April, 2011 that the respondent examined the case under Rule 54 and passed the necessary order on 16th May, 2011. It was also submitted that the order passed on the directions of this Court on 16th May,

2011 is contrary to the order passed by the High Court on 24th January, 2009. The latter order was passed after the petitioner was reinstated in service on 26th May, 2008, regarding regularization of the suspension period of the petitioner. In the order passed under Rule 54, the High Court had concluded that the period during which the appellant was kept under suspension shall be treated as a period spent on duty, but without salary except subsistence allowance already paid to him. Even this order was passed during the pendency of the present petition. Mr. Calla then submitted that not only the petitioner has been deprived of full pay and allowances during the period of suspension, but even his case for promotion was not considered with effect from the date a person junior to him was considered for promotion and promoted.

In support of his submission, Mr. Calla had relied on a number of judgments which are as under :

Shri Manni Lal Vs. Shri Parmai Lal & Ors.,[1] *Muhammad Ayoob Khuhro Vs. Emperor*[2], *Robert Stuart Wauchope Vs. Emperor*[3], *Vidya Charan Shukla Vs. Purshottam Lal Kaushik*[4], *O.P. Gupta Vs. Union of India & Ors.,*[5] *R.P. Kapur Vs. Union of India & Anr.*[6], *Commissioner of Police, New Delhi Vs. Narender Singh*[7], *Corporation of the City of Nagpur, Civil Lines, Nagpur & Anr. Vs. Ramchandra & Ors.*[8], *Jasbir Singh Vs. Punjab & Sind Bank & Ors.*[9], *The Divisional Superintendent, Northern Railway & Anr. Vs. R.B. Hanifi*[10], *Govind Prasad Vs. Union of India*[11], *Union of India & Ors. Vs. K.V. Jankiraman & Ors.*[12], *Union of India & Ors. Vs. Sangram Keshari Nayak*[13], *Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors.*[14], *State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai*[15], *Union of India & Ors. Vs. Lt. Gen. Rajendra Singh Kadyan & Anr*[16].

1. (1970) 2 SCC 462.
2. AIR (33) 1946 SIND 121.
3. (1933) 61 ILR 168.
4. (1981) 2 SCC 84.
5. (1987) 4 SCC 328.
6. (1964) 5 SCR 431.
7. (2006) 4 SCC 265.
8. (1981) 2 SCC 714.
9. (2007) 1 SCC 566.
10. (1976) Lab. I.C. 1403.

21. Mr. Pallav Shishodia, learned senior counsel on behalf of Respondent No.1, sought dismissal of the present writ petition, inter-alia, on the ground of delay. It was pointed out that there is a delay of more than 20 years in challenging the order of suspension dated 20th December, 1985. The learned senior counsel, in response to submissions of Mr. Calla, submitted that the initial suspension of the petitioner and further continuation of the same, during the criminal trial; during pendency of the appeal against acquittal; and during the pendency of the departmental enquiry; was not "only justified, but *imperative,*" in the view of "sensitive nature of judicial work" which was being undertaken by him. It was also submitted that since it is never possible to anticipate the outcome of a criminal trial or disciplinary proceedings which may eventually lead to acquittal or exoneration, as the case may be, suspension of the petitioner cannot be termed as *"wholly unjustified"*. In addition, Mr. Shishodia pointed out that the petitioner was acquitted by the trial court on "benefit of doubt". Further, dismissal of the appeal against acquittal does not in any manner affect the legal position.

22. It had also been pointed out by Mr. Shishodia that since there is no allegation of suspension being "mala-fide, vindictive or otherwise motivated", there remains no reason to interfere

11. (1980) RLW 258
12. (1991) 4 SCC 109.
13. (2007) 6 SCC 704.
14. 1994 Supp (3) SCC 674.
15. (2007) 6 SCC 524.
16. (2000) 6 SCC 698.

with the impugned order dated 24th January, 2009, as affirmed by the order dated 16th May, 2011. The learned senior counsel had also submitted that there is no challenge to the order dated 16th May, 2011 in the present writ petition, nor the petitioner had made a submission that his prosecution by the CBI was malicious or otherwise vitiated. In the light of aforesaid submissions, it was contended that suspension pending criminal proceedings and/or departmental enquiry was *fully justified*. Mr. Shishodia has also argued that the order denying full pay to the petitioner was passed by the High Court, in bonafide exercise of its powers and on the basis of well settled interpretation of Rule 54 of the 1951 Rules.

23. The learned senior counsel, relying upon a number of judgments of this Court, had further contended that matters relating to the grant of salary, promotions and other benefits to an employee during the period of his suspension are subject to the discretion of the employer. The employer has to strike a balance between the rights of the employee and the imperatives of an institution. He submitted that the High Court, acting in a fair, objective and reasonable manner, has drawn the line so as to avoid any disproportionate penalty. It has struck a balance between the entitlement of the petitioner and imperatives of the institution charged with public duty of administration of justice.

24. The learned counsel had further submitted that whatever amount was legally due to the petitioner has already been paid to him. It had been stated that Rupees Twelve Lac Seventy Three Thousand Eight Hundred Forty Two Only, i.e. Rs. 12,73,842/-, have been paid to the petitioner under various heads, like dearness allowance, subsistence allowance, etc. Also, the petitioner gets a monthly pension to the tune of Rupees Twenty Two Thousand Three Hundred Eighty Five Only, i.e. Rs. 22,385/-.

The counsel relied upon the following judgments to substantiate his contentions:

Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal[17], *Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Ors.*[18], *K. Ponnamma (Smt.) Vs. State of Kerala & Ors.*[19], *Dhananjay Vs. Chief Executive Officer, Zilla Parishad, Jalna*[20], *Union of India & Ors. Vs. Jaipal Singh*[21], *Baldev Singh Vs. Union of India & Ors.*[22], *N. Selvaraj Vs. Kumbakonam City Union Bank Ltd. & Anr.*[23], *Banshi Dhar Vs. State of Rajasthan & Anr.*[24], *Divisional Controller, Gujarat SRTC Vs. Kadarbhai J. Suthar*[25], *Union of India Vs. B.M. Jha*[26].

25. We have considered the submissions made by the learned senior counsel for the parties.

26. The only issue that needs to be resolved at this stage is as to whether the petitioner would be entitled *only* to the subsistence allowance as already paid to him or full salary and allowances, in view of his acquittal in the criminal case and the exoneration in departmental proceedings. Related to the aforesaid issue would be a consequential issue of notional promotion from the date an officer junior to him was promoted in the Rajasthan Judicial Service and the consequential entitlement to the emoluments on the promotional post, which in turn would determine the amount of suspension allowance and the other retiral benefits.

27. In our opinion, it is not really necessary to notice the

17. (1994) 1 SCC 541.
18. (1997) 3 SCC 636.
19. (1997) 9 SCC 36.
20. (2003) 2 SCC 386.
21. (2004) 1 SCC 121.
22. (2005) 8 SCC 747.
23. (2007) 9 SCC 172.
24. (2007) 1 SCC 324.
25. (2007) 10 SCC 561.
26. (2007) 11 SCC. 632.

ratio in each of the judgments cited, as all of them reiterate certain well known principles of law. We may, however, notice some of the principles highlighted in the judgments cited by the learned counsel. In the case of *Corporation of the City of Nagpur* (supra), it is observed that it may not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, where the accused has been acquitted honourably and completely exonerated of the charges. At the same time, it is pointed out that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered.

28. The same principle is reiterated in the case of *Commissioner of Police, New Delhi Vs. Narender Singh* (supra).

29. In *Jasbir Singh's* case (supra), the appellant was a confirmed peon in the respondent Bank. On an allegation that he had forged the signature of a depositor R and fraudulently withdrawn a certain sum, a departmental proceeding was initiated against him. A criminal case was also initiated simultaneously under Sections 409/201 IPC. He was acquitted in the criminal case. However, despite acquittal, the departmental proceedings continued and ultimately ended in an ex parte report to the effect that the charges had been proved. The respondent Bank also filed a suit against the appellant for recovery of the said sum. The suit was decreed but the appellate court held that the Bank failed to prove that the appellant had withdrawn or embezzled the said sum. It was held that the Bank was not entitled to recover the said amount. That judgment was not challenged. Thus, the same attained finality. However, the writ petition filed by the appellant, challenging the disciplinary proceedings and the order of punishment was dismissed by the Punjab and Haryana High Court. Without taking note of the decision of civil court and relying on a provision of the Bipartite Settlement, the High Court

held that the departmental proceedings could have been initiated even after the judgment of acquittal in the criminal case. The appellant employee then filed an appeal in this Court.

Allowing the appeal, this Court held that the respondent Bank invited findings of a competent civil court on the issue as to whether the appellant had committed any embezzlement or not. Embezzlement of fund was the principal charge against the appellant in all the proceedings. The respondent Bank failed to prove any of the charges before any court of law. The judgment in civil matter having attained finality, was binding on the respondent Bank.

It was further observed that in a case of this nature, the High Court should have applied its mind to the facts of the matter with reference to the materials brought on record. It failed to do so and did not take note of the decision of the civil court. It could not have refused to look into the materials on record. Therefore, the impugned judgment was set aside.

30. In *O.P. Gupta's* case (supra), this Court emphasised the principle that any order which would cause adverse civil consequences, can only be passed upon observance of the rules of Natural Justice. There is, therefore, insistence upon requirement of a "fair hearing". It was also emphasised that long, continued suspension affects the government servant injuriously. Since the order of suspension entitles the government employee only to "subsistence allowance", resulting in penal consequences, it should not be lightly passed. The court also emphasised that the expression "life" does not merely connote animal existence or a continued drudgery through life. These are all well known principles of law. We only make a reference to the same, since the cases have been cited.

31. Similarly the judgments cited by Mr. Shishodia reiterate the principle that "*no hard and fast rule*" can be laid down as to whether on reinstatement the employee is entitled to full back wages or no back wages at all. All the cases reiterate the

principle that the facts and circumstances of each case have to be examined by the concerned authority. It has to take an informed decision on the basis of the material on record. These judgments also reiterate that acquittal of an employee would not automatically entitle him to reinstatement or to payment of full back wages. The power is normally vested with the disciplinary authority to hold a departmental enquiry, even upon conclusion of the criminal trial where the employee is acquitted.

32. We have examined the entire issue keeping the aforesaid principles in mind. In order to determine the issue relating to the entitlement of petitioner to the salary and other allowance(s) upon reinstatement, the matter needs to be examined at the different stages/point of time. The first stage commenced at the time when the petitioner was initially suspended on 22nd December, 1985 w.e.f. 20th December, 1985. The petitioner, in our opinion, cannot legitimately protest against his suspension, at the initial stage, when he had remained in police custody for more than forty eight hours, though unfortunately for circumstances for which he was not responsible. This suspension was naturally continued when he was facing the trial for murder.

33. The next stage is when he was acquitted by the trial court on 1st May, 2002. The observations made by the Additional Session Judge, Delhi whilst acquitting the petitioner are as follows:-

> "285. The case in hand does not pass the muster. The circumstances that can be safely held as duly proved would include only that there was long-standing friendship between the accused and the deceased, and discovery of dead body of the latter in circumstances indicating unnatural death. The prosecution has failed to prove beyond all reasonable doubts the theory of accused having taken an amount of Rs. one lakh 20 thousand from the deceased on the promise of helping him in securing

> appointment as Member in Board of Revenue, or upon failure faced by the deceased in getting the said appointment refusing to, or haggling over, return of the said amount of money. The theory of accused having returned Rs. one lakh to PW 1 after the incident is suspect. There is a inordinate delay in the lodging of FIR which, seen against the backdrop of claims by all and sundry that they suspected involvement of the accused from the very beginning, has remained unexplained and is bound to prove fatal to the case (AIR 1996 SC 607).
>
> 286. The evidence regarding "last seen" does not inspire confidence and has rather come out as a fabricated one. Efforts to cook up evidence in the course of investigation, for example the recovery of blood stained clothes of the accused at his instance, coupled with unauthorized handling of the material exhibits recovered from the scene where the dead body had been found, have given the impression that the same might have been doctored. This erodes confidence in the prosecution case. The investigation conducted smacks of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused. The benefit of doubts arising as a result must accrue in favour of the accused, since suspicion, however strong, cannot take the place of proof in the final analysis."

These observations would indicate that the trial court disbelieved the very foundation of the prosecution case. The alleged motive has been found to be without any basis. The judgment of the trial court clearly indicates that the evidence produced does not reach even the bare minimum standard required for establishing the guilt of the petitioner. The theory of the prosecution that petitioner had demanded or taken money from the deceased was not supported by any independent evidence. The trial court also noticed that there was an inordinate delay in the registration of the FIR, which had

to be seen against the backdrop of claims, by all and sundry, that they suspected the involvement of the petitioner from the very beginning. The trial court categorically observed that in the peculiar circumstances of the case, the delay in registration of the FIR was *fatal* to the case of the prosecution. The trial court also observed that the evidence with regard to "*last seen*" was fabricated and, therefore, did not inspire confidence. It is also observed that the investigation in the case had not been conducted fairly. The Trial Court was left with a definite impression that the evidence had been "*doctored*". The Court categorically observed that "*the investigation conducted smack of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused*". These observations, in our opinion, would bring the present case within the realm of those cases which are often described as cases of "*no evidence*". Merely because the Court ultimately used the term that prosecution has failed to prove the case "beyond reasonable doubt" would not raise the stature of the evidence, produced by the prosecution, in this case from the level of being thoroughly unreliable.

34. As noticed above, Mr. Calla has submitted that the suspension of the petitioner should have been revoked at this stage. It will not be possible to accept the proposition that as soon as the trial court had acquitted the petitioner, the Rajasthan High Court was required to forthwith revoke the order of suspension. Undoubtedly, the petitioner could have been given a non-sensitive posting, not involving judicial functions. But, it was not imperative for the High Court to revoke the suspension, at that stage. It is a matter of record, that the prosecution agency decided to file an appeal against the judgment and order passed by the trial court, acquitting the petitioner. The appeal filed by the CBI was admitted by the Delhi High Court and remained pending till it was decided on 27th September, 2005. Therefore, the conclusions recorded by the trial court, were not final. They were liable to be reversed in appeal by the High Court. Thus, during the said period/stage,

it cannot be said that the continuance of the suspension of the petitioner was *wholly unjustified*. Merely because the High Court could have revoked the suspension, would not render the decision to continue the suspension, *wholly unjustified*.

35. The Rajasthan High Court was placed in a very piquant situation till the petitioner's acquittal was reiterated by the Delhi High Court. The High Court, literally, had no option but to place and keep the petitioner under suspension. It was not as if the petitioner had unwittingly breached a traffic regulation, which may not invite, even a frown from the general public. It was also not where he may had a minor altercation with someone which may well be overlooked by a reasonable man, as it would not involve any moral turpitude. He was facing a trial for the offence of murder, a crime of highest moral turpitude. Since time immemorial, Judges have been placed on a very high pedestal in every civilized society. Such high status is accompanied by corresponding responsibility of a judge maintaining an unusually high standard of dignity, poise and integrity. There can be no two ways about it! Therefore, the decision of the High Court to continue the suspension of the petitioner can not be said to be *wholly unjustified* till his acquittal by the Delhi High Court.

36. At this stage, we may just mention observations of this Court in two decisions of this Court in relation to the high standards of behaviour expected from a Judge. For instance, in *Daya Shankar Vs. High Court of Allahabad & Ors. Through Registrar & Ors.*[27], this court observed as under:

> "Judicial officer cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."

Further, in the case of *C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors.,*[28] again while elucidating the nature

27. (1987) 3 SCC 1.

28. (1995) 5 SCC 457.

of the position held by a judicial officer, this Court observed as under:

> "21**.** Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge......It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society."

37. The decision of the High Court to keep the petitioner under suspension has to be judged by keeping the aforesaid standards in mind. Therefore, we are unable to accept the submission of Mr. Calla that the suspension of the petitioner was *wholly unjustified* after he was acquitted of the criminal charges by the trial court.

38. We now come to the stage after the appeal against the acquittal was dismissed by the High Court. It appears that a Division Bench of the Delhi High Court re-appreciated the entire evidence and dismissed the appeal filed by the CBI. In its judgment, the High Court has clearly held that the prosecution had failed to prove any motive for the alleged murder. It is noticed by the High Court that the entire prosecution case is

based on circumstantial evidence. It is further observed that the injuries suffered by the deceased were not inconsistent with the plea that it was a case of accidental death. The High Court also disbelieved the witnesses of the prosecution with regard to the deceased having been "last seen" alive with the petitioner. Having disbelieved the evidence with regard to the motive and with regard to the victim being "last seen" alive with the petitioner, the High Court proceeded to examine the evidence with regard to the disclosure statement under Section 27 and the recoveries of incriminating pieces of evidence. Upon examination of each issue, the High Court observed that the facts brought on the record *"put a question mark on the genuineness of the story of the recoveries made".* The High Court disbelieved the recovery of the clothes allegedly belonging to the deceased. The story of recovery of blood stains was also disbelieved. Ultimately, the High Court recorded the following conclusions:-

> "**43.** In the present case, *the major links between the alleged offence and the accused are entirely non-existent. The above discourse shows positively that the prosecution has failed at every step to bring home the guilt of the accused.* The first step was to prove that it was a case of murder rather than a case of accident. The prosecution has failed to prove beyond reasonable doubt that it was a case of murder and not that of an accident.
>
> **44.** The second step was to prove that the accused and the deceased were last seen together soon before the incident. The prosecution has also failed to prove this fact beyond reasonable doubt. Apart from what has already been stated above an important fact in this case is that post-mortem report along with the CFSL report, Ex.PW-34/DA proves existence of alcohol in the stomach of the deceased. This tends to support the accident theory.
>
> **45.** The third step was to prove that the prosecution had recovered incriminating articles, either following the

disclosure statement or on its own initiative. The prosecution has failed even at doing the same. In this situation, even if the prosecution is able to prove existence of motive, the same by itself would not be of any value. The trial court has disbelieved the story of motive. However, for us it is not necessary to go into those details.

46. ……….*The prosecution has failed to prove firstly that there was any murder and secondly that the accused is the one who committed it.* There is absolutely no merit in the appeal and the same is accordingly dismissed."

39. The acquittal of the petitioner having been affirmed by the High Court of Delhi, in our opinion, it was necessary for the High Court of Rajasthan to take a decision: (a) whether to revoke the order of suspension and permit the petitioner to perform judicial functions; (b) whether to hold a departmental enquiry with regard to the receipt of money allegedly received by him from the deceased; (c) as to how the period of suspension was to be treated; (d) whether the petitioner was entitled to full salary, part salary or no salary at all for the period of suspension.

40. It appears to us that given the findings recorded by the trial court, subsequently reiterated by the High Court of Delhi, the decision to continue the petitioner under suspension, thereafter, was rather harsh. It is true that the suspension of the petitioner was continued as the High Court had decided to hold a departmental enquiry against the petitioner on the charges that he had wrongly extracted certain money from the deceased. But it is a matter of record that both the trial court as well as the High Court had found the entire story with regard to the alleged receipt of money to be false. The enquiry was founded on the same facts and the same evidence which have had been examined by the trial court as well as the High Court. In such circumstances, it was necessary for the High Court to examine the findings of the trial court as well as the High Court

in detail before taking a decision to initiate departmental proceedings against the petitioner, founded on the same set of facts and the evidence. It is apparent from the record that no such examination of the judgment was undertaken by the High Court. Even after taking a decision to initiate departmental proceeding against the petitioner, it was no longer imperative to continue the petitioner under suspension. The petitioner was no longer charged with any criminal offence as both the trial court as well as the High Court had literally concluded that the charges against the petitioner had been concocted. The petitioner had been subjected to continued suspension since 22nd December, 1985. During the period of departmental proceedings, even if the petitioner was not to be assigned any judicial work, the High Court could have conveniently given him suitable posting on the administrative side. In our opinion, from the time of dismissal of the appeal by the Delhi High Court, the continued suspension of the petitioner was *wholly unjustified*.

41. Again it is a matter of record, that even in the departmental enquiry the charges against the petitioner were not proved and he was *exonerated* of the same. It was only at that stage that the suspension of the petitioner was revoked. The petitioner had already moved the present writ petition immediately after the order of acquittal was upheld by the Delhi High Court. The enquiry proceedings were completed during the pendency of the writ petition. Undoubtedly, the order of suspension was revoked by the High Court on 26th March, 2008 but without giving any direction as to how the period of suspension was to be treated. It was only subsequently that the matter with regard to regularization of his period of suspension was considered by the Full Court in the meeting held on 29th November, 2008. Even at that stage though the Full Court passed a resolution that period of suspension shall be treated as period spent on duty, but it was to be without payment of any salary except for the subsistence allowance already paid to him. On the basis of the aforesaid resolution, the High Court passed the order dated 24th January, 2009. So even by order

dated 24th January, 2009, the petitioner was granted only partial relief. This necessitated the amendment of the writ petition by the petitioner questioning the legality of the aforesaid order. It was only at that stage that this Court by order dated 5th April, 2011 directed the High Court to pass appropriate orders under Rule 54 of the Rules. It appears even at that stage the High Court did not consider it necessary to grant any further relief to the petitioner.

42. We are of the considered opinion, having regard to the sequence of events narrated above, that it would be unjust to deny the salary to the petitioner with effect from the date the appeal against acquittal was dismissed by the High Court of Delhi. We see no cogent reason as to why it was necessary to continue the suspension of the petitioner during the pendency of the departmental proceedings. There was no distinction between the facts or the evidence relied upon in the criminal trial as well as the department proceedings. This apart, the petitioner had been acquitted of any involvement in the crime of murder. Whilst exercising its jurisdiction under Rule 54, it was necessary for the High Court to pass a detailed and reasoned order as to whether the period of suspension was *wholly unjustified*. Undoubtedly, the power under Rule 54 is discretionary but such discretion has to be exercised reasonably and by taking into consideration the material relevant to the decision. Upon acquittal of the petitioner from the criminal charges, it was no longer necessary to keep him under suspension during the pendency of the departmental enquiry. In our opinion, the High Court failed to exercise its jurisdiction properly under Rule 54, as directed by this Court in the order dated 5th April, 2011. In our opinion, the suspension of the petitioner ought to have been revoked upon acquittal by the High Court even during the pendency of the departmental enquiry.

43. This now leads us to the last submission of Mr. Calla that upon exoneration in the departmental proceedings, the

petitioner was required to be considered for promotion from the date a person junior to him was promoted.

44. In view of the authoritative judgment rendered by this Court in the case of *Jankiraman* (supra), the submissions made by Mr. Calla would have to be accepted. In the aforesaid judgment it was held that:-

> "**26**. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings."

45. In this case, it is a matter of record that upon exoneration in the departmental enquiry, the petitioner was reinstated in service. No punishment was inflicted on him at all. However, during the pendency of the criminal trial as also the departmental proceedings, he was not considered for promotion, when the cases of persons junior to him were considered. In our opinion, the High Court erred in directing in the Full Court Resolution dated 29th November, 2008, and the communication dated 24th January, 2009 that the petitioner shall not be entitled for any promotion.

46. We, therefore, partly allow the writ petition. We reject the submissions of Mr. Calla that the suspension of the petitioner was rendered *wholly unjustified* upon acquittal by the trial court. We also reject the submissions of Mr. Calla that the suspension of the petitioner was *wholly unjustified* during the pendency of the appeal before the High Court. We, however, hold that the continued suspension of the petitioner during the pendency of the departmental proceedings was *wholly unjustified*. The petitioner is, therefore, held entitled to full pay and allowances from 27th September, 2005, i.e. the date of the

judgment rendered by the Delhi High Court onwards. We further hold that the petitioner was entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. We, therefore, direct the High Court to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the rules) from the date when a person junior to him was considered and promoted to the next higher post. Let such a decision be taken by the High Court within a period of three months from the date of receipt of this order. We further direct that the petitioner would be entitled to all consequential benefits, such as salary and other allowances by treating him on duty with effect from the date the appeal against acquittal was dismissed by the Delhi High Court and after fixing his last pay drawn correctly. The consequential benefits shall be paid to him with 6% interest from the date of the dismissal of the appeal by the High Court on 27th September, 2005. The enhanced retiral benefits shall be released to him within three months of the receipt of a copy of this order.

47. Assuming that, the Rajasthan High Court wanted to conduct its own departmental enquiry after the acquittal of the petitioner being confirmed by the Delhi High Court, his suspension during that period was wholly uncalled for because of which he unnecessarily suffered and had to litigate further. We, therefore, award costs of Rs. 25,000/- to the petitioner to be borne by the respondent High Court.

R.P. Writ Petition Partly allowed.

STATE OF HARYANA & ANR.
v.
KARTAR SINGH (D) THROUGH LRS.
(Civil Appeal No. 5115 of 2005)

NOVEMBER 29, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

Land Acquisition Act, 1894:

ss. 23(1-A), 23(2) and 28 as amended by Amendment Act, 1984 – Benefits claimed by filing application u/ss 151 and 152 CPC after the compensation enhanced by reference court and grant of 15% solatium and 6% interest by its order dated 17.5.1980 had attained finality on dismissal of State's appeal and SLP by High Court and Supreme Court respectively – Held: An award and decree having become final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions brought in by the Amendment Act in the LA Act by filing petitions u/s 151 and s.152 of the CPC.

Execution:

Power of executing court – Held: A plea of nullity of a decree can always be set up before the executing court – Any judgment and order which is a nullity never acquires finality and is thus open to challenge in execution proceedings.

The compensation for the land of the respondent-land-owners acquired under the Land Acquisition Act, 1894, was enhanced by the reference court by its order dated 17.5.1980. It awarded the solatium at the rate of 15% on the enhanced amount of compensation and interest at the rate of 6% from the date of dispossession till the payment was made. The State Government's

appeal before the High Court and Special Leave Petition before the Supreme Court were dismissed. After the Land Acquisition Amendment Act, 1984 came into force w.e.f. 24.9.1984, the respondent made an application u/s 151 and 152 of the Code of Civil Procedure, 1908 before the High Court in the disposed of first appeal, for the benefits of the amended provisions in the Land Acquisition Act, particularly, ss. 23(1A) and 23(2). The High Court allowed the application by its order dated 28.4.1989. The respondent then filed another execution petition for execution of the award and decree dated 28.4.1989, which was resisted by the State Government. The executing court overruled the objection and held that it was not open to the executing court to go behind the decree. The revision petition of the State Government was dismissed by the High Court.

Disposing of the appeals, the Court

HELD: 1.1. Legal position is no more *res integra* that an award and decree having become final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions brought in by the Amendment Act in the LA Act by filing petitions u/s 151 and s.152 of the CPC. In view of this, the award and decree passed by the High Court on 28.4.1989 has to be held to be without jurisdiction and nullity. [Para 21] [172-E-F]

Union of India Vs. Swaran Singh and Ors. **1996 (3) Suppl. SCR 205 (1996) 5 SCC 501;** *Sarup Singh and Anr. Vs. Union of India and Anr.* **2010 (15) SCR 131= (2011) 11 SCC 198 and** *State of Punjab and Anr. Vs. Babu Singh and Ors.* **1995 (2) SCR 374 =1995 Supp (2) SCC 406 – relied on.**

1.2. A plea of nullity of a decree can always be set up before the executing court. Any judgment and order which is a nullity never acquires finality and is thus open to challenge in the execution proceedings. [Para 21] [172-F-G]

Balwant N. Viswamitra and Ors. Vs. Yadav Sadashiv Mule (Dead) through LRs and Ors. **2004 (3) Suppl. SCR 519 = (2004) 8 SCC 706 – inapplicable.**

1.3. The order of the High Court dated 1.4.2003 and the order of the Additional District Judge, dated 6.4.1999 are set aside. The execution petition filed by the respondents seeking execution of the award and decree dated 28.4.1989 stands dismissed. [Para 23] [173-B]

Case Law Reference:

2010 (15) SCR 131	**relied on**	**Para 15**
1995 (2) SCR 374	**relied on**	**Para 14**
1996 (3) Suppl. SCR 205	**relied on**	**Para 14**
2004 (3) Suppl. SCR 519	**inapplicable**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5115 of 2005.

From the Judgment & Order dated 01.04.2003 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4158 of 1999.

WITH

C.A.No. 5096 of 2005.
C.A. No. 5097-5098 of 2005.
C.A. No. 5116 of 2005.

Manjit Singh, AAG, Punit Dutt Tyagi, Anil Antil, Tarjit Singh, Kamal Mohan Gupta, Manoj Swarup and Neha Kedia for the appearing parties.

The Judgment of the Court was delivered by

R.M. LODHA, J.

Civil Appeal No. 5115 of 2005

1. This Appeal, by special leave, has been filed under Article 136 of the Constitution of India by the State of Haryana and the Land Acquisition Collector, Urban Estate, Panchkula against the judgment and order of the Punjab & Haryana High Court dated April 1, 2003.

2. The controversy arises in this way. On May 2, 1973, the Government of Haryana issued notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'LA Act') proposing to acquire land for residential and commercial area as Sector 13 and Sector 13 Extension at Karnal, Haryana.

3. Subsequent thereto, declaration was made under Section 6 of the LA Act and then the award came to be passed by the Land Acquisition Collector on November 23, 1973 fixing the market value of the acquired land at the rate of Rs. 270/- per Biswa. The respondents' land is part of the above acquisition in the award.

4. The respondents were not satisfied with the market value determined by the Land Acquisition Collector and sought reference under Section 18 of the LA Act. The matter was referred to the civil court for determination of compensation for compulsory acquisition of the respondents' land.

5. The reference court on May 17, 1980 decided the reference(s) and enhanced compensation at the rate of Rs. 22/- per square yard. The reference court also awarded solatium at the rate of 15% on the enhanced amount of compensation and interest at the rate of 6% from the date of dispossession till the payment was made as awarded.

6. The respondents did not carry the matter further. However, the State of Haryana was dissatisfied with the determination of compensation by the reference court and,

accordingly, preferred first appeal before the Punjab and Haryana High Court.

7. On January 16, 1981, the first appeal preferred by the State of Haryana was dismissed by the single Judge of the High Court and the judgment and award by the reference court was upheld. It is pertinent to mention that during the pendency of the first appeal, the respondent No. 1 had laid execution of the award passed by the reference court by making an execution application in 1980.

8. The State of Haryana preferred special leave petition against the award and decree of the High Court but was unsuccessful. Special leave petition was dismissed by this Court on December 12, 1983.

9. Vide Land Acquisition (Amendment) Act, 1984 (for short, 'Amendment Act'), LA Act came to be amended with effect from September 24, 1984. By the Amendment Act, Section 23 of the LA Act was amended. There was amendment in Section 28 of the LA Act as well. Section 30 of the Amendment Act provided for transitional provisions.

10. On April 28, 1989, the respondents made an application under Sections 151 and 152 of the Code of Civil Procedure (for short, 'CPC') before the High Court in the disposed of first appeal against which the special leave petition preferred by the State of Haryana had already been dismissed. By this application the respondents prayed for the benefits of the amended provisions in LA Act particularly Sections 23(1-A) and 23(2) thereof.

11. The High Court allowed the application made by the respondents for grant of benefits of the amended provisions on April 28, 1989 and granted benefits of the amended provisions of Sections 23(1-A) and 23(2) of the LA Act to them.

12. The respondents then filed another execution petition

for execution of the award and decree dated April 28, 1989. On behalf of the appellants, an objection was raised that the award and decree passed by the High Court on April 28, 1989 was without jurisdiction and, therefore, not executable and enforceable.

13. The executing court, vide its order dated April 6, 1999, overruled the objection taken by the appellants and held that it was not open to the executing court to go behind the decree. The present appellants challenged the order of the executing court by filing a revision petition before the High Court. The revision petition has been dismissed by the impugned order.

14. Mr. Manjit Singh, learned Additional Advocate General, appeared for the appellants and submitted that the decree passed by the High Court on April 28, 1989 giving the benefits of amended Sections 23(1-A) and 23(2) of the LA Act to the respondents was a nullity and without jurisdiction. He relied upon the decisions of this Court in *State of Punjab and another Vs. Babu Singh and Others*[1], *Union of India Vs. Swaran Singh & Others*[2] and *Sarup Singh and Another Vs. Union of India and Another*[3].

15. Mr. Manoj Swarup, learned counsel for the respondents, in the first place distinguished the decision of this Court in *Swaran Singh*[2] by making reference to the observations made by this Court in para 7 which reads, "Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%". Secondly, learned counsel for the respondents submitted that *Swaran Singh*[2] did not lay down good law. He cited the decision of this Court in *Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through LRs. and others*[4] to draw a distinction between a 'void

1. 1995 Supp (2) SCC 406.
2. (1996) 5 SCC 501.
3. (2011) 11 SCC 198.
4. (2004) 8 SCC 706.

decree' and an 'illegal, incorrect and irregular decree'. Learned counsel submitted that the judgment and decree passed by the High Court on April 28, 1989 could at best be termed as an 'illegal, incorrect and irregular decree' but surely it is not a 'void decree'. He also referred to the decision of this Court in *National Agricultural Cooperative Marketing Federation of India Ltd. and another Vs. Union of India and Others*[5] to butress his point that the decree dated April 28, 1989 having attained finality as its correctness, legality and validity was never challenged and, therefore, could not have been set up in the execution proceedings.

16. In *Babu Singh*[1] a two Judge bench of this Court was concerned with an appeal filed by the State of Punjab and its functionary against the judgment and order of the High Court whereby the High Court allowed the applications made by the expropriated owners under Sections 151 and 152, CPC to amend the decree by awarding the benefits of enhanced solatium and additional amount available under Section 23(1-A) and Section 23(2) and Section 28 of the LA Act as amended by the Amendment Act. This Court held that the High Court was clearly without jurisdiction in entertaining the applications under Sections 151 and 152, CPC to award additional benefits under the amended provisions of the LA Act. The discussion of this Court in *Babu Singh*[1] reads as follows:

> "4. It is to be seen that the High Court acquires jurisdiction under Section 54 against the enhanced compensation awarded by the reference court under Section 18, under Section 23(1) with Section 26 of the Act. The Court gets the jurisdiction only while enhancing or declining to enhance the compensation to award higher compensation. While enhancing the compensation "in addition" to the compensation under Section 23(1), the benefits enumerated under Section 23(1-A) and Section 23(2) as also interest on the enhanced compensation on the amount

5. (2003) 5 SCC 23.

which in the opinion of the Court "the Collector ought to have awarded in excess of the sum which the Collector did award", can be ordered. Thus, it would be clear that civil court or High Court gets jurisdiction when it determines higher compensation under Section 23(1) and not independently of the proceedings.

5. This is the view taken by this Court in *State of Punjab v. Satinder Bir Singh (sic.)*, disposed of on 22-2-1995.The same ratio applies to the facts in this case, since as on the date when the judgment and decree was made by the High Court, the law was that the High Court should award solatium at 15% and interest at 6%. Payment of additional amount as contemplated under Section 23(1-A) cannot be made since the notification under Section 4(1) was dated 11-12-1974 and even the award of the District Court was dated 23-2-1978. Under these circumstances, the LA Amendment Act 68 of 1984 has no application and there is no error in the award or the decree as initially granted. The High Court was clearly without jurisdiction in entertaining the applications under Sections 151 and 152 to award the additional benefits under the Amendment Act 68 of 1984 or to amend the decrees already disposed of."

17. In *Swaran Singh*[2] the correctness of the decree passed by the High Court giving the expropriated owners benefits of amended provisions of solatium and interest under Section 23(2) and proviso to Section 28 of the LA Act as amended by the Amendment Act was in issue. That was a case where notification under Section 4(1) of the LA Act was published on June 10, 1977 proposing to acquire the land for extension of Amritsar Cantonment at Village Kala Ghanpur. The award was made by the Collector under Section 11 on August 28, 1978. On reference under Section 18, the reference court enhanced the compensation by its award and decree dated December 24, 1981. The award and decree passed by the reference court was confirmed by the single Judge as well as by the Division

Bench of the High Court and special leave petitions from the judgment of the High Court were dismissed. On July 28, 1987, after the amendments were made in LA Act by the Amendment Act, the owners made applications under Sections 151 and 152, CPC for award of enhanced solatium and interest. The High Court allowed the applications. When execution applications were laid, the executing court dismissed them, but on revision the High Court allowed them and directed execution of enhanced solatium and interest. It is from this order that the appeals, by special leave, were preferred by the Union of India before this Court. This Court in para 7 and 8 (pages 502-503) held as under :

"7. It is settled law that after the Reference Court has granted an award and decree under Section 26(1) of the Act which is an award and judgment under Section 26(2) of the Act or on appeal under Section 54, the only remedy available to a party is to file an application for correction of clerical or arithmetical mistakes in the decree. The award of solatium and interest would be granted on enhancement of compensation when the court finds that the compensation was not correct. It is a part of the judgment or award. Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%. The Amendment Act 68 of 1984 came into force as on 24-9-1984. It is settled law that if the proceedings are pending before the Reference Court as on that date, the claimants would be entitled to the enhanced solatium and interest. In view of the fact that the Reference Court itself has answered the reference and enhanced the compensation as on 24-12-1081, the decree as on that date was correctly drawn and became final.

8. The question then is whether the High Court has power to entertain independent applications under Sections 151 and 152 and enhance solatium and interest as amended under Act 68 of 1984. This controversy is no

longer res integra. In *State of Punjab V. Jagir Singh* [1995 Supp.(4) SCC 626] and also in catena of decisions following thereafter in *Union of India V. Pratap Kaur* [(1995) 3 SCC 263]; *State of Maharashtra V. Maharau Srawan Hatkar* [(1995) 3 SCC 316 : JT 1995 (2) SC 583]; *State of Punjab V. Babu Singh* [1995 Supp. (2) SCC 406]; *Union of India V. Raghubir Singh* [(1989) 2 SCC 754]; and *K.S. Paripoornan V. State of Kerala* [(1994) 5 SCC 593] this Court has held that the Reference Court or the High Court has no power or jurisdiction to entertain any applications under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solatium at 30% under Section 23 (2) and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till date of deposit under Section 28 as amended under Act 68 of 1984 is clearly without jurisdiction and, therefore, a nullity. The order being a nullity, it can be challenged at any stage. Rightly the question was raised in execution. The executing Court allowed the petition and dismissed the execution petition. The High Court, therefore, was clearly in error in allowing the revision and setting aside the order of the executing Court."

18. In *Swaran Singh*[2] it has been clearly held that the High Court has no power to entertain an independent application under Section 151 and Section 152 of the CPC and enhance solatium and interest as amended under the Amendment Act.

19. The sentence "Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%" in para 7 in *Swaran Singh*[2] is hardly a distinguishing feature. *Swaran Singh*[2] is on all fours and is squarely applicable to the present fact situation. We have no reason, much less a

justifiable reason, to doubt the correctness of law laid down in *Swaran Singh*[2].

20. *Swaran Singh*[2] has been referred to by this Court in para 26 (page 208) of comparatively recent judgment in *Sarup Singh*[3] and followed. In para 25 (page 208 of the report) this Court in *Sarup Singh*[3] held as under :

> "25. In the present cases the judgment and order passed by the High Court before Amendment Act of 68 of 1984 became final and binding as no appeal was brought to this Court thereafter. However, consequent to the amendment in the Land Acquisition Act, the appellants had filed civil miscellaneous applications for the grant of 30% solatium and 9% interest for first year and 15% interest thereafter. This Court has also held in a catena of decisions that a decree once passed and which has become final and binding cannot be sought to be amended by filing petition under Sections 151 and 152, CPC."

21. Legal position is no more *res integra* that an award and decree having become final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions brought in by the Amendment Act in the LA Act by filing petitions under Section 151 and Section 152 of the CPC. In view of this, the award and decree passed by the High Court on April 28, 1989 has to be held to be without jurisdiction and nullity. It goes without saying that a plea of nullity of a decree can always be set up before the executing court. Any judgment and order which is a nullity never acquires finality and is thus open to challenge in the executing proceedings.

22. The decisions of this Court in *Balvant N. Viswamitra*[4] and *National Agricultural Cooperative Marketing Federation of India Ltd.*[5] relied upon by the learned counsel for the respondents have no relevance to the controversy in hand. The propositions of law laid down therein are beyond question but

these propositions have no application to the facts of the present case.

23. Civil Appeal is, accordingly, allowed. The order of the High Court dated April 1, 2003 and the order of the Additional District Judge, Karnal dated April 6, 1999 are liable to be set aside and are set aside. The execution petition filed by the respondents seeking execution of the award and decree dated April 28, 1989 stands dismissed. The parties shall bear their own costs.

Civil Appeal No. 5116 of 2005

24. In view of judgment passed in Civil Appeal 5115/2005 above, this Civil Appeal is also allowed in the same terms. The parties shall bear their own costs.

Civil Appeal No. 5096 of 2005 and Civil Appeal Nos. 5097-5098 of 2005

25. In view of the judgment passed in Civil Appeal 5115 of 2005 and Civil Appeal No. 5116 of 2005 today, these Civil Appeals do not survive and stand disposed of as such.

R.P. Appeals disposed of.

THE DEPUTY INSPECTOR GENERAL OF POLICE & ANR.

v.

S. SAMUTHIRAM

(Civil Appeal No. 8513 of 2012)

NOVEMBER 30, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Service Law:

Dismissal – Member of Armed Reserved – Prosecution of, for offences punishable u/s 4 of Tamil Nadu Prohibition of Eve-Teasing Act and s.509 IPC – In departmental inquiry allegations found proved and punishment of dismissal imposed – Subsequently, acquittal in criminal case – Held: Mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings – In the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement – In the instant case, in departmental proceedings the charges were proved – In the criminal case the complainants turned hostile and other key witnesses including the doctor were not examined by the prosecution – In the circumstances, the court held that there was no evidence to implicate the accused – That being the factual situation, the delinquent cannot be said to have been honourably acquitted by criminal court – Even otherwise, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so – High Court, in its limited jurisdiction under Art. 226 of the Constitution, was not justified in setting aside the punishment imposed in the departmental proceedings – Judgment of High Court is set aside – Tamil Nadu Prohibition of Eve-Teasing Act, 1998 – s.4 – Constitution of India, 1950 – Art. 226.

Sexual Harassment:

Eve-teasing – Held: Eve-teasing is a euphemism, a conduct which attracts penal action – The consequence of eve-teasing may at times be disastrous – There is no uniform law to curb eve-teasing effectively – Only in the State of Tamil Nadu, a Statute has been enacted, and that too has no teeth – The necessity of a proper legislation to curb eve-teasing is of extreme importance – Until suitable legislation to curb eve-teasing takes place, directions are issued to take urgent measures so that the evil can be curtailed to some extent – Constitution of India, 1950 – Arts. 21, 14 and 15 – Legislation.

WORDS AND PHRASES:

Expression, 'honourable acquittal' – Explained.

The respondent, while posted with the Armed Reserve and deputed for duty at a Police out post, was by an order dated 18.7.1999 placed under suspension w.e.f. 10.7.1999. The allegations against him were that on 9.7.1999, at 11:00 pm he went to the bus stand in a drunken state and misbehaved with and eve-teased a married woman. He was also found absent from duties. A complaint against the respondent was registered at the Police Station for offences punishable u/s 4 of the Tamil Nadu Prohibition of Eve-Teasing Act, 1998 and s.509 IPC. The departmental proceedings culminated in dismissal of the respondent from service. During the pendency of the O.A. filed by the respondent before the Tamil Nadu Administrative Tribunal, he was acquitted in the criminal case. The Tribunal held that no reliance could be placed on the judgment of the criminal court, and dismissed the O.A. However, the High Court allowed the writ petition of the respondent.

In the instant appeal filed by the Department, the question for consideration before the Court was: when

the departmental enquiry has been concluded resulting in the dismissal of the delinquent from service, will the subsequent finding recorded by the criminal court acquitting the respondent delinquent, have any effect on the departmental proceedings?

Allowing the appeal, the Court

HELD: 1.1. Mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The charges in the departmental proceedings were inquired into by the Deputy Superintendent of Police. The Department examined ten witnesses; and fourteen documents were produced. On the side of the defence, D.W. 1 and D.W. 2 were examined. The Enquiry Officer found all the three charges proved beyond reasonable doubt. P.Ws. 4 and 5, the two Head Constables who had taken the respondent and the complainants to the Police Station, and PW 6, the Head Constable of the Police Station, clearly narrated the entire incident and the involvement of the respondent. The Enquiry Officer clearly concluded that the evidence tendered by the P.Ws. 4, 5 and 6 and the documentary evidence would clearly prove the various charges levelled against the delinquent. The Medical Officer of the Government Hospital had also certified that the delinquent had consumed liquor and did not cooperate for urine and blood tests. The Superintendant of Police, concurred with the findings of the Enquiry Officer and held that the charges were clearly proved beyond reasonable doubt. It was held that the respondent being a member of a disciplined force should not have behaved in a disorderly manner and that too in a drunken state, in a public place, and misbehaving with a married woman. The said conduct of the respondent would undermine the morale of the police force. Consequently, the Superintendant of Police awarded the

punishment of dismissal from service on the respondent. His departmental appeal was rejected by the Inspector General of Police. [para 14 and 20] [187-D-H; 188-A-E; 191-G]

1.2. In the criminal case before the Judicial Magistrate, PW 1 and PW 2, the husband and the wife (victim) turned hostile. Prosecution then did not take steps to examine the rest of the prosecution witnesses. The two Head Constables who took the respondent along with PWs 1 and 2 to the Police Station were crucial witnesses, but the prosecution, took no step to examine them, and so also the Doctor. It was under such circumstances that the criminal court took the view that there was no evidence to implicate the respondent-accused, consequently, he was found not guilty u/s 509 IPC read with s.4 of the Eve-Teasing Act and was, therefore, acquitted. That being the factual situation, the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined. [para 15 and 20] [188-G; 189-B-C; 192-C]

Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another **1999 (2) SCR 257 = (1999) 3 SCC 679;** *Southern Railway Officers' Association v. Union of India* **2009 (12) SCR 429 = (2009) 9 SCC 24 ;** *State Bank of Hyderabad v. P.Kata Rao* **2008 (6) SCR 983 = (2008) 15 SCC 657; and** *Divisional Controller, Karnataka State Raod Transport Corporation v. M. G., Vittal Rao* **(2012) 1 SCC 442 – referred to**

1.3. In *Bhopal Singh Panchal**, **this Court held that the mere acquittal does not entitle an employee to reinstatement in service: the acquittal has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial**

pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. [para 21] [192-E-G]

Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* **(1994) 1 SCC 541; *R.P. Kapoor v. Union of India* **1964 SCR 431 = AIR 1964 SC 787; and** *State of Assam and another v. Raghava Rajgopalachari* 1972 **SLR 45 – referred to.**

(1934) 61 ILR Cal. 168 – referred to.

1.4. In the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. The issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules. The High Court, in its limited jurisdiction under Art. 226 of the Constitution, was not justified in setting aside the punishment imposed upon the respondent in the departmental proceedings. The judgment of the High Court is set aside. [para 23-25 and 33] [193-E, F-G; 194-D-E; 198-C]

2.1. Eve-teasing is a euphemism, a conduct which attracts penal action. Consequence of eve-teasing may, at times, are disastrous, but it is seen, only in the State of Tamil Nadu a statute has been enacted and that too has no teeth. It has been noticed that there is no uniform law to curb eve-teasing effectively. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Every citizen has right to live with dignity and honour which is a fundamental right guaranteed under Art. 21 of the Constitution. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Arts. 14 and 15 as well. [para 2, 26 and 30] [182-C; 194-G-H; 195-A-B; 196-B]

2.3. It has been noticed that in the absence of effective legislation to contain eve-teasing, normally, complaints are registered u/s 294 or s.509 IPC, which has not been proved to be an effective mechanism, rather filing of complaint and to undergo a criminal trial itself is an agony for the complainant, over and above the extreme physical or mental agony already suffered. The necessity of a proper legislation to curb eve-teasing is of extreme importance. [para 26, 28 and 30] [195-B-E-F; 196-B]

Vishaka and Others v. State of Rajasthan; **(1977) 6 SCC 241;** *Rupan Deol Bajaj and Another v. K.P.S. Gill*; **1995 (4) Suppl. SCR 237 = (1995) 6 SCC 194 – referred to**

The Indian Journal of Criminology and Criminalistics **(January-June 1995 Edn.) – referred to**

2.4. Until suitable legislation to curb eve-teasing is enacted, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. Therefore, this Court gives the following directions:

(1) All the State Governments and Union Territories are directed to depute plain clothed female police

officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.

(2) The State Government and Union Territories will install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.

(3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.

(4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.

(5) State Governments and Union Territories are directed to establish Women's Helpline in various cities and towns, so as to curb eve-teasing within three months.

(6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parks, beaches,

public service vehicles, places of worship etc.

(7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

(8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the authorities concerned including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing. [para 32] [196-G; 197-A-H; 198-A-B]

Case Law Reference:

1999 (2) SCR 257	**referred to**	**para 7**
2009 (12) SCR 429	**referred to**	**para 17**
2008 (6) SCR 983	**referred to**	**para 18**
(2012) 1 SCC 442	**referred to**	**para 19**
(1994) 1 SCC 541	**referred to**	**para 21**
1964 SCR 431	**referred to**	**para 22**
1972 SLR 45	**referred to**	**para 22**
(1934) 61 ILR Cal. 168	**referred to**	**para 22**
(1977) 6 SCC 241	**referred to**	**para 31**
1995 (4) Suppl. SCR 237	**referred to**	**para 31**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8513 of 2012.

From the Judgment & Order dated 26.10.2007 of the High Court of Madras in WP No.13726 of 2004.

C. Paramasivam, B. Balaji for the Appellants.

V.N. Subramaniam, N. Vijakumar, V. Senthil Kumar, Balaji Srinivasan for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. Eve-Teasing is a euphemism, a conduct which attracts penal action but it is seen, only in one State, a Statute has been enacted, that is State of Tamil Nadu to contain the same, the consequence of which may at times drastic. Eve-teasing led to the death of a woman in the year 1998 in the State of Tamil Nadu which led the Government bringing an ordinance, namely, the Tami Nadu Prohibition of Eve-Teasing Ordinance, 1998, which later became an Act, namely, the Tamil Nadu Prohibition of Eve-Teasing Act, 1998 [for short 'the Eve-Teasing Act']. The Statement of Objects and Reasons of the Eve-Teasing Act reads as follows:

> "Eve-teasing in public places has been a perennial problem. Recently, incidents of eve-teasing leading to serious injuries to, and even death of a woman have come to the notice of the Government. The Government are of the view that eve-teasing is a menace to society as a whole and has to be eradicated. With this in view, the Government decided to prohibit eve-teasing in the State of Tamil Nadu.
>
> 2. Accordingly, the Tamil Nadu Prohibition of Eve-teasing Ordinance, 1998 (Tamil Nadu Ordinance No. 4 of 1998) was promulgated by the Governor and the same was published in the Tamil Nadu Government Gazette Extraordinary, dated the 30th July, 1998.
>
> 3. The Bill seeks to replace the said Ordinance."

3. We are in this case concerned with a situation where a member of the law enforcement agency, a police personnel,

himself was caught in the act of eve-teasing of a married woman leading to criminal and disciplinary proceeding, ending in his dismissal from service, the legality of which is the subject matter of this appeal.

4. The respondent herein, while he was on duty at the Armed Reserve, Palayamkottai was deputed for Courtallam season Bandobust duty on 9.7.1999 and he reported for duty on that date at 8.30 PM at the Courtallam Season Police out post. At about 11.00 PM he visited the Tenkasi bus stand in a drunken state and misbehaved and eve-teased a married lady, who was waiting along with her husband, to board a bus. The respondent approached that lady with a dubious intention and threatened both husband and wife stating that he would book a case against the husband unless the lady accompanied him. Further, he had disclosed his identity as a police man. Both husband and wife got panic and complained to a police man, namely, Head Constable Adiyodi (No.1368) who was standing along with Head Constable Peter (No.1079) of Tenkasi Police Station on the opposite side of the bus-stand. They were on night duty at the bus stand. They rushed to the spot and took the respondent into custody and brought him to Tenkasi Police Station along with the husband and wife. Following that, a complaint No.625/1999 was registered on 10.7.1999 at that Police Station against the respondent under Section 509 of the Indian Penal Code and under Section 4 of the Eve-teasing Act. On 10.7.1999, at about 1.25 hrs., the respondent was taken to the Government Hospital Tenkasi for medical examination. There he was examined by Dr. N. Rajendran, who issued a Certificate of Drunkenness, which reads as follows:

"**Symptoms at the time of examination**:

Breath smell of alcohol, Eye congested, Retina expanded, sluggish reaction to light, speech and activities normal, pulse rate 96, Blood pressure 122/85. I am of opinion that the above person:

(i) consumed alcohol but is not under its influence.

Station: Tenkasi Name: N. Rajendran
Date: 10.07.1999 (Sd/- dt.10.07.1999)

Civil Surgeon

I am not willing to undergo blood and urine test.

Sd/- S. Samuthiram, PC 388"

5. The respondent was then placed under suspension from 10.7.1999 (FN) as per DO.1360/1999 in C.No.P1/34410/1999 vide order dated 18.7.1999 and departmental proceedings were initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 (in short 'Tamil Nadu Service Rules') for his highly reprehensible conduct in behaving in a disorderly manner to a married lady in a drunken state at Tenkasi bus stand on 9.7.1999. Further, it was also noticed that he was absent from duty from 07.00 hrs on 10.7.1999 to 03.45 hrs.

6. The Deputy Superintendent of Police, Armed Reserve, Tiruneveli, conducted a detailed domestic enquiry and after examining ten prosecution witnesses and perusing fourteen prosecution documents and after hearing the defence witnesses, submitted a report dated 22.11.1999 finding all the charges proved against the delinquent respondent. The Superintendent of Police, Tiruneveli after carefully perusing the enquiry report dismissed the respondent from service on 4.1.2000.

7. The respondent, aggrieved by the dismissal order, filed O.A. No.1144 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai. While the O.A. was pending before the Tribunal, the Judicial Magistrate, Tenkasi rendered the judgment in S.T.C No.613 of 2000 on 20.11.2000 acquitting the respondent of all the charges. The judgment of the Criminal

Court was brought to the notice of the Tribunal and it was submitted that, on the same set of facts, the delinquent be not proceeded within the departmental proceeding. The judgment of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another* (1999) 3 SCC 679 was also placed before the Tribunal in support of that contention.

8. The Tribunal noticed that both, husband and wife, deposed before the Enquiry Officer that the respondent had committed the offence, which was supported by the other prosecution witnesses, including the two policemen who took the respondent in custody from the place of incident. Consequently, the Tribunal took the view that no reliance could be placed on the judgment of the criminal court. The O.A. was accordingly dismissed by the Tribunal vide order dated 23.3.2004. The order was challenged by the respondent in a Writ Petition No.13726 of 2004 before the High Court of Madras. The High Court took the view that if a criminal case and departmental proceedings against an official are based on the same set of facts and evidence and the criminal case ended in an honourable acquittal and not on technical grounds, imposing punishment of removal of the delinquent official from service, based on the findings of domestic enquiry would not be legally sustainable. The High Court also took the view that the version of the doctor who was examined as PW8 and Ext. P-4 certificate issued by him, could not be considered as sufficient material to hold the respondent guilty and that he had consumed alcohol, but was found normal and had no adverse influence of alcohol. The High Court, therefore, allowed the writ petition and set aside the impugned order dismissing him from service. It was further ordered that the respondent be reinstated with continuity of service forthwith, with back wages from the date of acquittal in the criminal case, till payment.

9. The State, aggrieved by the said judgment has filed this appeal by special leave through the Deputy Inspector General of Police.

10. Shri C. Paramasivam, learned counsel appearing for the appellant, submitted that the High Court was not justified in interfering with disciplinary proceedings and setting aside the order of dismissal of the respondent. Learned counsel submitted that the High Court overlooked the fact that the standard of proof in a domestic enquiry and criminal enquiry is different. The mere acquittal by the criminal Court does not entitle the delinquent for exonerating in the disciplinary proceedings. Learned counsel also submitted that the case in hand is not where punishment of dismissal was imposed on the basis of conviction in a criminal trial and only, in such situation, acquittal by a Court in a criminal trial would have some relevance. Further, it was also pointed out that, in the instant case, the respondent was not honourably acquitted by the criminal Court, but was acquitted since complainant turned hostile.

11. Shri V. N. Subramaniam, learned counsel appearing for the respondent, supported the findings recorded by the High Court. Learned counsel submitted that the judgment of the criminal court acquitting the respondent has to be construed as an honourable acquittal and that the respondent cannot be proceeded with on the same set of facts on which he was acquitted by a criminal court. Learned counsel also placed reliance on the judgment of this Court in *Capt. M. Paul case* (supra).

12. We may first deal with the departmental proceedings initiated against the respondent.

DEPARTMENTAL PROCEDINGS:

13. We may indicate that the following were the charges levelled against the respondent in the departmental proceedings and a charge memo dated 24.8.1999 was served on the respondent:

(i) Reprehensible conduct in having behaved in a

disorderly manner in a drunkenness mood at Tenkasi Bus-stand on 9.7.1999 at 23.00 hrs.

(ii) Highly reprehensible conduct in eve-teasing Pitchammal (44/1999) W/o. Vanamamalai of Padmaneri in the presence of her husband and having approached her with a dubious intention on 9.7.1999 at 23.00 hrs. and thereby getting involved in a criminal case in Tenkasi P.S. Cr. No. 625/1999 under Section 509 IPC and Section 4 of the Tamil Nadu Prohibition of Eve-Teasing Ordinance Act, 1998 and

(iii) Highly reprehensible conduct in having absented from duty from 10.7.1999 at 07.00 hrs onward till 03.45 hrs.

14. The charges were inquired into by the Deputy Superintendent of Police, Armed Reserve Tirunelveli. The prosecution examined ten witnesses and fourteen documents were produced. On the side of the defence, D.W. 1 and D.W. 2 were examined. After examining the witnesses on either side and after giving an opportunity of hearing, the Enquiry Officer found all the three charges proved beyond reasonable doubt. P.Ws. 4 and 5, who were Head Constables 1368 Adiyodi of Tenkasi Police Station and Head Constable 1079 Peter of Tenkasi Police Station, clearly narrated the entire incident and the involvement of the respondent, so also PW 6, the Head Constable of Tenkasi Police Station. The Enquiry Officer clearly concluded that the evidence tendered by the prosecution witnesses P.Ws. 4, 5 and 6 and prosecution documents 3, 4 and 5 would clearly prove the various charges levelled against him. The Medical Officer of the Government Hospital had also certified that the delinquent had consumed liquor and he was not cooperating for urine and blood tests. The Enquiry Officer also found that the delinquent ought to have reported for duty at the out-post station on 10.7.1999 at 07.00 hrs. as per the instruction given to him on 9.7.1999 at 20.30 hrs., while he

reported for courtallam season Bandobust duty at season out-post police station. But, it was found that the delinquent had failed to report for duty. Further, he had also indulged in the activity of eve-teasing a married woman. After finding the delinquent respondent guilty of all the charges, the Enquiry Officer submitted its report dated 22.11.1999. The Superintendant of Police, Tirunelveli concurred with the findings of the Enquiry Officer and held that the charges were clearly proved beyond reasonable doubt. It was held that the respondent being a member of a disciplined force should not have behaved in a disorderly manner and that too in a drunken state, in a public place, and misbehaving with a married woman. It was held that the said conduct of the respondent would undermine the morale of the police force, consequently, the Superintendant of Police awarded the punishment of dismissal from service on the respondent, vide its proceeding dated 4.1.2000. The respondent then filed an appeal before the Inspector General of Police, which was rejected vide his proceeding dated 10.3.2000. Respondent then filed an application in O.A. No. 1144 of 2000 before the Tamil Nadu Administrative Tribunal. While O.A. was pending, the delinquent was acquitted of the criminal charges.

CRIMINAL PROCEEDINGS:

15. We have indicated that a criminal case was also registered against the respondent by the Tenkasi Police Station being Crime No. 625/1999 under Section 509 IPC and Section 4 of the Eve-Teasing Act, 1998, which was registered as STC 613 of 2002 before the Judicial Magistrate, Tenkasi. Before the Criminal Court, PW 1 and PW 2, the husband and the wife (victim) turned hostile. Prosecution then did not take steps to examine the rest of the prosecution witnesses. Head Constable (No.1368) Adiyodi and Head Constable (No.1079) Peter of Tenkasi Police Station were crucial witnesses. Facts would clearly indicate that it was the above mentioned Head Constables who took the respondent to Tenkasi Police Station

along with P.Ws. 1 and 2, though P.Ws. 1 and 2 had clearly deposed before the Enquiry Officer of the entire incident including the fact that the above mentioned two Head Constables had taken the respondent along with P.Ws.1 and 2 to the Tenkasi Police Station. The Criminal Court took the view that since P.W. 1 and P.W. 2 turned hostile, the criminal case got weakened. The prosecution, it may be noted also took no step to examine the Head Constables by name 1368 Adiyodi and 1079 Peter of Tenkasi Police Station, so also the Doctor P.W.8 before the criminal Court. It was under such circumstances that the criminal Court took the view that there is no evidence to implicate the respondent-accused, consequently, he was found not guilty under Section 509 IPC read with Section 4 of the Eve-Teasing Act and was, therefore, acquitted.

16. We may indicate that before the order of acquittal was passed by the Criminal Court on 20.11.2000, the Departmental Enquiry was completed and the respondent was dismissed from service on 4.1.2000. The question is when the departmental enquiry has been concluded resulting in the dismissal of the delinquent from service, the subsequent finding recorded by the Criminal Court acquitting the respondent delinquent, will have any effect on the departmental proceedings. The propositions which the respondent wanted to canvass placing reliance on the judgment in *Capt. M. Paul Anthony case* (supra) read as follows:

> "(*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."

17. This Court, in *Southern Railway Officers' Association v. Union of India* (2009) 9 SCC 24, held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Court reiterated that order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.

18. In *State Bank of Hyderabad v. P.Kata Rao* (2008) 15 SCC 657, this Court held that there cannot be any doubt whatsoever that the jurisdiction of the superior Courts in interfering with the finding of fact arrived at by the Enquiring Officer is limited and that the High Court would also ordinarily

not interfere with the quantum of punishment and there cannot be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith. In that judgment, this Court further held as follows:

> "The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another* [(1999) 3 SCC 679], however, remains unshaken although the applicability thereof had been found to be dependant on the fact situation obtaining in each case."

19. In a later judgment of this Court in *Divisional Controller, Karnataka State Raod Transport Corporation v. M.G., Vittal Rao* (2012) 1 SCC 442, this Court after a detailed survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the Disciplinary Authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency.

20. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the Prosecution. Considering the facts and circumstances of the case, the possibility of winning order P.Ws. 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the Prosecution had not examined

Head Constables 1368 Adiyodi and 1079 Peter of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with P.Ws. 1 and 2, husband and wife, to the Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (husband – complainant) is found in Ex.P1 – Complaint. Further, the Doctor P.W.8 has also clearly stated before the Enquiry Officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.

Honourable Acquittal

21. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

22. In *R.P. Kapoor v. Union of India*, AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than

honourable. In *State of Assam and another v. Raghava Rajgopalachari* reported in 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in (1934) 61 ILR Cal. 168 which is as follows:

> "The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and

his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

25. In view of the above mentioned circumstances, we are of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India.

26. We may, in the facts and circumstances of this case, wish to add some aspects which are also of considerable public importance. We notice that there is no uniform law in this country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus stands, metro-stations, railway stations, cinema theatres, parks, beaches, places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace, needless to say, at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological

problems and even committing suicide. Every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve- teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well. We notice in the absence of effective legislation to contain eve-teasing, normally, complaints are registered under Section 294 or Section 509 IPC.

27. Section 294 says that "Whoever, to the annoyance of others- (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song; ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both".

28. It is for the prosecution to prove that the accused committed any obscene act or the accused sang, recited or uttered any obscene song; ballad or words and this was done in or near a public place, it was of obscene nature and that it had caused annoyance to others. Normally, it is very difficult to establish those facts and, seldom, complaints are being filed and criminal cases will take years and years and often people get away with no punishment and filing complaint and to undergo a criminal trial itself is an agony for the complainant, over and above, the extreme physical or mental agony already suffered.

29. Section 509 IPC says, "Whoever intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending, that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both".

30. The burden is on the prosecution to prove that the accused had uttered the words or made the sound or gesture

and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, woman files complaints and often the wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and follow up such acts. The necessity of a proper legislation to curb eve-teasing is of extreme importance, even the Tamil Nadu Legislation has no teeth.

31. Eve teasing today has become pernicious, horrid and disgusting practice. The Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) has categorized eve teasing into five heads viz. (1) verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In *Vishaka and Others v. State of Rajasthan*; (1977) 6 SCC 241, this Court has laid down certain guidelines on sexual harassments. In *Rupan Deol Bajaj and Another v. K.P.S. Gill*; (1995) 6 SCC 194, this Court has explained the meaning of 'modesty' in relation to women. More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilized and cultured society. The experiences of women and girl children in over-crowded buses, metros, trains etc. are horrendous and a painful ordeal.

32. The Parliament is currently considering the Protection of Woman against Sexual Harassment at Workplace Bill, 2010, which is intended to protect female workers in most workplaces. Provisions of that Bill are not sufficient to curb eve-teasing. Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

(1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations,

metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.

(2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.

(3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.

(4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.

(5) State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.

(6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parks, beaches, public service vehicles, places of worship etc.

(7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

(8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

33. The Appeal is accordingly allowed with the above directions and the judgment of the High Court is set aside. However, there will be no order as to costs.

R.P. Appeal allowed.

PRAMOD BHANUDAS SOUNDANKAR
v.
STATE OF MAHARASHTRA
(Criminal Appeal No. 1960 of 2012)

NOVEMBER 30, 2012

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR, JJ.]

Penal Code, 1860 – ss. 411 and 412 – Dacoity by 10 accused – Stolen property (4 kg silver) sold to appellant-accused (jeweller) – Conviction of appellant-accused by courts below u/ss. 411 and 412 – On appeal, plea that appellant-accused, at the most could be convicted u/s. 411 and not 412 as he did not know whether the accused selling the silver, belonged to a gang of dacoits – Held: The evidence that the appellant had known or had reason to believe that the silver chips were stolen property, would be sufficient only to establish his guilt u/s. 411 – Courts below have not recorded a finding that the accused was aware that the silver chips presented to him were procured by commission of dacoity or that he knew or had reason to believe that presenter of the silver chips belonged to a gang of dacoits – Therefore, conviction u/s. 412 set aside – Sentence of punishment reduced to 1 year RI and fine of Rs. 1000/-.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1960 of 2012.

From the Judgment & Order dated 13.6.2012 of the High Court of Judicature at Bombay bench at Aurangabad in Criminal Appeal No. 260 of 2011.

Jayant Bhushan, Shivaji M. Jadhav, Brijkishor Sah, Anish R. Saha for the Appellant.

Sanjay Kharde, Asha Gopalan Nair for the Respondent.

The following Order of the Court was delivered

ORDER

1. Leave granted.

2. Six persons wearing black clothes, entered the house of Rameshchandra Sawarmal Bagdiaya, situated at Akola Road, Hingoli, on the night intervening 17th and 18th July,.2009, at about 1 am, after breaking open the main gate. At the time of the break in, Rameshchandra Sawarmal Bagdiaya and his wife Kirandevi were at the residence. Having threatened Rameshchandra Sawarmal Bagdiaya and his wife, the assailants demanded keys to an “almirah” (storage cabinet) in the premises. Rameshchandra Sawarmal Bagdiaya informed them, that the keys were in the drawer of a table in their room. Having recovered the keys from the drawer, the intruders opened the “almirah”. From the “almirah”, they took away gold and silver ornaments besides cash. In addition, they took three gold finger-rings and a gold chain from the person of Rameshchandra Sawarmal Bagdiaya, and a gold “mangalsutra” (wedding chain) and gold bangles from the person of Kirandevi.

3. From the statement made by Rameshchandra Sawarmal Bagdiaya, it came out, that the assailants collectively took away three gold finger-rings, one “mangalsutra”, one gold locket, two gold bangles, two ear-tops, one gold bar weighing three tolas (30 grams), one ladies finger-ring, two “patlyas” (thick bangles), a number of silver chips weighing 1 kilogram each, 150 silver coins and Rs.1,93,000/- cash.

4. In the process of solving the crime, Vishwanath Gavali was the first to be arrested by the investigating officer. Vishwanath Gavali, disclosed the names of some others, involved in the incident. Thereafter, in November, 2009, three accused Hanuman Kale, Ganesh Kale and Kathalu alias Sigret

were arrested. In January of the following year, Khetrya was also apprehended. On information furnished by him, Roshan alias Dhonya and Kiran, were arrested in February, 2010. These arrests led to the disclosure of the identity of the owner of the car used in the crime. Thereupon Shaikh Javed, the car owner was arrested. Shivaji Kale was the last to be arrested from amongst the intruders.

5. Even though Shivaji Kale (accused no. 8) had disclosed the name of Sanjay alias Kaliya as one of their associates in the crime, he could not be arrested, as he was absconding. He was, however, arrested after the submission of the chargesheet, whereupon a supplementary chargesheet was filed implicating Sanjay alias Kaliya.

6. The aforesaid ten accused were allegedly responsible for the dacoity. One of them, Shivaji Kale (accused no. 8) disclosed, during the course of investigation, that he had stolen four silver chips (weighing 1 kilogram each) from the residence of Rameshchandra Sawarmal Bagdiaya, and had sold the same to Pramod Bhanudas Soundankar, a jeweller. The four silver chips stolen by the accused Shivaji Kale were recovered from the shop of Pramod Bhanudas Soundankar-appellant. Pramod Bhanudas Soundankar-appellant was proceeded against (as accused no. 11) for dishonestly having received stolen property (under Sections 411 and 412 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"), knowing (or having reason to believe) that it was stolen..

7. The instant appeal has been filed by the aforesaid Pramod Bhanudas Soundankar-appellant. During the course of hearing, the solitary contention advanced at the hands of the learned counsel for the appellant was, that the Trial Court, as also the High Court, had seriously erred in holding the appellant Pramod Bhanudas Soundankar guilty, under Section 412 IPC. It was the contention of the learned counsel for the appellant, that the evidence produced by the prosecution during the trial of the case, could at best, result in the conviction of the

appellant under Section 411 IPC. In the aforesaid view of the matter, the sole question which arises for our consideration, in the present appeal is confined to the issue, whether the Courts below were justified in holding the appellant Pramod Bhanudas Soundankar guilty of having committed the offence punishable under Section 412 IPC and not Section 411 thereof.

8. The Trial Court, while dealing with the case of the appellant Pramod Bhanudas Soundankar, recorded the following observations:-

> "92. So far as evidence against accused no. 11 Pramod Soundankar is concerned, it is not the case of the prosecution that he was involved in the dacoity. However, muddemal articles are seized as per the memorandum statement of accused no. 8 Shivaji Kale from the shop of accused no. 11. On reaching to shop, he has handed over those articles to the police. Accordingly, Panchnama is made. There is nothing brought on record in the evidence of PW-20 P.I. Rauf, an Investigating Officer that he is having any interest as against this accused to falsely involved him in this crime. Therefore, merely because the panch witness on memorandum and seizure panchnamas are not supporting, the evidence of PW 20 P.I. Rauf, I.O. On memorandum and seizure panchanama and PW-4 Rameshchandra Bagdiaya, complainant as to identity of the muddemal property I hold that the evidence brought on record is sufficient to hold that the property, which is seized from accused no. 11 Pramod Bhanudas Soundankar, is the property transferred from dacoity and involvement of accused no. 8 Shivaji Kale in the offence of dacoity and the nature of property itself is such that the favour silver chips having weight of 1 kg each from which it can be inferred that this accused having

knowledge about the same has purchased it and retained it. Therefore, he is also liable for punishment under Sections 412 and 411 of the Indian Penal Code."

9. During the course of the appellate proceedings before the High Court, the evidence with reference to the appellant Pramod Bhanudas Soundankar was discussed as under:-

"29. As regards the accused no. 11, it is to be noted that he is jeweller by occupation. Accused no. 8 Shivaji Kale was arrested on 2.2.2010 from Wapi, Gujarat. According to the prosecution, the said accused made a statement that he has sold four silver chips to the present appellant/accused. Those silver chips, according to the PW-20 P.I. Shaikh Abdul Rauf, were recovered from the present appellant. Panch witness to the memorandum of statement as well as the recovery panchnama, namely, PW-2 Nagorao and PW-3 Gajanan, both of them have turned hostile, though employees of the complainant.

30. The learned Sessions Judge has believed the straightforward testimony of the Investigating Officer i.e. Police Inspector, who has given the chronological account of the events.

31. It was alternatively submitted on behalf of the accused, that even if it is held that the present accused have received the property from accused no. 8 Shivaji, yet it cannot be said that he has knowledge that the property was a stolen property. It may, however, be noted that this appellant-accused is the jeweler by occupation and he has received four silver chips from an ordinary person. In the circumstances, this very fact shows that the present appellant had knowledge that the property

must not have been a normal property. In the circumstances, the finding of the learned Sessions Judge in this regard also cannot be faulted with."

10. It was the vehement contention of the learned counsel for the appellant, that accused nos. 1 to 10 were all agricultural labourers. Keeping that in mind, when four silver chips were presented for sale by Shivaji Kale to the appellant Pramod Bhanudas Soundankar, it was inevitable for him to appreciate, that the said silver chips weighing 1 kilogram each could only have been stolen property. Such quantity of silver produced by an agricultural labour for sale was *per se* sufficient reason to believe, that the same did not belong to the presenter. This by itself according to the learned counsel for the appellant though sufficient for the offence under Section 411, is not enough for establishing guilt under Section 412 IPC. It was submitted that from the evidence produced by the prosecution, it was not possible to infer, that Pramod Bhanudas Soundarkar (the appellant herein), had known that Shivaji Kala had acquired the silver chips from a dacoity, or that he had knowledge that Shivaji Kale belonged to a gang of dacoits. In the absence of such proof, it was submitted, that the offence under Section 412 IPC could not be deemed to have been made out..

11. In order to appreciate the submission advanced at the hands of the learned counsel for the appellant, it is necessary to extract hereunder, Sections 411 and 412 IPC. The aforesaid provisions are accordingly set out below:-

"411. **Dishonestly receiving stolen property –**

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. **Dishonestly receiving property stolen in the**

commission of a dacoity -

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

12. Having given our thoughtful consideration to the facts and circumstances in the present case, we are of the view, that the fundamental ingredient, that the appellant had received the goods knowing (or having reason to believe) them to be stolen, stood fully established. We say so because, it is not a matter of dispute that Shivaji Kale (accused no. 8) was an agricultural labourer. For an agricultural labourer, to present four silver chips, weighing 1 kilogram each, at the shop of a jeweller, would clearly result in a grave suspicion that the same did not belong to him. For a labourer, it would be unthinkable to own 4 kilograms of silver. In the background of the aforesaid factual position, that when the appellant, a jeweller, received 4 kilograms of silver from an agricultural labourer, it was obvious to him (the appellant), that the same did not belong to Shivaji Kale (accused no.8). We are satisfied, that the appellant had sufficient cause to entertain a reasonable belief, that the same was stolen property. There can therefore be no doubt, that the Trial Court, as also the High Court, were fully justified in holding that the appellant Pramod Bhanudas Soundankar had purchased four silver chips produced by Shivaji Kale (accused no. 8) believing, that the same were stolen articles. Having so concluded, it is clear, that the most fundamental and foundational ingredient of Sections 411 and 412 IPC stood established against the appellant.

13. According to the learned counsel for the appellant, for the satisfaction of the ingredients expressed in Section 412 IPC, the accused could be held to be guilty only, if it could be further established, that the stolen property received by the appellant, was known to him, as having been procured through, the commission of a dacoity. According to learned counsel, consideration at the hands of the Trial Court, as also, the High Court, with reference to the appellant herein (which have been extracted in paragraphs 7 and 8, respectively) does not establish, the aforesaid ingredient of Section 412 IPC. As such it was submitted, that the prosecution had remained unsuccessful in establishing all the ingredients of the crime under Section 412 IPC.

14. The ingredient of Section 412 IPC, referred to in the foregoing paragraph, has an alternative. Even if the alternative can be established, the accused would be guilty of having committed the crime expressed in Section 412 IPC. It is apparent from a plain reading of Section 412 IPC, that a person receiving stolen goods, would be guilty of the offence under Section 412 IPC, if it can further be shown, that the recipient of the goods knew (or had reason to believe), that the person offering the goods, belonged to a gang of dacoits. It was the vehement contention of the learned counsel for the appellant, that the instant involvement of the appellant Pramod Bhanudas Soundankar is his first involvement in such a case, inasmuch as, he has never faced a criminal trial earlier, and has never been convicted for any criminal involvement prior to his instant conviction. According to learned counsel, the prosecution having not shown his previous relationship with any of the other 10 accused, prior to the incident under reference, there was no question of any presumption, that the appellant herein had known (or had reason to believe), that the offerer of the silver chips belonged to a gang of dacoits.

15. Having perused the conclusions drawn by the Trial Court as also the High Court with reference to the appellant

Pramod Bhanudas Soundankar, it is not possible for us to conclude, that either of the Courts below had recorded any finding in respect of the other essential ingredients of the offence under Section 412 IPC. The evidence produced by the prosecution, that the appellant Pramod Bhanudas Soundankar had known (or had reason to believe), that four silver chips (weighing 1 kiolgram each) was stolen property, would be sufficient only to establish his guilt under Section 411 IPC. A perusal of the impugned judgments, does not reveal a finding recorded by either the Trial Court or the High Court, that the appellant was aware, that the silver chips presented to him by Shivaji Kale (accused n o.8) were procured by the commission of a dacoity. Even the alternative conclusion, namely, that the appellant knew (or had reason to believe) that Shivaji Kale (accused no.8) belonged to a gang of dacoits, was not recorded by the courts below. Even during the course of hearing before us, learned counsel for the State of Maharashtra, could not draw our attention to any evidence on the basis whereof, either of the aforesaid alternative ingredients of Section 412 IPC could be demonstrated. It is therefore clear, that the guilt of the appellant under Section 412 IPC cannot be stated to have been substantiated in the facts and circumstances of the present case.

16. For the reasons recorded hereinabove, we are satisfied, that the Trial Court, as also the High Court, were not justified in convicting the appellant under Section 412 IPC. We therefore, set aside the conviction of the appellant under Section 412 IPC.

17. The sentence imposed on the appellant herein, was based on the fact that he had been found guilty of offence under Section 412 IPC. Our determination, however exculpates the appellant from having committed the offence under Section 412 IPC. We, however, maintain the conviction of the appellant, under Section 411 IPC. The sentence of imprisonment, contemplated for the offence under Section 411 IPC, can

extend upto three years. In the facts and circumstances of the case, we are satisfied that the ends of justice would be met, if the sentence of punishment inflicted on the appellant is reduced to one year rigorous imprisonment and fine of Rs.1000/-. In case of default, in payment of fine he shall suffer simple imprisonment for one month. Ordered accordingly.

Partly allowed, as above.

K.K.T. Appeal partly allowed.

THE CHIEF COMMISSIONER, CENTRAL EXCISE AND CUSTOMS, LUCKNOW & ORS.
v.
PRABHAT SINGH
(Civil Appeal No. 8635 of 2012)

NOVEMBER 30, 2012

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR, JJ.]

Service Law:

Appointment on compassionate ground – O.M. dated 5.5.2003 – Held: The very object of making provision for appointment on compassionate ground, is to provide succour to a family dependent on a government employee, who has unfortunately died in harness – Delay in raising such a claim, is contradictory to the object sought to be achieved – The norms governing compassionate appointment have to be strictly followed – Where claims for compassionate appointment exceed the available vacancies, a selection process based on comparative compassion gradient of eligible candidates, has to be adopted – In the instant case, even though the father of the applicant had died on 2.3.1996 he sought judicial redress, for the first time, by approaching the CAT in 2005 – By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003, as appointment on compassionate ground under the OM is permissible within three years of the death of the bread winner in harness – Order of High Court directing the authorities to appoint the appellant on compassionate ground, against a post in the grade of Tax Assistant or any other post falling in the quota of direct recruitment, is set aside – Department of Personnel and Training, Government of India, O.M. dated 5.5.2003.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8635 of 2012.

From the Judgment & Order dated 09.08.2011 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 33452 of 2008.

Sidharth Luthra, ASG, B.K. Prasad, Nakul Dewan, Bhakti Pasrija Sethi, Aditya Singhla, Dinesh Choudhary, Arvind Kumar Sharma for the Appellants.

Saurabh Upadhyay, S.K. Verma, Navin Verma for the Respondent.

The following Order of the Court was delivered by

O R D E R

JAGDISH SINGH KHEHAR, J. 1. Leave granted.

2. Vijay Bahadur Singh, who was working as a sepoy in the Central Excise and Customs Department and was posted in the Customs Division at Varanasi, died in harness on 2.3.1996. His son Prabhat Singh applied for appointment on compassionate ground. It seems, that he could not be appointed as such, because there was no vacancy available to accommodate him. His application therefore remained pending.

3. Having waited long enough, Prabhat Singh filed Original Application no. 1459 of 2005 before the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as the "CAT-Allahabad Bench"). In his Original Application, Prabhat Singh prayed for a direction to the respondents to appoint him on compassionate grounds, since his father Vijay Bahadur Singh had died in harness. The CAT-Allahabad Bench disposed of the application filed by Prabhat Singh on 8.12.2005 with a direction to the Commissioner, Central Excise, Allahabad to take a decision on the representation filed by Prabhat Singh

seeking appointment on compassionate ground within three months.

4. In compliance with the directions issued by the CAT-Allahabad Bench dated 8.12.2005, the Commissioner, Central Excise, Allahabad, adjudicated upon the claim of Prabhat Singh (for appointment on compassionate ground), by an order dated 5.1.2006. A perusal of the aforesaid order inter alia reveals, that the policy instructions pertaining to appointment on compassionate ground envisage, that such appointments can be made only up to a maximum of 5% vacancies, arising under the direct recruitment quota (in any group "C" or group "D" posts). It also emerges from the order dated 5.1.2006, that the Ministry of Finance, vide its letter dated 19.7.2001, restrained the authorities from, filling up any vacancies by way of direct recruitment. In compliance therewith, the department had not made any appointment by way of direct recruitment since December, 2000. Accordingly, in the absence of appointment against direct recruitment vacancies, no compassionate appointment could have been made. This therefore constituted one of the reasons for not appointing Prabhat Singh on compassionate ground. The order passed by the Commissioner, Central Excise, Allahabad further reveals, that the erstwhile cadres of Lower Divisional Clerks and Upper Divisional Clerks had been abolished. The existing Lower Divisional Clerks and Upper Divisional Clerks were merged into a newly created cadre of Tax Assistants. In so far as the post of Tax Assistant is concerned, the minimum prescribed qualification, for appointment by way of direct recruitment thereto, was graduation. Prabhat Singh could not be appointed on compassionate ground, against the post of Tax Assistant as he possessed the qualification of intermediate, which is lower than the minimum prescribed qualification. For the reasons summarized hereinabove, the claim of Prabhat Singh for appointment on compassionate ground was rejected by the order of the Commissioner, Central Excise, Allahabad dated 5.1.2006.

5. Dissatisfied with the order dated 5.1.2006, Prabhat Singh approached the Central Administrative Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as "the CAT- Lucknow Bench"), by filing Original Application no.468 of 2006. The instant Original Application filed by Prabhat Singh was disposed of by CAT-Lucknow Bench by an order dated 14.03.2008, with the direction, that the claim of Prabhat Singh for appointment on compassionate ground be re-considered against the post of Tax Assistant. While issuing the aforesaid direction, it was clarified, that the earlier order dated 5.1.2006 would not be taken into consideration, to the detriment of the applicant-Prabhat Singh.

6. In compliance with the directions issued by the CAT-Lucknow Bench dated 14.3.2008, the Additional Commissioner, (P&V), Central Excise, Allahabad, re-considered the claim of Prabhat Singh for appointment on compassionate ground. It would be relevant to mention, that at the time of the instant consideration, an Office Memorandum issued by the Department of Personnel and Training dated 5.5.2003 (hereinafter referred to as "the O.M. dated 5.5.2003") was taken into consideration. The O.M. dated 5.5.2003, spells out the policy, as also, the terms and conditions for appointment on compassionate ground. A perusal of the order dated 22.5.2008 passed on reconsidering the claim of Prabhat Singh (for appointment on compassionate ground) reveals, that the O.M. dated 5.5.2003 inter alia expressly provided, that appointment of a dependant family member on compassionate ground, was permissible only within three years of the death of the bread-winner in harness. The aforesaid order dated 22.5.2008, also noticed, that a Review Committee constituted for the purpose of making appointments on compassionate ground, had re-considered all pending matters on 21.09.2007. The Review Committee had excluded the name of Prabhat Singh (and all other candidates like him) from consideration, because more than three years expired after the death of his father (on 2.3.1996). Apart from the reason expressed above,

in the order dated 22.5.2008, it was noticed that there was no available vacancy in the cadre of Tax Assistant. It was pointed out, that the cadre controlling authority had not released any further vacancy of Tax Assistant, which could be filled up by direct recruitment. Accordingly, due to non availability of any direct recruitment vacancy, in the cadre of Tax Assistant, the claim of Prabhat Singh for such appointment, was held to be not made out. For the reasons summarized hereinabove, the claim of Prabhat Singh, for appointment on compassionate ground, was again rejected.

7. Even though the appellant in compliance with the directions issued by the CAT-Lucknow Bench, dated 14.3.2008, re-examined the claim of Prabhat Singh for appointment on compassionate ground, and accordingly, passed the order dated 22.5.2008 (referred to in the foregoing paragraph), yet the appellants chose to assail the order passed by the CAT-Lucknow Bench dated 14.3.2008 (disposing of O.A. no.468 of 2006). The appellants accordingly, preferred Miscellaneous Writ Petition no.33452 of 2008 in the High Court of Judicature at Allahabad (hereinafter referred to as "the High Court") to assail the order passed by the CAT-Lucknow Bench, dated 14.3.2008, wherein the directions had been issued to the appellants to re-consider the claim of Prabhat Singh, for appointment on compassionate grounds against the post of Tax Assistant.

8. The High Court disposed of the aforesaid miscellaneous writ petition vide order dated 9.8.2011. The operative part of the order passed by the High Court is being extracted hereunder:-

> "Looking into this fact that now the post of Tax Assistant is to be filled up by way of promotion, the order of Tribunal is modified to the extent that the case of respondent no.1 shall now be considered by the petitioner in the grade of Tax Assistant or any other post falling in the quota of direct recruitment. The respondent no.1 shall be given appointment either in the department where his father was working or in any other department of Government of India, expeditiously, but not later than six months from the date of receipt of a certified copy of the order of this Court.
>
> With the aforesaid directions the writ petition is disposed of."

The aforesaid directions issued by the High Court have been assailed, through the instant Special Leave Petition.

9. A perusal of the impugned order passed by the High Court reveals that the High Court expressly noticed the fact, that in the order of the Commissioner, Central Excise, Allahabad, dated 5.1.2006, the ground on which the claim of Prabhat Singh for appointment on compassionate ground was declined, was expressed as non-availability of any vacancy, because of creation of the new cadre of Tax Assistant (and the merger of the posts of Lower Division Clerk and Upper Division Clerk in the said cadre). The Commissioner, Central Excise, consequent upon the abolition of posts of Lower Division Clerk and Upper Division Clerk declined the claim of Prabhat Singh for appointment against the post of Tax Assistant on compassionate ground, for the reasons that he did not possess the qualification of graduation, which was the prescribed educational qualification, for appointment by way of direct recruitment, against the post of Tax Assistant. The claim of Prabhat Singh, having been so considered, the High Court could not have passed the ultimate direction requiring the appellants herein, to yet again consider the claim of Prabhat Singh for appointment against the post of Tax Assistant or against any other equivalent post in the same grade.

10. Whether or not the claim of Prabhat Singh for appointment on compassionate ground could be considered, in terms of directions issued by the High Court, would truly depend on the OM dated 5.5.2003 which laid down the policy,

as also, the terms and conditions of eligibility for appointment as such. It is evident from the narration of facts noticed above, that the appellants while considering the claim of Prabhat Singh for appointment on compassionate ground (consequent upon directions issued by the CAT-Allahabad Bench and CAT-Lucknow Bench) vide orders dated 5.1.2006 and 22.5.2008, clearly expressed, that there was no direct recruitment vacancy available, to consider the candidature of Prabhat Singh, for appointment on compassionate ground. In the background of the aforesaid factual position, there was hardly any justification for the High Court to have passed the directions extracted above.

11. It would also be pertinent to mention, that the High Court, in the impugned order dated 9.8.2011, also took notice of the fact, that the Ministry of Finance vide its order dated 19.7.2001, had prohibited the appellants from filling up any further vacancies by way of direct recruitment. In the orders passed by the appellants herein, it was categorically noticed, that no vacancies by way of direct recruitment were actually filled up after December, 2000. Since the OM dated 5.5.2003 laid down a quota of 5%, for appointment on compassionate ground, out of vacancies filled up by direct recruitment, the question of appointment on compassionate ground could have arisen, only if the appellants had proceeded to make appointments by way of direct recruitment. Since it is not a matter of dispute before us, that no appointment by way of direct recruitment was made by the appellants after December, 2000, it clearly emerges that the quota contemplated in the OM dated 5.5.2003 for appointment on compassionate ground had not become available. Therefore, the question of appointment of Prabhat Singh at the hands of the appellants on compassionate ground, did not arise at all.

12. The High Court expressed, that ban at the hands of Finance Department would not affect appointment on compassionate ground, the said determination, in our view, was

rendered without taking into consideration the fact, that the quota of 5% would arise only when appointments by direct recruitment were actually made. Out of vacancies filled up by way of direct recruitment, 5% could then be earmarked towards compassionate appointment under the OM dated 5.5.2003. Since no direct recruitment was made by the appellants after December, 2000, clearly no vacancy had became available for appointment on compassionate ground, with effect from December, 2000. The direction issued by the High Court dated 9.8.2011, requiring the appellants to consider the case of Prabhat Singh for appointment on compassionate ground, was without reference to the OM dated 5.5.2003, wherein the policy, and terms and conditions for appointment on compassionate ground, were laid down.

13. Most importantly, the High Court did not take into consideration one of the most significant reasons depicted in the orders passed by the appellants (dated 5.1.2006 and 22.5.2008), namely, that under the OM dated 5.5.2003 appointment on compassionate ground was permissible within a period of three years from the date of death of the concerned employee in harness. Vijay Bahadur Singh, the father of Prabhat Singh had died on 2.3.1996. The candidature of Prabhat Singh, for appointment on compassionate ground, under the OM dated 5.5.2003 could have been considered only till 1.3.1999. Thereafter, Prabhat Singh was rendered ineligible for appointment on compassionate ground. Pointedly, on aforesaid ground the Review Committee constituted by the appellants to consider the claims of dependents of employees who had died in harness, vide an order dated 21.9.2007, had excluded the names of persons including Prabhat Singh, from the list of pending cases for appointment on compassionate ground, because they could no longer be appointed on compassionate ground, since more than three years had expired after the death of the concerned bread winner in harness. Had the High Court or the Tribunals applied their mind to the aforesaid pre-condition for eligibility for appointment on

compassionate ground, none of the directions issued by the High Court or the Tribunals would have been issued. Such directions could have been issued only when the party approaching the Tribunal or the High Court had established a prima facie case, by demonstrating fulfillment of the terms and conditions stipulated in rules/regulations/policy instructions/ office memoranda, relevant for such consideration. Had the aforesaid simple exercise been carried out, it would not have been necessary to examine the matter again and again. In the instant case, on a simple issue of compassionate appointment, there have been repeated rounds of litigation, the first time before the CAT-Allahabad Bench, then before the CAT-Lucknow Bench, and thereafter, before the High Court. From the High Court the matter has now been carried to this Court. If only the pre-requisite eligibility of Prabhat Singh for appointment on compassionate ground had been examined, it would not have been necessary to examine the matter again, and yet again. The instant observations have been recorded only to demonstrate how judicial time at different levels has been wasted by entertaining a frivolous litigation. Surely, because Prabhat Singh had approached a judicial forum nine years after the death of his father, whereas, appointment on compassionate ground is permissible only within three years of the death of the bread winner, the matter deserved to have been rejected at the stage of first entertainment.

14. We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed. Where claims for appointment on compassionate ground, exceed, the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process, necessarily has to be fair, and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates

but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed, so that, the exercise carried out in choosing one of the two candidates against a solitary available vacancy, can be shown to be based on reason, fair-play and non arbitrariness.

15. The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT-Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment.

16. Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every

such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion.

17. For the reasons recorded hereinabove, the impugned order passed by the High Court dated 9.8.2011, directing the appellants to appoint Prabhat Singh on compassionate ground, against a post in the grade of Tax Assistant or any other post falling in the quota of direct recruitment, is liable to be set aside. The same is accordingly hereby set aside.

18. The instant appeal is accordingly allowed.

R.P. Appeal allowed.

KRISHAN LAL
v.
STATE OF RAJASTHAN & ANR.
(Criminal Appeal Nos. 1972-1973 of 2012)

DECEMBER 03, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Rajasthan Prisoners Release on Parole Rules, 1958:

rr.2 (d), 9 and 10 A(i) – Application for release on 'Parole', by appellant, a life convict, who was sentenced to remain in prison for the rest of his life – Held: In view of the order of the Court, appellant is not entitled to normal parole in terms of r.9 – However, in emergent cases involving humanitarian consideration, the Authority concerned is free to pass appropriate orders in terms of Rule 10 A(i) and as directed in the judgment – Code of Criminal Procedure 1973 – s.401 – Penal Code, 1860 – ss. 302, 307, 148, 450 r/w. ss. 149 and 120-B.

The appellant was convicted and sentenced to death alongwith 9 others for offences punishable u/ss. 302, 307, 148, 450 read with ss. 149 and 120-B, IPC. The High Court upheld the conviction but commuted the death sentence to imprisonment for life. The Supreme Court[1] while deciding the appeals of the convicts against their conviction as also those of the complainant respondent no. 2 and the State for restoring death sentence of the convicts, by its judgment dated 29.03.2001, confirmed the conviction and sentence awarded to the accused persons by the High Court and held that the imprisonment for life awarded to the appellant would be the imprisonment in prison for the rest of his life and he would not be entitled to any commutation or premature

1. 2001 (2) SCR 864..

release u/s 401 of the Code of Criminal Procedure, 1973, Prisoners Act, Jail Manual or any other Statute and the Rules made for the purposes of grant of commutation and remissions. On the petition of the appellant, the High Court directed the Advisory committee to consider his case and the Advisory Committee, on 18.08.2010, released him on parole for 40 days. When the complainant apprised the High Court of the order of the Supreme Court, the High Court, by order dated 06.10.2010 issued a show cause notice to the appellant and the State Government and by final order dated 06.04.2011 dismissed the petition filed by the appellant as having rendered infructuous.

Disposing of the appeals, the Court

HELD: 1.1. It is true that this Court, in *Subhash Chander**, **has not considered appellant's right or entitlement to parole. However, the order in the said case shows that it was represented on behalf of the appellant that the Court can pass appropriate orders to deprive the appellant of his liberty throughout his life and if he was sentenced to life imprisonment, he would never claim his pre-mature release or commutation of his sentence on any ground. It is also relevant to note that in the course of hearing, it was pleaded for the complainant that if the appellant was not awarded death sentence, he was likely to eliminate the remaining family members of the deceased, as was evident from his past conduct and behaviour, and this Court accepted the apprehension so made and passed the order insofar as the appellant was concerned. It is, therefore, clear that the appellant has to serve the imprisonment throughout his life in prison and is not entitled to any commutation or premature release under the Code or any other provision made for the purposes of grant of commutation and remissions. [Para 6-7] [225-G-H; 226-A-D-G-H]**

Subash Chander vs. Krishan Lal & Ors.* **2001 (2) SCR 864 = (2001) 4 SCC 458 – referred to

1.2. In view of the order of this Court dated 29.03.2001 in *Subash Chander* **it is reiterated that the appellant is not entitled to normal parole in terms of r. 9 of the Rajasthan Prisoners Release on Parole Rules, 1958. However, in emergent cases involving humanitarian consideration, the Authority concerned is free to pass appropriate orders in terms of r.10 A(i) of the said Rules. Even while considering such application, the Authority concerned is directed to adhere to the conditions mentioned in the said Rule, impose appropriate stringent condition(s) and see that by the temporary release of the appellant nothing happens to the complainant and his family and also pass appropriate orders giving them necessary protection. It is also made clear that if the Authority concerned is not satisfied with the reasons for temporary parole, it is free to reject such application. [Para 12] [229-D-F]**

Case Law Reference:

2001 (2) SCR 864 referred to Para 2

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1972-1973 of 2012.

From the Judgment & Order dated 06.10.2010 of the High Court of Rajasthan at Jodhpur in DBCWP No. 2982 of 2010, WP No. 10309 of 2010 dated 6.4.2011 in WP No. 10309 of 2010.

K.V. Viswanathan, Arun Kumar Beriwal, Shiv Kumar Dwivedi, Adeeba Mujahid, Mehul M. Gupta, Rishabh Sancheti, T. Mahipal, Amit Bhandari and Milind Kumar for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the order dated 06.10.2010 passed by the High Court of Judicature for Rajasthan at Jodhpur in Writ Petition (Parole) No. 10309 of 2010 whereby a show cause notice was issued to the appellant herein and the State Government and it was also held that the convict- Krishan Lal (the appellant herein) shall not be released on parole or otherwise as ordered by this Court on 29.03.2001 in the case of *Subash Chander vs. Krishan Lal & Ors.* reported in (2001) 4 SCC 458 and also against the final order dated 06.04.2011 by which the petition filed by the appellant herein was dismissed as having rendered infructuous.

3. **Brief facts:**

(i) The appellant herein was an accused in a murder case along with 11 accused persons. The trial Court convicted all the accused persons except one for the offences under Section 302, 307, 148, 450 read with Sections 149 and 120B of the India Penal Code, 1860 (in short "IPC") and sentenced them to death.

(ii) Aggrieved by the order of conviction and death sentence, the appellant along with other accused persons filed appeals before the High Court. The High Court upheld the conviction of all the convicted persons including that of the appellant herein but commuted the death sentence to imprisonment for life.

(iii) Challenging the order of the High Court, the complainant – respondent No.2 herein filed two sets of appeals bearing Criminal Appeal Nos. 812-814 of 1999 and Criminal Appeal Nos. 815-816 of 1999 before this Court praying for setting aside the order of acquittal and awarding of death sentence to the convicted persons as was done by the trial Court. The accused persons also filed two sets of appeals bearing Criminal Appeal Nos. 817-

818 of 1999 and Criminal Appeal Nos. 819-820 of 1999 before this Court praying for their acquittal by setting aside the conviction and sentence awarded to them by the trial Court and the High Court. The State also filed appeals before this Court for quashing the order of acquittal of one accused person and for awarding death sentence to the convicted persons. This Court, in the abovesaid appeals, by judgment dated 29.03.2001, confirmed the conviction and sentence awarded to the accused persons by the High Court and held that the imprisonment for life awarded to the appellant herein shall be the imprisonment in prison for the rest of his life and he shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, 1973 (in short "the Code"), Prisoners Act, Jail Manual or any other Statute and the Rules made for the purposes of grant of commutation and remissions.

(iv) Prior to the order of this Court in *Subash Chander* (supra), on 06.03.1999 and 12.05.2000, the appellant herein was allowed regular parole of 20 days and 30 days respectively by the Parole Advisory Committee and, accordingly he availed the same. During the period from 2001-2010, the appellant tried for third regular parole for 40 days by filing various applications but the same were not considered. Aggrieved by the same, the appellant herein moved the High Court by filing an application being D.B. Criminal Parole No. 2982 of 2010. The High Court by order dated 26.05.2010, directed the Parole Advisory Committee for considering the case of the appellant. Vide order dated 12.08.2010, the Advisory Committee released the appellant herein on parole on 18.08.2010 for 40 days.

(v) Aggrieved by the orders dated 26.05.2010 and 12.08.2010 passed by the High Court and the Parole Advisory Committee respectively, the Complainant-respondent No.2 herein filed an application being Civil

Misc. Application No. 93 of 2010 in DB Criminal W.P. No. 2982 of 2010 before the High Court for reconsideration of the order dated 26.05.2010 and for quashing the order dated 12.08.2010 passed by the Parole Advisory Committee. The High Court, by impugned order dated 06.10.2010, issued show cause notice to the appellant herein and the State Government and also held that the appellant shall not be released on parole or otherwise as ordered by this Court in the case of *Subash Chander* (supra). After the reply of the appellant herein, the High Court, by final order dated 06.04.2011 dismissed the petition filed by the appellant herein as having rendered infructuous.

(vi) Against the orders dated 06.10.2010 and 06.04.2011, the appellant has filed these appeals by way of special leave before this Court.

4. Heard Mr. K.V. Viswanathan, learned senior counsel for the appellant, Mr. Amit Bhandari, learned counsel for respondent No.1-State and Mr. Rishabh Sancheti, learned counsel for respondent No.2-the Complainant.

5. The only point for consideration in these appeals is whether the appellant is entitled to be released on parole in the light of the order passed by this Court on 29.03.2001 in *Subash Chander* (supra)?

6. In order to understand the claim of the appellant, it is useful to refer the direction given by this Court in *Subash Chander* (supra). When the above-said appeals were filed by the complainant, the State as well as the accused before this Court, it was represented on behalf of the present appellant – Krishan Lal (A-1) that the Court can pass appropriate orders to deprive the appellant herein of his liberty throughout his life. It is also seen from the order that upon instructions, Mr. U.R. Lalit, learned senior counsel submitted that Krishan Lal (A-1) – appellant herein, if sentenced to life imprisonment, would

never claim his pre-mature release or commutation of his sentence on any ground. The above statement of the learned senior counsel for Krishan Lal (A-1) – appellant herein had been recorded by this Court. It is also relevant to note that in the course of hearing, Mr. Ranjit Kumar, learned senior counsel, who appeared for the Complainant in that matter, contended that if accused like Krishan Lal (A-1), appellant herein, is not awarded death sentence, he is likely to eliminate the remaining family members of Bhagwan Ram, as is evident from his past conduct and behaviour. He further submitted that in order to protect the surviving family members of Bhagwan Ram, it is necessary to at least deprive Krishan Lal(A-1)-appellant herein of his life. It is relevant to point out that this Court accepted the apprehension made by the learned senior counsel for the Complainant. In those circumstances, the following order insofar as Krishan Lal – the appellant herein is concerned was passed:

> "23. However, in the peculiar circumstances of the case, apprehending imminent danger to the life of Subhash Chander and his family in future, taking on record the statement made on behalf of Krishan Lal(A1), we are inclined to hold that for him the imprisonment for life shall be the imprisonment in prison for the rest of his life. *He shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purposes of grant of commutation and remissions."*

(Emphasis supplied)

7. From the above direction, it is clear that Krishan Lal-appellant herein has to serve the imprisonment throughout his life in prison and is not entitled to any commutation or premature release under the Code or any other Act including Prisoners Act, Jail Manual or any other statute and the Rules made for the purposes of grant of commutation and remissions. It is true

that this Court has not considered his right or entitlement of parole.

8. Mr. K.V. Viswanathan, learned senior counsel for the appellant in support of his claim for parole relied on the Rajasthan Prisoners Release on Parole Rules 1958. In exercise of the powers conferred by sub-section (6) of Section 401 of the Code of Criminal Procedure, the Government of Rajasthan has passed the above Rules. Section 2(d) defines "Parole" as under:

> "2(d) **"Parole"** means conditional enlargement of a prisoner from the jail under these rules"

As per the Rules, a prisoner sentenced to imprisonment for not less than one year may be permitted to make an application for release on parole before the Prisoners Parole Advisory Committee. Rules provide constitution of Prisoners Parole Advisory Committee and procedures to be followed in considering such applications. Rule 9 of the said Rules speaks about Parole period. Mr. Viswanathan has also pointed out that on the basis of the said Rules, the appellant was granted parole on two occasions i.e., on 06.03.1999 and 12.05.2000 for a period of 20 days and 30 days respectively, and when the appellant made another application praying for third parole for 40 days, based on the order dated 26.05.2010 of the High Court, the Advisory Committee, by order dated 12.08.2010 released the appellant on parole for a period of 40 days on 18.08.2010. The said order was challenged by the complainant – respondent No.2 herein by filing an application being D.B. Civil Misc. Application No. 93 of 2010 before the High Court. Considering the earlier order of this Court dated 29.03.2001 in Subash Chander (supra), the High Court rejected the 3rd application filed by the appellant for parole.

9. Learned counsel appearing for the State as well as the Complainant submitted that in view of the stand taken by the learned senior counsel for the appellant before this Court giving

up his right of praying for commutation or premature release and be in prison till the end of his life and the apprehension of the complainant's family that in the event of his release even on parole he is likely to eliminate the remaining family members of Bhagwan Ram, the present appeals are liable to be dismissed.

10. We have already extracted the ultimate order of this Court confirming the imprisonment for life in prison for rest of his life and foregoing commutation or premature release under any of the statute or Rules or Circulars. Though Mr. Viswanathan has claimed that the appellant was granted parole on two occasions for 20 days and 30 days and no adverse against the appellant was reported, it is relevant to note that the appellant was granted parole on the abovesaid two occasions prior to the order passed by this Court on 29.03.2001 in *Subash Chander* (supra) and the specific direction of this Court in that order was not placed for consideration at the time of granting 3rd parole to the appellant by the Advisory Committee.

11. Though the Rajasthan Prisoners Release on Parole Rules, 1958 enables the appellant to apply for parole before the Advisory Committee, we are of the view that in view of the commutation of death sentence into life imprisonment and specific conditions imposed foregoing commutation or premature release under any statute or Rules and considering the apprehension expressed by the complainant-respondent No.2 herein, we hold that henceforth the appellant shall not be entitled for regular parole in terms of Rule 9 of the said Rules. However, if any contingency arises, the same may be considered by the Advisory Committee in terms of Rule 10-A(i) of the said Rules which reads as under:

> "10-A(i) Notwithstanding the provision of rules 3,4,5, 9 & 10 in emergent cases, involving humanitarian consideration viz., (1) critical condition on account of illness of any close relations i.e. father, mother, wife, husband, children, brother or unmarried sister; (2) death of any such

close relation; (3) serious damage to life or property from any natural calamity; and (4) marriage of a prisoner, his/ her son or daughter or his/her brothers/sisters in case his/ her parents are not alive.

A Prisoner may be released on parole for a period not exceeding 7 days by the Superintendent of the Jail and for a period not exceeding 15 days by the Inspector General of Prisons (District Magistrate) on such terms and conditions as they may consider necessary to impose for the security of the prisoner including a guarantee for his return to the jail, acceptance or execution whereof would be a condition precedent to the release of such prisoner on parole."

12 In view of the order of this Court dated 29.03.2001 in *Subash Chander* (supra), we reiterate that the appellant is not entitled to normal parole in terms of Rule 9, however, in emergent cases involving humanitarian consideration, the Authority concerned is free to pass appropriate orders in terms of Rule 10 A(i) of the Rules. Even while considering such application, the Authority concerned is directed to adhere to the conditions mentioned in the said Rule, impose appropriate stringent condition(s) and see that by the temporary release of the appellant nothing happens to the complainant and his family and also pass appropriate orders giving them necessary protection. It is also made clear that if the Authority concerned is not satisfied with the reasons for temporary parole, it is free to reject such application.

13. With the above direction, the appeals are disposed of.

R.P. Appeals disposed of.

JODHBIR SINGH
v.
STATE OF PUNJAB
(Criminal Appeal No. 1971 of 2012)

DECEMBER 3, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

s.7-A read with r.12 of 2007 Rules – Claim of juvenility – Application by appellant that on the date of commission of alleged offence he was a juvenile – Certificate issued by Government High School indicating the appellant as a juvenile on the date of offence – Court of Session holding the appellant not to be a juvenile – High Court dismissing appellant's revision – Held: In a case where genuineness of the school leaving certificate has not been questioned, Court of Session and High Court were not justified in placing reliance on certain statements made by mother of accused in cross-examination – Court of Session also committed an error in placing reliance on the certificate issued by the village Chowkidar – When law gives prime importance to the date of birth certificate issued by the school first attended, genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar – The appellant was a juvenile on the date of incident and has to be tried by the Juvenile Justice Board – Court of Session is directed to make over the files to the Juvenile Justice Board to proceed with the trial, so far as the appellant is concerned.

An FIR for offences punishable under the NDPS Act, 1985 was registered against the appellant and another

person on 26.09.2010, stating that they were apprehended the same day with 2 kg heroin. The appellant filed an application before the Special Judge claiming that he was a juvenile on the date of the alleged offence. He produced a certificate issued by the Government High School showing his date of birth as 20.07.1996. The Special Judge *inter alia* held that the mother of the applicant was not able to state the correct age of the applicant; that the certificate issued by the School and the record of the Chowkidar register were contrary; and that the School Certificate seemed to be maneuvered only to get the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000. The High Court also rejected the revision of the appellant.

In the instant appeal, in pursuance to the order dated 29.08.2012 passed by the Court, an affidavit was filed by the Dy. Superintendent of Police, who examined the genuineness of the Certificate dated 5.4.2006 issued by the State Council for Research and Training, Punjab, Chandigarh and the certificate dated 19.10.2000, issued by the Government High School, both showing the date of birth of the appellant as 20.07.1996. The Head Master, Government High School also certified the genuineness of the documents on the basis of the record.

Allowing the appeal, the Court

HELD: 1.1. It is significant to notice that the genuineness of the certificate dated 05.04.2006 issued by the State Council of Education Research and Training Punjab, Chandigarh and the certificate issued by Government High School and the admission and withdrawal register of Government High School has not been questioned. [Para 11] [237-G]

1.2. In a case where genuineness of the school leaving certificate has not been questioned, the Court of Session and the High Court were not justified in placing reliance on certain statements made by the mother of the accused in the cross-examination. The Court of Session also committed an error in placing reliance on the certificate issued by the village Chowkidar who was examined as RW2. When law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar. [Para 13] [238-H; 239-A-B]

Ashwani Kumar Saxena v. State of M.P. **(2012) 9 SCC 750 – relied on**

1.3. This Court, therefore, holds that the appellant was a juvenile on the date of the incident and has to be tried by the Juvenile Justice Board. The Court of Session is directed to make over the files to the Juvenile Justice Board to proceed with the trial, so far as the appellant is concerned. [para 14] [239-D-E]

Case Law Reference:

(2012) 9 SCC 750	**relied on**	**para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1971 of 2012.

From the Judgment & Order dated 7.7.2011 of the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No. 1440 of 2011.

Siddharth Mittal, S.K. Sabharwal for the Appellant.

Saurabh Ajay Gupta, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. The appellant and one Sandeep Singh were apprehended by the SP/Anti Smuggling Squad on 26.09.2012 near Gurdwara Atari Sahib Sulthanwind, Amritsar while they were waiting for a party to deliver the consignment of 2 kg Heroin on their Motor Cycle No. PB-02-BC-1089. FIR No. 26 dated 26.09.2010 was registered by PS State Special Operation Cell under Sections 21, 25, 29, 61, 85 of the NDPS Act. An application was filed by the appellant before the Judge, Special Court, Amritsar for sending the case against him to the Juvenile Justice Board for trial.

3. The appellant stated before the Judge, Special Court, Amritsar that he was a juvenile on the date of the incident since he was born on 20.07.1996. A certificate dated 19.10.2010 issued by the Government High School, Naushehra Cheema (Tarn Taran) was also produced in support of his contention that his date of birth was 20.07.1996. The application was opposed by the State stating that during interrogation, he had stated he was born in the year 1991 and as such he was not a juvenile on the date of the incident. Further, reference was also made to the certificate issued by the Chowkidar of the village which showed that the date of birth of the appellant was 05.07.1993.

4. After hearing the counsel on either side at length and perusing the records, the Sessions Court passed the following order which reads as follows:

> "A perusal of the record has shown that as per the certificate Ex.A1 passing of 5th Class, issued by the Education Department, Punjab shows the date of birth of the applicant-accused Jodhbir Singh to be 20.07.1996 AW1 Parkash Kaur, mother of the applicant-accused has mentioned the date of birth of Jodhbir Singh to be 20.07.1996. She has stated that the age of Jodhbir Singh is 14 ½ years. However, in her cross examination, the said witness Parkash Kaur had categorically mentioned the date of birth of Jodhbir Singh to be 20.07.1996 has feigned for ignorance regarding the date of her marriage. Regarding her elder son, she had stated that he was born on 15 Magh, but she could not tell year of birth of her eldest son Gursahib Singh. She has also not been able to tell the date of birth of Jodhbir Singh during the course of her cross examination though she had specifically told the date during the course of her examination in chief. Even she could not tell after how many years of her marriage Jodhbir Singh was born. This shows that Parkash Kaur, mother of the applicant-accused Jodhbir Singh is not aware about the date of birth of her son as well as his age. RW2 Jagjit Singh, Chokidar has stated that as per the record of his Chowkidar register, the date of birth of Jodhbir Singh was 5.7.1993. Even here, in the document Ex.RW2/A there is cutting. All this shows that the document Ex.A1 and the document Ex.RW2/A are contrary to each other not showing the real date of birth of the accused. The record of the criminal case bearing FIR No.26 dated 26.09.2010 shows that during the course of interrogation, the accused had not disclosed himself to be a minor or juvenile. Though his maternal uncle Dalbir Singh also informed regarding the complicity of the accused in the commission of the offence under Sections 21, 25, 29 of the NDPS Act, but neither his maternal uncle nor his parents had told the police that applicant-accused Jodhbir Singh was minor at the time of commission of the offence. In the identification certificate of accused Jodhbir Singh, his age has been mentioned as 19/20 years. In such like circumstances, the school certificate as well as the entry in the register of the chowkidar regarding date of birth of the applicant-accused Jodhbir Singh does not seem to be true and that the said record seems to be maneuvered only to get undue benefit of the provision of Juvenile Justice (Care and Protection of Children) Act, 2000."

5. The appellant, aggrieved by the above order, filed Criminal Revision No. 1440 of 2011 before the High Court of Punjab and Haryana at Chandigarh. The High Court concurred

with the views expressed by the Sessions Court and heavily relied on the following circumstances to dismiss the revision petition on 07.07.2011.

> "(i) The mother of the petitioner Parkash Kaur while appearing as AW1 has not been able to tell the date of birth of the petitioner during the cross-examination. She was not even able to tell after how many years of her marriage the petitioner was born.
>
> (ii) The petitioner himself during the course of interrogation had not disclosed himself to be minor or juvenile.
>
> (iii) His maternal uncle Dalbir Singh had also not supplied any information to the police regarding the age.
>
> (iv) In the identification certificate, the petitioner has given his age as 19/20 years."

6. Aggrieved by the said order, this appeal has been preferred.

7. Mr. Siddharth Mittal, learned counsel appearing for the appellant submitted that the Sessions Court has committed a grave error in not properly appreciating the scope of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the JJ Act') and Rule 12 of the Juvenile Justice Rules, 2007 (for short 'the JJ Rules'). Learned counsel submitted that the courts have committed a grave error in placing reliance on the certificate issued by the village Chowkidar as against the certificate issued by the State Council for Education Research and Training Punjab, Chandigarh dated 05.04.2006 and the certificate dated 19.10.2000 issued by the Government High School, Naushehra Cheema (Tarn Taran). Learned counsel submitted that both the abovementioned certificates indicate that the date of birth of the appellant is 20.07.1996 and therefore on the date of the incident i.e.26.09.2010, the appellant was a juvenile. Considerable reliance was placed on judgment of this Court

in *Ashwani Kumar Saxena v. State of M.P.* [(2012) 9 SCC 750] in support of his contention.

8. Mr. Saurabh Ajay Gupta, learned counsel appearing for the respondent-State, submitted that there is no illegality in the order passed by the Sessions Court, which was confirmed by the High Court. Learned counsel submitted that since there is some conflict on the date of birth shown in the school register and that of the certificate issued by village Chowkidar, the Sessions Court and the High Court were justified in placing reliance on the certificate issued by village Chowkidar to reject the claim of juvenility.

9. When the matter came up for hearing, we passed the order dated 29.08.2012 which reads as follows:

> "Learned counsel appearing for the petitioner placed reliance on certificate issued by the State Council for Education Research and Training, Punjab, Chandigarh dated 5.4.2006, where it is stated that the date of birth of the petitioner is 20.7.1996. A photo copy of the same has been made available to the Court as well as to the counsel appearing for the state Government.
>
> Learned counsel for the petitioner also placed reliance on a copy of certificate dated 19.10.2000 issued by the Government High School, Naushehra Cheema (Tarn Taran) which also shows date of birth of the petitioner as 20.07.1996 and reference was also made to the Admission and Withdrawal Register, Govt. High School, Naushera Cheema (Tarn Taran) issued by the Headmaster/ Principal of the Govt. High School, Naushera Cheema (Tarn Taran).
>
> Under such circumstances, we are inclined to give a direction to the State to examine the genuineness of these documents and file an affidavit to that effect."

10. In pursuance of that order, an affidavit dated 14.11.2012 was filed by Dy. Superintendent of Police, State Special Operation Cell, Amritsar, Punjab who examined the genuineness of the certificates referred to in our order. Relevant portion of the order reads as follows:

"3. That as per the directions, following documents furnished by the petitioner have been examined to ascertain their genuineness.

(A) A Certificate issued by the State Council of Education Research and Training Punjab, Chandigarh dated 05.04.2006.

(B) A Certificate issued by Govt. High School, Naushera Cheema, Tarn Taran.

(C) A copy of admission and withdrawal register of Govt. High School Naushera Cheema.

4. That, Sh. Manjinderjit Singh Head Master Govt. High School Nausherha Cheema, Tarn Taran has certified the genuineness of the documents on the basis of the record maintained in the school.

5. That, the copy of the statement furnished by Sh. Manjinderjit Singh Head Master Govt. High School Nausherha Cheema, Tarn Taran to this effect is attached as Annexure R-1."

11. We notice the genuineness of the certificate issued by the State Council of Education Research and Training Punjab, Chandigarh dated 05.04.2006 and the certificate issued by Govt. High School Naushera Cheema, Tarn Taran and the admission and withdrawal register of Govt. High School, Naushera Cheema has not been questioned.

12. In *Ashwani Kumar Saxena* case (supra), this Court has explained how "Age determination inquiry" has to be conducted

under Section 7A of the JJ Act read with Rule 12 of the JJ Rules. Relevant portion of the same is extracted hereunder:

"32. "Age determination inquiry" contemplated under Section 7A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination."

13. We are of the view that in a case where genuineness of the school leaving certificate has not been questioned, the Sessions Court and the High Court were not justified in placing

reliance on certain statements made by Parkash Kaur, mother of the accused in the cross-examination. The Sessions Court also committed an error in placing reliance on the certificate issued by the village Chowkidar who was examined as RW2. When the law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar.

14. We may indicate that all these legal aspects has already been dealt with in *Ashwani Kumar Saxena* case (supra), hence, further elucidation of the question raised does not arise. The issue raised, in our view, is fully covered by the abovementioned judgment. In such circumstances, we are inclined to allow this appeal and set aside the order passed by the Sessions Court dated 16.04.2011 and the impugned judgment and order dated 07.07.2011in Criminal Revision No. 1440 of 2011. We hold that the appellant was a juvenile on the date of the incident and has to be tried by the Juvenile Justice Board. The Sessions Court is directed to make over the files to the Juvenile Justice Board to proceed with the trial, so far as the appellant is concerned.

R.P. Appeal allowed.

GURMINDER SINGH KANG
v.
SHIV PRASAD SINGH & ORS.
(Civil Appeal No. 8819 of 2012)

DECEMBER 7, 2012

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Contempt of Court:

Contempt of order of High Court – Appellant-Commissioner of Food and Civil Supplies, canceling the time bound promotions granted to respondent-employee by orders of High Court – High Court holding that the appellant committed contempt of its order, imposed upon him punishment of 2 months' simple imprisonment with fine – Held: Orders and judgments of courts are meant to be obeyed and not to be disobeyed, with impunity – Appellant came forward with a lame and flippant statement that he did not understand the implication of the order of High Court – He passed orders in total derogation of the directions contained in the orders of High Court – In the circumstances, the order of High Court does not call for interference – However, taking into account the age of appellant and the remorse conduct displayed by him, the punishment of imprisonment need not be retained – Instead, a "stern warning" is imposed apart from confirming the imposition of fine – Service law.

Respondent No. 1, who was dismissed from service, was, by order dated 28.2.1980, reappointed at the starting basic pay of Rs.296/- with a condition that he would not be entitled to any future promotions. Subsequently, he filed a writ petition claiming that he be accorded time bound promotion as per the State Government's scheme.

The High Court held that the employee could not be denied the benefit of the time bound promotion scheme and, by its order dated 21.8.1995, disposed of the writ petition directing the Commissioner, Food and Civil Supplies to decide the representation by a reasoned order. Accordingly, respondent no. 1 was granted two time bound promotions, the first from 1.4.1981 and the second from 9.9.1992. However, the appellant, by his order dated 25.7.2003, held that the time bound promotions granted to respondent no. 1 were contrary to reappointment order dated 28.2.1980. His pre-revised pay of Rs.296/- was fixed at the lowest of corresponding revised scale of pay, w.e.f. 1.1.1996 and the excess payment was directed to be recovered. In the writ petition filed by respondent no. 1, the High Court held that the conduct of the appellant in passing the order dated 25.7.2003 in violation of the specific order of the High Court passed in the earlier writ petition on 21.8.1995, amounted to contempt of the order of the High Court. It, therefore, imposed upon the appellant punishment of 2 months' simple imprisonment and a fine of Rs.2000/-.

Disposing of the appeal, the Court

HELD: 1.1 Orders and judgments of courts are meant to be obeyed and not to be disobeyed, with impunity. The appellant, a senior level I.A.S. Officer with not less than 30 years of experience in the State Administration came forward with a lame and flippant statement that he did not understand the implication of the order of the High Court which led him to pass such orders in total derogation of the directions contained in the orders of the High Court.From perusal of the order dated 21.8.1995, it is evident that the High Court, though was conscious of the reappointment order dated 28.2.1980, which was subject to the condition that the employee would not be entitled to any promotions, took the view that irrespective of the said condition, having regard to the time bound promotions provided for under separate schemes announced by the State Government, he could not be denied the benefit arising therefrom. It was with that specific observation, the authority concerned, namely, the Commissioner, Food and Civil Supplies was directed to dispose of the employee's representation by reasoned order by fixing a time limit. The order dated 21.8.1995 had also become final and conclusive. If the appellant had any doubt, he should have approached the High Court and sought for proper clarifications. Even thereafter when the said employee filed the writ petition, the appellant ought to have rectified his mistake and displayed his remorse conduct by complying with the directions of the High Court. Instead, the appellant appeared to have attempted to justify his action. [Para 9-10] [246-D-G; 247-B-D-E-G]

1.2 Therefore, this Court holds that the order of the High Court that the appellant committed contempt of its order dated 21.08.1995 does not call for interference. However, taking into account the age of the appellant, who has retired from service, as well as the remorse conduct displayed before this Court, the simple imprisonment of two months alone need not be retained. However, this Court imposes a "stern warning" to be recorded as against the appellant apart from confirming the imposition of fine as per order of the High Court. [Para 12] [248-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8819 of 2012.

From the Judgment & Order dated 22.03.2004 of the High Court of Patna in C.W.J.C. No. 9019 of 2013.

Anurag Kumar, Sudama Ojha, Dr. Maya Rao for the Appellant.

Gopal Singh, Samir Ali Khan, Chandan Kumar for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted.

2. This civil appeal arises out of the order dated 22.3.2004 passed by the High Court of Judicature at Patna in CWJC No.9019/2003 by which the appellant herein was found guilty of contempt of its order dated 21.8.1995 passed in CWJC No.4369/1994. While convicting him for contempt, the learned Judge imposed simple imprisonment of two months apart from a fine of Rs.2000/-. The order was, however, suspended for a period of four weeks to enable the appellant to approach this Court. Notice was issued by this Court in the Special Leave Petition on 15.4.2004 and the impugned order of the High Court was also stayed.

3. At the very outset, it is pertinent to mention that this Court by order dated 11.09.2009 dismissed the Special Leave Petition as against respondent No.1 as the petitioner failed to file application for substituted service in regard to respondent No.1.

4. We heard learned counsel for the appellant as well as learned counsel for the respondent. We have also perused the order impugned in this appeal. To briefly state the facts, one Shiv Prasad Singh who was In-charge Block Supply Officer of Aurangabad was dismissed from service in the year 1977 on charges of bribery, by the Commissioner, South Chhotanagpur Division, Ranchi. Subsequently, considering his representation, he was reappointed by memo No.1471 dated 28.2.1980. While reappointing him, the said order mentioned that Shri Shiv Prasad Singh would get the basic starting pay of Rs.296/- and will not be entitled for any future promotions. The said order became final and Shiv Prasad Singh was reappointed as per

order dated 28.2.1980. The said Shiv Prasad Singh filed CWJC 4369 of 1994 wherein he prayed for a direction to accord time bound promotion as per the State Government's scheme. Irrespective of the specific directions contained in reappointment order dated 28.2.1980, the said writ petition was disposed of by order dated 21.8.95. The said order was to the following effect:-

> "It is no doubt that the order as contained in annexure '1' was passed in the year 1980 and the petitioner did not assail the same in any Court of law since then, but in my opinion when the Government introduced the scheme of time bound promotion, he can not be denied the benefit arising therefrom only on account of the impugned order (annexure 1) if he is otherwise eligible and found suitable. However, it has rightly been pointed out by the learned standing counsel that as the representation of the petitioner is still pending before the Commissioner, Food and Civil Supply, Govt. of Bihar (respondent No.2) be directed to dispose of the same.
>
> Accordingly, after having heard the learned counsel for the parties, the writ application is disposed of with the direction to the Commissioner, Food and Civil Supplies, Government of Bihar (respondent N0.2) to dispose of the representation of the petitioner by a reasoned order within three months from the date of receipt/production of a copy of this order, the certified copy of which shall be produced along with the copy of the said representation before respondent No.2 by the petitioner within two weeks."

5. Pursuant to the said order Shiv Prasad Singh was granted first time bound promotion from 01.04.1981 and second time bound promotion from 09.09.92. His salary was fixed in the revised scale of Rs.5500-9000. The appellant herein by his order dated 25.7.2003 in his capacity as the Commissioner Food and Supplies and Commerce, Government of Bihar held that the grant of time bound promotion

one on 01.04.1981 and other on 09.09.1992 were in contravention of the conditions contained in the reappointment order dated 28.2.1980 and so saying cancelled the said promotions. The salary was also fixed in the pre-revised scale of Rs.296/-. The corresponding revised scale was stated to be Rs.5000-8000/-.

6. Consequent to the said orders dated 25.7.2003 necessary orders revising salary in the lowest scale of Rs.5000-8000/- was fixed from 01.01.1996 and the excess payment was also directed to be recovered from him. Aggrieved by the order dated 25.7.2003, the said Shiv Prasad Singh filed a writ petition namely, CWJC No. 9019 of 2003. While examining the grievances in the Writ Petition of Shiv Prasad Singh the learned Judge of the Patna High Court took the view that the order passed by the appellant dated 25.7.2003 was in violation of the specific orders passed in CWJC 4369 of 1994 dated 21.8.1995 and directed the appellant to show cause why he should not be punished for contempt. Thereafter, the appellant stated to have filed his reply and not being satisfied with the stand taken by the appellant, the learned Judge concluded that the conduct of the appellant in having passed the order dated 25.7.2003 was in violation of the order dated 21.8.1995 and, therefore, the said conduct of the appellant amounted to contempt of the order of the Court. On the above said basis, the learned Judge ultimately imposed the punishment of two months' simple imprisonment apart from payment of fine of Rs.2000/-.

7. We heard Mr. Anurag Kumar, learned counsel for the appellant who strenuously contended that the appellant could not understand the implication of the order dated 21.8.95 in the proper perspective when he passed the order dated 25.7.2003 and that in any event since he has tendered an unconditional apology he should be dealt with leniently.

8. While entertaining this appeal, the appellant was directed to be present in Court. Accordingly, he also appeared

before us on 8.10.12. It was submitted before us by the learned counsel for the appellant that the appellant retired as Chief Secretary of State of Bihar and that he regrets for whatever had happened in passing the order dated 25.7.2003 and that he did not intend to violate the orders of the Court. The learned counsel, therefore, contended that considering the age of the contemnor and having regard to the remorse conduct displayed, he may be dealt with leniently.

9. Having perused the order of the learned Single Judge who has considered the matter *in extenso,* we find that the conclusions of the learned Judge in having held that the stand of the appellant that he was not able to understand the spirit of the order in the proper perspective cannot be accepted, was well justified. The appellant was a senior IAS officer and it was found that he had nearly 30 years of experience as an officer in the administrative service. When we peruse order dated 21.8.95, we find that the High Court, though was conscious of the conditions contained in the reappointment order dated 28.2.80, took the view that irrespective of the said condition, namely, that the order of reappointment was subject to the condition that Shiv Prasad Singh would not be entitled for any promotions, however, found that having regard to the time bound promotions provided for under separate schemes announced by the State Government, any such condition in the order dated 28.2.80 would not operate against the detriment of the said employee, namely, Shiv Prasad Singh. That such conclusion has been clearly set out in the order which has been extracted by us in the earlier part of this order. It was with that specific observation the authority concerned, namely, the Commissioner, Food and Civil Supply of Government of Bihar was directed to dispose of the employee's representation by reasoned order by fixing a time limit. The order dated 21.8.95 had also become final and conclusive. Pursuant to the said order when the then Commissioner Food and Civil Supplies Government of Bihar passed orders, granting the first time bound promotion from 1.4.81 and second time bound

promotion from 9.9.92 and by fixing the salary of the employee concerned in the proper scale, even assuming the appellant who was stated to have been subsequently posted as Commissioner of Food and Civil Supplies had any doubt as to the nature of the order passed on 21.8.95, he should have taken the Royal Road of approaching the High Court and sought for proper clarifications instead of taking his own decision to reverse the orders granting time bound promotions to the peril of the employee and that too without even referring to the order dated 21.8.95. Even thereafter when the said employee filed the present Writ Petition in CWJC No.9019 of 2003, the appellant ought to have rectified his mistake and restored the benefits of time bound promotions granted in favour of the employee concerned and thereby displayed his remorse conduct by complying with the directions of the High Court.

10. The order of the learned Single Judge impugned in this appeal discloses that instead of displaying such fair conduct before the Court, he appeared to have attempted to justify his action by resorting to an escape route and stated to have offered his regret and unconditional apology as a last resort to pardon him from being punished for any contempt action. Orders and judgments of the Court are meant to be obeyed and not to be disobeyed, with impunity. Of late, we come across several such instances, where high level officers of the Administration display scant regard for the orders of the Court and always come forward with lame excuses. The case on hand is one such instance where the appellant who was a senior level I.A.S. Officer with not less than 30 years of experience in the State Administration came forward with a lame and flippant statement that he did not understand the implication of the order of the High Court which led him to pass such orders in total derogation of the directions contained in the orders of the High Court.

11. In the light of the above conclusion of ours, on going through the orders impugned in this appeal, we do not find any

scope to interfere with the order of the learned Single Judge. Before us the learned counsel stated that the appellant has retired from service and while appearing before us the learned counsel submitted that the appellant expresses his deep regrets and sincere apologies without any reservation for whatever conduct displayed by him in the matter of non-compliance of the orders of the High Court dated 21.8.95.

12. We, therefore, hold that the orders impugned in this appeal in having concluded that the appellant committed contempt of its order dated 21.08.95 does not call for interference. We, however, take into account the age of the appellant as well as the remorse conduct now displayed before us, as submitted by learned counsel appearing for the appellant, we are of the view that the simple imprisonment of two months alone need not be retained. We, however, impose a “stern warning” to be recorded as against the appellant apart from confirming the imposition of fine of Rs.2000/- to be paid as per the order of the learned Judge impugned in this appeal. We further direct that the said fine amount of Rs.2000/- shall be paid, as directed by the learned Judge, within four weeks from the date of receipt of copy of this order. Failing compliance of the said condition, the sentence of simple imprisonment of two months shall stand revived. With the above directions, this appeal stands disposed of.

R.P. Appeal disposed of.

THE STATE OF KARNATAKA & ORS.
v.
VIVEKANANDA M. HALLUR & ORS.
(Civil Appeal Nos. 8803-8805 of 2012)

DECEMBER 07, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Karnataka Stamps Act, 1957 – Schedule, Article 5(e)(i) – Explanation (ii) – Stamp duty – Levy of – On Sale Deed – On the basis of market value of the property on the day of the execution – Writ petition seeking refund of the stamp duty – Single Judge of High Court allowing the petitions and directing refund – Writ appeal – Filed after delay of 449 days – Division bench of High Court dismissing the appeal on the ground of delay as well as on merit – On appeal, held: Delay in filing writ appeal ought to have been condoned – Since the Division Bench did not advert to the substantial ground urged by the State, matter remitted to High Court for consideration afresh on merit.

A 'Sangha' regisstered under Karnataka Societies Registration Act, 1960 allotted residential sites to its members (respondents) by executing Lease-cum-sale Agreements. The lease period was for 10 years. The agreements were registered after payment of the required stamp duty. After completion of the lease period, Absolute Sale Deeds were executed and then presented for registration. While registering the sale deeds. Stamp duty was collected on the market value of the property on the day of execution of the deed and after adjusting the stamp duty paid on Lease-cum-Sale Agreements. Thereafter, respondent Nos. 1 to 3 filed writ petitions seeking refund of stamp duty paid on the Absolute Sale Deeds. Single Judge of High Court held that the respondents were not liable to pay the stamp duty on the amount shown as

consideration in the Absolute Sale Deeds and were entitled to refund thereof. The writ appeal thereagainst was dismissed by the Division Bench of High Court on the ground of delay as well as on merits.

In appeal to this Court, respondent Nos. 4 to 32 were impleaded. The question for consideration in the appeal were, whether the State had shown sufficient cause for condoning the delay in filing writ appeals; whether the Division Bench was correct in directing the State to repay the amount collected as stamp duty, when Article 5(e)(i) Explanation (ii) of Karnataka Stamps Act, 1957 states that the amount collected on the sale or Lease-cum-Sale Deed shall be adjusted towards the total duty leviable on the conveyance?

Allowing the appeals, the Court

HELD: 1. The reasons for the delay of 449 days in filing the appeals before the Division Bench of High Court show that how the delay occurred. In view of the reasons stated therein and in the light of the issues to be considered by the Division Bench of High Court as well as the financial implication on the State Exchequer, the reasons stated for the delay cannot be rejected as unacceptable. The Division Bench of the High Court ought to have condoned the delay and gone into the merits of the matter in the light of the provisions of the Karnataka Stamp Act, 1957. [Paras 7 and 8] [254-F-H; 255-A-B]

2. The Division Bench of High Court has not adverted to any substantial grounds urged by the State, particularly with reference to the provisions of Article 5(e)(i) and Explanation (ii) of the Karnataka Stamp Act, 1957. Therefore, the order of the Division Bench is set aside and the matter is remitted to the High Court for fresh consideration. The High Court is requested to restore

W.A. Nos. 1023, 1324 and 1325 on its file and dispose of the same on merits in accordance with law, after affording opportunity to all the parties including the newly impleaded respondent Nos. 4 to 32 as well as the connected writ petitions pending before the High Court. [Para 9] [255-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8803-8805 of 2012.

From the Judgment and Order dated 19.06.2009 of the High Court of Karnataka at Bangalore in WA No. 1023, 1324 and 1325 of 2009.

P.P. Rao, Basava Prabhu S. Patil, B.S. Prasad, Anirudh, V.N. Raghupathy, Purushottam Sharma Tripathi, Filza Moonis, Akshat Kulshrestha, Mohan Pandey, Chandra Sekhar and Anajana Chandrashekar for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 19.06.2009 passed by the High Court of Karnataka at Bangalore in Writ Appeal Nos. 1023, 1324 and 1325 of 2009 whereby the Division Bench of the High Court dismissed the appeals on the ground of delay as well as on merits.

3. **Brief facts :**

(a) Respondents herein are the members of Kendriya Upadhyayara Sangha (R) (in short 'the Sangha'), Bangalore South Taluk, registered under the Karnataka Societies Registration Act, 1960. The Sangha was granted certain land at Jakkasandra Village, South Taluk by the State of Karnataka in order to provide house sites to its members. The sole object of the Sangha is charitable and to protect the interest of its

members and not to form the sites and allot to its members with a profit motive.

(b) According to the appellant-State, the Sangha has allotted residential sites to its members including the respondents herein by executing Lease-cum-Sale Agreements in their favour after receiving the full sale consideration. The said agreements were registered in the office of sub-Registrar, Bangalore South after paying the required stamp duty.

(c) Under the above said Lease-cum-Sale Agreements, the lease was for a period of 10 years and after completion of the said period, respondents herein approached the Sangha and requested them to execute the Absolute Sale Deeds in their favour in respect of their sites. The Sangha agreed to execute the same and the Absolute Sale Deeds were presented for registration before the sub-Registrar, Bommanahalli. The sub-Registrar, while registering the sale deeds, has collected the stamp duty on the market value prevailing on that day of execution of the same after adjusting the stamp duty paid on Lease-cum-Sale Agreements. After registration of the documents of sale, the respondents herein approached the High Court by filing writ petitions seeking refund of stamp duty paid on the absolute Sale Deeds.

(d) Pursuant to the writ petitions filed by the respondents, the State Government filed a detailed statement of objections and contended that the Sangha is registered under the Registration Act, hence, the Sangha has no right to form the sites and allot the same to its members and, there is no exemption under the Karnataka Stamp Act, 1957 (hereinafter referred to as "the Act") for any Lease-cum-Sale Agreement executed by the Sangha. Under the Act, only a site allotted by a House Building Co-operative Society can claim exemption. It is the claim of the State that the authorities have rightly collected the stamp duty on the sale deed treating it as a principal document.

(e) Learned single Judge, by order dated 11.12.2007, in the writ petitions being Nos. 16777, 19358 and 19359 of 2005 filed by respondent Nos.1-3 herein held that the stamp duty collected by the authorities on Lease-cum-Sale Agreement falls under Article 5(e)(i) of the Schedule to the Act, therefore, it is a sale agreement with possession, hence, the stamp duty paid is as per the provisions of the Act. Therefore, when the documents are placed for registration as a sale deed, they have to pay the stamp duty of the property on the market value as on that day of execution of the sale deed but they are entitled to claim deduction of the amount which they have already paid on the Lease-cum-Sale Agreement. However, the learned single Judge further held that, (a) the petitioners therein are not liable to pay stamp duty on the amount shown as consideration in the absolute sale deeds; and (b) they are entitled to refund of the amount imposed and collected as stamp duty on the absolute sale deeds.

(f) Aggrieved by the said directions, the State filed appeals being W.A. Nos. 1023, 1324 & 1325 of 2009 before the Division Bench of the High Court. It was contended before the Division Bench that the finding given by the learned single Judge in the impugned order that in view of the provisions of Article 5(e)(i) of the Schedule to the Act, when the stamp duty and the registration fee had been collected on the Lease-cum-Sale instrument treating it as the possession of the property which has been handed over at the time of executing Lease-cum-Sale Deed, the question of collecting the stamp duty and registration charges on the absolute deeds after the expiry of the Lease-cum-Sale Agreement is only a supplement and could not arise.

(g) The Division Bench, by impugned order dated 19.06.2009, dismissed the writ appeals filed by the State both on the ground of delay as well as on merits.

(h) Against the said order, the State has filed the present appeals by way of special leave petitions.

4. This Court, after issuance of notice on the applications for impleadment (I.A.Nos. 4-6), by order dated 18.02.2011 impleaded respondent Nos. 4-32.

5. Heard Mr. Basava Prabhu S. Patil, learned senior counsel for the appellant-State, Mr. Chandra Sekhar, learned counsel for respondent Nos. 1 & 3 and Mr. P.P. Rao, learned senior counsel for newly impleaded respondent Nos. 4-32.

6. The following questions which arise for consideration in these appeals are:

(i) Whether the State has shown sufficient cause for condoning the delay of 449 days in filing writ appeals against the order of the learned single Judge, who allowed the writ petitions?

(ii) Whether the Division Bench was justified in simply affirming the order of the learned single Judge in directing the State to repay the amount collected as stamp duty when Article 5(e) Explanation (ii) has held that the amount collected on the sale or Lease-cum-Sale Deed shall be adjusted towards the total duty leviable on the conveyance? And

(iii) Whether the order of the High Court is contrary to the provisions of Article 5(e)(i) and Explanation (ii) of the Karnataka Stamp Act, 1957?

7. First of all, we were taken through the reasons stated for the delay of 449 days in filing the appeals before the Division Bench against the order of the learned single Judge. The application for condonation of delay in filing appeals was supported by an affidavit of sub-Registrar, Peenya, Bangalore North Taluk. A perusal of the application and the reasons stated therein show that how the delay has occurred. But after going through the reasons stated therein and in the light of the issues to be considered by the Division Bench as well as the financial implication on the State Exchequer, we are of the view that the reasons stated for the delay cannot be rejected as unacceptable.

8. the issues raised and the positive direction given by the learned single Judge, we are of the view that the Division Bench of the High Court ought to have condoned the delay and gone into the merits of the matter in the light of the provisions of the Karnataka Stamp Act, 1957. Though the High Court concentrated only on narrating the pleadings of the parties, reasoning of the learned single Judge and cause shown for condoning the delay, but has not considered the substantial grounds urged by the State. As rightly pointed out by learned senior counsel for the State that though in the last paragraph there is some reference about the reasoning of the learned single Judge, not much attention was given on the merits of the claim made by the State.

9. On these grounds, without expressing anything on merits of the claim of either party, we condone the delay in filing the writ appeals and in the light of our conclusion that the Division Bench has not adverted to any substantial grounds urged by the State, particularly with reference to the provisions of Article 5(e)(i) and Explanation (ii) of the Karnataka Stamp Act, 1957, we set aside the order of the Division Bench impugned in these appeals and remit the same to the High Court for fresh consideration. We request the High Court to restore W.A. Nos. 1023, 1324 and 1325 on its file and dispose of the same on merits in accordance with law, after affording opportunity to all the parties including the newly impleaded respondent Nos. 4-32 herein as well as the connected writ petitions pending before the High Court, preferably within a period of six months from the date of receipt of copy of this judgment. Once again, we make it clear that except adverting to the stand of the State, we have not expressed our views on any of the claims and it is for the Division Bench of the High Court to consider their respective claims in accordance with law as observed supra.

10. The appeals are allowed. There shall be no order as to costs.

K.K.T. Appeals allowed.

U. SREE

v.

U. SRINIVAS

(Civil Appeal Nos. 8927-8928 of 2012)

DECEMBER 11, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Hindu Marriage Act, 1955 - s.13(1)(ia) - Divorce - Grant of - In favour of husband - On ground of "mental cruelty" - Justification - Held: Justified - Respondent-husband, who pursued a career in music, clearly deposed about the constant and consistent ill-treatment meted out to him by the wife as she showed her immense dislike to his "sadhna" (routine practice and learning of music under the guidance of his father who was also his "guru" in "the Guru-Sishya Parampara" i.e. the tradition of teacher and disciple), and exhibited total indifference and, in a way, contempt to the tradition of teacher and disciple - Graphical demonstration given by husband that the wife did not show the slightest concern for his public image on many occasions by putting him in a situation of embarrassment leading to humiliation - She made wild allegations about conspiracy in the family of her husband to get him re-married for the greed of dowry without an iota of evidence on record to substantiate the same - This was an aspersion not only on the character of the husband but also a maladroit effort to malign the reputation of his family - Respondent-husband clearly proved his case of mental cruelty which was the foundation for seeking divorce.

Hindu Marriage Act, 1955 - s.25 - Permanent alimony - Grant of - Held: While granting permanent alimony, no arithmetic formula can be adopted - It shall depend upon the status of the parties, their respective social needs, the

financial capacity of the husband and other obligations - The duty of the Court is to see that the wife lives with dignity and comfort and not in penury - The living need not be luxurious but simultaneously the wife should not be left to live in discomfort - The Court has to act with pragmatic sensibility - On facts, respondent-husband himself asserted that he had earned name and fame in the world of music and had been performing concerts in various parts of India and abroad - Regard being had to the status of the husband, the social strata to which the parties belong and further taking note of earlier orders of Supreme Court in this case, permanent alimony fixed at Rs.50 lacs, to be deposited before the trial court, out of which Rs.20 lacs to be kept in a fixed deposit in the name of the minor child of the parties in a nationalized bank - Clarification given that any amount deposited earlier shall stand excluded.

Practice and Procedure - Divorce petition by husband - On ground of cruelty - Conclusion recorded by courts below relating to desertion by the wife - Held: Liable to be overturned, since there was no prayer or pleading with regard to desertion in the divorce petition.

Evidence Act, 1872 - s.65 - Secondary evidence relating to contents of a document - Admissibility - Discussed.

Constitution of India, 1950 - Article 136 - Interference under, with concurrent findings of fact - Scope - Discussed.

The appellant-wife had instituted a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights against the respondent-husband. The respondent-husband on the other hand filed a petition under Sections 13(1)(ia), 26 and 27 of the Hindu Marriage Act read with Section 7 of the Family Courts Act, 1984 inter alia praying for dissolution of marriage.

The respondent-husband, in his petition for divorce

and while resisting the stand taken by the appellant-wife in her petition for restitution of conjugal rights, inter alia pleaded that after abandoning formal education, he pursued a career in music treating it as a concept of 'bhakti' (devotion); that he had to continue his 'sadhana' (practice and learning of music) as a daily routine under the guidance of his father who was also his "guru" in "the Guru-Sishya Parampara" (tradition of teacher and disciple); that the aforesaid aspect of his life was not liked by his wife and she always interrupted the practice sessions hurling abuses at him; that despite his best efforts to make his wife understand the family tradition and show reverence to the seniors in the sphere of music, she remained obstinate in her attitude and chose to cause him not only embarrassment in public but also humiliation which affected his reputation and self respect and that she had communicated with her friends that she would like to see her husband behind bars on the ground of dowry harassment.

The trial court held that the wife had treated the husband with cruelty; that she had not taken any steps for re-union and had deserted him for thirteen years without any valid reason and, hence, the husband was entitled for a decree of divorce and the wife was not entitled to have a decree for restitution of conjugal rights. The trial court, while passing the decree for dissolution of marriage, directed to pay permanent alimony of Rs. 5 lacs each to the wife and the minor child.

Dissatisfied, the appellant-wife preferred application in the High Court which affirmed the decree of dissolution of marriage. The High Court held that the material brought on record showed that the wife had gone to the parental home and made no efforts to get reunited with the husband and that her depositions were contradictory inasmuch as on one hand she had stated

that she had been ill-treated and on the other that there was cordial relationship. The High Court referred to the xerox copy of the letter Exhibit R-8 written in her handwriting to her parents and held that when the said letter was summoned from her father she stated that there was no such letter and on that ground the admissibility was called in question. The High Court held that when the efforts were made to get the primary evidence and it could not be obtained, the secondary evidence could be adduced and that would be admissible under Section 65 of the Evidence Act. The English translation of the said letter was marked as Exhibit R-9 which, according to the High Court, indicated that the wife had clearly stated that she had spoken ill of her mother-in-law and others and had expressed her desire to seek divorce as she could not stay any longer in the matrimonial home. It was held by the High Court that the conduct of the wife clearly established desertion and her behaviourial pattern exhibited mental cruelty meted out to the husband. Apart from concurring with the grant of permanent alimony, the High Court further directed the respondent-husband to pay a sum of maintenance amounting to Rs.12,500/- to the appellant-wife and the minor child.

In the instant appeal, it was inter alia contended by the appellant that Exh. R-8 and R-9 were not admissible in evidence inasmuch as they could not be treated as secondary evidence as envisaged under Section 65 of the Evidence Act, 1872 and that the trial court as well as the High Court had failed to appreciate that neither mental cruelty nor desertion had been established as per the law.

Dismissing the appeals, the Court

HELD: 1.1. Section 65 of the Evidence Act, 1872 permits the parties to adduce secondary evidence, yet such a course is subject to a large number of limitations.

In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. [Para 17] [276-F-G; 277-A-B]

1.2. In the case at hand, the trial court has really not discussed anything relating to foundational evidence. The High Court has only mentioned that when the letter (alleged to have been written by the wife to her father) was summoned and there was a denial, the secondary evidence is admissible. Such a view is neither legally sound nor in consonance with the pronouncements of this Court. Consequently, the photostat copy of the said letter is not admissible in evidence and the question as to whether the appellant had treated her husband with mental cruelty has to be dwelled upon, keeping the photostat copy of the said letter out of consideration. [Paras 18, 19] [277-C-E]

Ashok Dulichand v. Madahavlal Dube (1975) 4 SCC 664: 1976 (1) SCR 246; *J. Yashoda v. K. Shobha Rani* (2007) 5 SCC 730: 2007 (5) SCR 367; *M. Chandra v. M. Thangamuthu and Other* (2010) 9 SCC 712: 2010 (11) SCR 38 and *H. Siddiqui (Dead) by Lrs. v. A. Ramalingam* (2011) 4 SCC 240: 2011 (5) SCR 587 - relied on.

2.1. The conception of cruelty has inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperament and emotions that have been conditioned by the social status. When the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable, it would amount to mental cruelty. Emphasis is to be laid on the behavioral pattern of the wife whereby a dent is created in the reputation of the husband, regard being had to the fact that reputation is the salt of life. [Para 22] [279-A-E]

2.2. In the case at hand, the husband has clearly deposed about the constant and consistent ill-treatment meted out to him by the wife inasmuch as she had shown her immense dislike to his "sadhna" in music and had exhibited total indifference and, in a way, contempt to the tradition of teacher and disciple. It has graphically been demonstrated that she had not shown the slightest concern for the public image of her husband on many an occasion by putting him in a situation of embarrassment leading to humiliation. She has made wild allegations about the conspiracy in the family of her husband to get him re-married for the greed of dowry and there is no iota of evidence on record to substantiate the same. This, in fact, is an aspersion not only on the character of the husband but also a maladroit effort to malign the reputation of the family. The trial court as well as the High Court have clearly analysed the evidence and recorded a finding that the wife had treated the husband with mental cruelty. True it is, there is some reference in that regard to the photostat copy of the letter (allegedly written by the wife to her father) which is not admissible in evidence but the other evidence brought on record clearly support the findings recorded by the Family

Judge and the High Court. [Para 23] [279-E-F; 280-A-C]

Samar Ghosh v. Jaya Ghosh **(2007) 4 SCC 511: 2007 (4) SCR 428;** *Ravi Kumar v. Julmidevi* **(2010) 4 SCC 476: 2010 (2) SCR 545 and** *Vishwanath Agrawal, s/o Sitaram Agrawal v. Sarla Vishwanath Agrawal* **(2012) 7 SCC 288 - relied on.**

Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasikhan **(1981) 4 SCC 250: 1982 (1) SCR 695;** *Shobha Rani v. Madhukar Reddi* **(1988) 1 SCC 105: 1988 (1) SCR 1010;** *V. Bhagat v. D. Bhagat* **(1994) 1 SCC 337: 1993 (3) Suppl. SCR 796;** *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate* **(2003) 6 SCC 334: 2003 (3) SCR 607;** *A. Jayachandra v. Aneel Kaur* **(2005) 2 SCC 22: 2004 (6) Suppl. SCR 599;** *Vinita Saxena v. Pankaj Pandit* **(2009) 1 SCC 422;** *Suman Kapur v. Sudhir Kapur* **(2009) 1 SCC 422: 2008 (15) SCR 972;** *N.G. Dastane v. S. Dastane* **(1975) 2 SCC 326: 1975 (3) SCR 967;** *Rajani v. Subramaniam* **AIR 1990 Kerala 1;** *Parveen Mehta v. Inderjit Mehta* **(2002) 5 SCC 706;** *Gananath Pattnaik v. State of Orissa* **(2002) 2 SCC 619: 2002 (1) SCR 845;** *Manisha Tyagi v. Deepak Kumar* **(2010) 4 SCC 339: 2010 (2) SCR 554;** *Sujata Uday Patil v. Uday Madhukar Patil* **(2006) 13 SCC 272: 2006 (10) Suppl. SCR 955;** *Chanderkala Trivedi v. Dr. S.P. Trivedi* **(1993) 4 SCC 232: 1993 (1) Suppl. SCR 796 and** *Pranay Majumdar v. Bina Majumdar* **(2007) 9 SCC 217: 2007 (1) SCR 1089 - referred to.**

Sheldon v. Sheldon **(1966) 2 WLR 993 - referred to.**

Halsbury's Laws of England, 4th Edn., Vol. 13, para 623 - referred to.

3.1. The jurisprudence under Article 136 stands out to be extremely wide but that does not, however, warrant intervention in a situation having concurrent set of facts and an appeal therefrom on the factual issue. The article

has been engrafted by the founding fathers of the Constitution for the purposes of avoiding mischief and injustice on the wrong assumption of law. The justice delivery system of the country prompts this Court to interfere under Article 136 of the Constitution when the need of the society stands established and the judgment, if left outstanding, would not only create prejudice but would also have an otherwise adverse effect on the society. [Para 25] [280-G; 281-A-C]

3.2. When there is infirmity in the decision because of excluding, ignoring and overlooking the abundant materials and the evidence, if considered in proper perspective, would have led to conclusion contrary to the one taken by both the High Court as well as the fora below, it would be open to this Court to interfere with the concurrent findings of fact. [Para 27] [282-F]

3.3. In the case at hand, the finding returned by the trial court which has been given the stamp of approval by the High Court relating to mental cruelty cannot be said to be in ignorance of material evidence or exclusion of pertaining materials or based on perverse reasoning. The conclusion on that score clearly rests on proper appreciation of facts and, hence, the same is concurred with. [Para 28] [282-G; 283-A]

State of U.P. v. Babul Nath **(1994) 6 SCC 29: 1994 (2) Suppl. SCR 598;** *Bharat Coking Coal Ltd. v. Karam Chand Thapar & Bros. Pvt. Ltd.* **(2003) 1 SCC 6: 2002 (4) Suppl. SCR 165;** *Ganga Kumar Srivastava v. State of Bihar* **(2005) 6 SCC 211 and** *Dubaria v. Har Prasad and Another* **(2009) 9 SCC 346: 2009 (14) SCR 348 - relied on.**

4. In regard to the finding recorded by the trial court and the High Court relating to desertion by the wife, as the factual matrix would reveal, both the Courts proceeded on the base that the wife had not endeavored

to reunite herself with the husband and there had long lapse of time since they had lived together as husband and wife. On the aforesaid foundation, conclusion has been drawn that there is an animus descerendi on the part of the wife. From the divorce petition, it is evident that there is no pleading with regard to desertion. The petition was not filed seeking divorce on the ground of desertion but singularly on cruelty. In the absence of a prayer in that regard, the conclusion arrived at as regards desertion by the trial court which has been concurred with by the High Court is absolutely erroneous and, accordingly, the same is overturned. [Para 29] [283-B-E]

5. The husband has proved his case of mental cruelty which was the foundation for seeking divorce. Therefore, despite dislodging of the finding of desertion, it is held that the respondent husband has rightly been granted a decree of divorce. The decree for dissolution of marriage is affirmed on the ground of mental cruelty. [Paras 30, 35] [283-F; 286-C]

6.1. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. While granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. The Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. [Para 33] [285-B-E]

6.2. In the case at hand, the respondent himself has asserted that he has earned name and fame in the world of

music and has been performing concerts in various parts of India and abroad. The duty of the Court is to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility. Regard being had to the status of the respondent-husband, the social strata to which the parties belong and further taking note of the orders of this Court on earlier occasions, it is appropriate to fix the permanent alimony at Rs 50 lacs which shall be deposited before the trial court out of which Rs.20 lacs shall be kept in a fixed deposit in the name of the child in a nationalized bank which would be utilised for his benefit. The deposit shall be made in such a manner so that the wife would be in a position to draw maximum quarterly interest. It is clarified that any amount deposited earlier shall stand excluded. [Para 34] [285-E-F-G; 286-A-C]

Vinny Parmvir Parmar v. Parmvir Parmar **(2011) 13 SCC 112: 2011 (9) SCR 371 - relied on.**

Case Law Reference:

1975 (3) SCR 967	**referred to**	**Para 10**
AIR 1990 Kerala 1	**referred to**	**Para 10**
(2002) 5 SCC 706	**referred to**	**Para 10, 22**
2002 (1) SCR 845	**referred to**	**Para 10**
1988 (1) SCR 1010	**referred to**	**Para 10**
2010 (2) SCR 554	**referred to**	**Para 10**
2006 (10) Suppl. SCR 955	**referred to**	**Para 10**
1993 (1) Suppl. SCR 796	**referred to**	**Para 10**
2007 (1) SCR 1089	**referred to**	**Para 10**
1976 (1) SCR 246	**relied on**	**Para 14**
2007 (5) SCR 367	**relied on**	**Para 15, 22**
2010 (11) SCR 38	**relied on**	**Para 16**
2011 (5) SCR 587	**relied on**	**Para 17**
2007 (4) SCR 428	**relied on**	**Para 20**
2010 (2) SCR 545	**relied on**	**Para 21**
(2012) 7 SCC 288	**relied on**	**Para 22**
1982 (1) SCR 695	**referred to**	**Para 22**
(1966) 2 WLR 993	**referred to**	**Para 22**
1993 (3) Suppl. SCR 796	**referred to**	**Para 22**
2003 (3) SCR 607	**referred to**	**Para 22**
2004 (6) Suppl. SCR 599	**referred to**	**Para 22**
(2009) 1 SCC 422	**referred to**	**Para 22**
2008 (15) SCR 972	**referred to**	**Para 22**
1994 (2) Suppl. SCR 598	**relied on**	**Para 24**
2002 (4) Suppl. SCR 165	**relied on**	**Para 25**
(2005) 6 SCC 211	**relied on**	**Para 26**
2009 (14) SCR 348	**relied on**	**Para 27**
2011 (9) SCR 371	**relied on**	**Para 33**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8927-8928 of 2012.

From the Judgment & Order dated 26.09.2011 of the High Court of Madras in MP of No. 1 of 2010, CMA No. 1656 of 2010, CMA No. 1657 of 2010.

K. Sarada Devi for the Appellant.

K.Ramamoorthy, N. Shoba, Sri Ram J. Thalapathy, S. Subbaiah, V. Adihmoolam for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. The appellant-wife instituted F.C.O.P. No. 568 of 1997 under Section 9 of the Hindu Marriage Act, 1955 (for brevity 'the Act') in the Principal Family Court, Chennai for restitution of conjugal rights. The respondent-husband filed F.C.O.P. No. 805 of 1998 under Sections 13(1)(i-a), 26 and 27 of the Act read with Section 7 of the Family Courts Act, 1984 praying for dissolution of marriage, custody of the child and return of jewellery and other items. The learned Family Judge jointly tried both the cases and, on the basis of the evidence brought on record, dismissed the application for restitution of conjugal rights preferred by the wife and allowed the petition of the husband for dissolution of marriage and held that the child would remain in the custody of the mother on the principle that welfare of the child is paramount, and further the husband was not entitled to return of jewels or any other item from the wife in the absence of any cogent evidence in that regard. The learned Family Judge, while passing the decree for dissolution of marriage, directed to pay permanent alimony of Rs. 5 lacs each to the wife and her minor son within a month.

3. Being dissatisfied by the common order, the appellant-wife preferred C.M.A. No. 1656 of 2010 and C.M.A. No. 1657 of 2010 in the High Court of Judicature at Madras and the Division Bench concurred with the conclusion as regards the decree of dissolution of marriage as a consequence of which both the appeals had to meet the fate of dismissal. However,

the Bench, apart from concurring with the grant of permanent alimony, directed the respondent-husband to pay a sum of maintenance amounting to Rs.12,500/- to the appellant-wife and her son from the date of order passed by the Chief Metropolitan Magistrate at Hyderabad till the date of the order passed by the High Court. Hence, the present two appeals have been preferred by special leave assailing the common judgment passed by the High Court in both the appeals.

4. The facts requisite to be stated for adjudication of the appeals are that the marriage between the appellant and the respondent was solemnized on 19.11.1994 at Tirupathi according to Hindu rites and customs. After entering into wedlock, they lived together at Vadapalani, Chennai. As tradition would warrant, she went to her parental home for delivery where a male child was born on 30th of May, 1995. The respondent celebrated the child's birth in his in-law's house and thereafter, the wife stayed with her parents for sometime. She returned to Chennai on 4.10.1995 and there she lived with her husband till 3.1.1996. The case of the wife in her application for restitution of marriage is that on 3.1.1996, her father-in-law, without her consent, took her to her parental home and, thereafter, the husband without any justifiable reason withdrew from her society. All efforts made by her as well as by her parents to discuss with her husband and his family members to find out a solution went in vain. In this backdrop, a prayer was made for restitution of conjugal rights.

5. The husband resisted the aforesaid stand contending, inter alia, that there was total incompatibility in the marital relationship inasmuch as she found fault with his life style, his daily routine, his likes and dislikes and picked up quarrels on trivial issues. She threw tantrums only with the exclusive purpose that she should dominate the relationship and have her own way. At the time of practising and learning music in the presence of his father, who was also his "Guru", she hurled abuses and screamed which invariably followed with arguments and quarrels. Though she was expected, as per the customs, to

show respect towards elders and to the senior artists, yet, throwing all traditional values to the wind, she would walk away by creating a scene to his utter embarrassment. His public image was totally ruined and reputation was mutilated. It was also alleged that she called her parents and threatened to initiate proceedings under the Indian Penal Code, 1860 with the help of her father, who was an I.A.S. officer in the Vigilance Department in the Government of Andhra Pradesh. With the efflux of time, the discord aggravated and the wife became more aggressive and did not allow her husband to go near her or the child. On 3.1.1996, when the wife expressed her desire to go to her parental home, he could not dare to object and she went with costly gifts received by him in India and abroad in recognition of his performance in music. Regard being had to the physical safety of the wife and the child, he requested his father to escort them to Hyderabad. While she was at Hyderabad, she spread rumours among the relatives and friends pertaining to his fidelity, character and habits. It was further asserted by the husband that she had filed the petition only to harass him and, in fact, the manner in which he had been treated clearly exhibited mental cruelty and, therefore, the said relief should not be granted. It was averred that in view of the treatment meted out to the husband, dissolution of marriage was the only solution and not restitution of conjugal rights.

6. The respondent, in his petition for divorce, pleaded that after abandoning formal education, he pursued his career in music treating it as a concept of 'bhakti' or devotion. He had to continue his 'sadhana' as a daily routine under the guidance of his father as it was necessary to understand the nuances and the subtleties of music which could only be gathered by experience and acquisition of knowledge at the feet of a "guru" and also to keep alive "the Guru-Sishya Parampara". The aforesaid aspect of his life was not liked by his wife and she always interrupted hurling abuses at him. Despite his best efforts to make his wife understand the family tradition and show reverence to the seniors in the sphere of music, she remained

obstinate in her attitude and chose to walk away causing him not only embarrassment in public but also humiliation which affected his reputation and self respect. That apart, whenever the husband visited her at the parental home, he was deprived of conjugal rights and physically prevented from playing with the child. In spite of his sacrifice and efforts to adjust with her mental attitude, she remained adamant and her behavioural pattern remained painfully consistent. Gradually, her behaviour became very cruel and, eventually, he was compelled to file a case for judicial separation to which, as a counterblast, she filed a case for restitution of conjugal rights. She had communicated with her friends that she would like to see her husband behind bars on the ground of dowry harassment. She had also threatened that if he took part in any musical concert at Hyderabad, his life shall be endangered. Put in such a situation, left with no other alternative, he was compelled to file a petition for dissolution of marriage.

7. As the factual narration would unfurl, the wife in the written statement asserted that she was aware of the importance of music, its traditional values and clearly understood the devotion and dedication as she herself was a `Veena' player and because of her sacrifice, her husband had gained reputation and popularity which also enhanced his financial status, but, with the rise, he failed to perform his duties as a husband. She denied the interruption in the practice sessions and controverted the factum of maltreatment. It was averred that as the husband had gained reputation, his parents and other relatives thought of a second marriage so that he could get enormous dowry. She denied the scandalous allegations and stated that she was proud of her husband's accomplishments. She justified her filing of petition before the Chief Metropolitan Magistrate for grant of maintenance as he was absolutely careless and negligent to look after her and the child. It was further pleaded that the grounds mentioned in the petition were vexatious and frivolous and, therefore, there was no justification for grant of a decree of divorce.

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8. The learned Family Judge framed seven issues and, considering the oral and documentary evidence brought on record, came to hold that the wife had treated the husband with cruelty; that she had not taken any steps for re-union and had deserted him for thirteen years without any valid reason and, hence, the husband was entitled for a decree of divorce and she was not entitled to have a decree for restitution of conjugal rights. The learned Family Judge directed that the custody of the child should remain with the mother and the husband had miserably failed to make out a case for return of jewels and other items. He granted permanent alimony as stated earlier.

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9. Being grieved by the aforesaid decision of the learned Family Judge, the wife preferred two appeals. On behalf of the appellant-wife, it was urged before the High court that the judgment and decree passed by the Family Court regarding grant of divorce was passed on assumptions and presumptions; that she had suffered immense humiliation and hardship at the hands of the family members of the husband but the Family Court did not appreciate the said facet in proper perspective; that the finding relating to desertion by the wife was contrary to the evidence on record and, in fact, it was the case that the husband had left the wife in the lurch at her parental home and did not think for a moment to bring her back; that the allegation with regard to the interruption in the music learning sessions and her dislike of her husband had been deliberately stated to make out a case of mental cruelty; that certain documents had been placed reliance upon by the learned Family Judge though they were not admissible in evidence and further the documents produced by the wife had not been properly appreciated and dealt with; and that the court below would have been well advised, in the obtaining factual matrix, to direct restitution of conjugal rights. It is worth noting that alternatively it was urged that the trial Court had committed an error in granting permanent alimony of Rs. 10 lacs in toto, regard being had to the income of the husband.

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10. In appeal, the High Court, after noting the respective contentions advanced by the learned counsel for the parties, proceeded to appreciate the essential ingredients which are necessary to be established to sustain a petition under Section 9 of the Act. After referring to certain decisions in the field and the concept of mental cruelty as stated in Halsbury's Laws of England, 4th Edn., Vol. 13, para 623 and American Jurisprudence and the dictum laid down in *N.G. Dastane v. S. Dastane*[1], *Rajani v. Subramaniam*[2], *Parveen Mehta v. Inderjit Mehta*[3], *Gananath Pattnaik v. State of Orissa*[4], *Shobha Rani v. Madhukar Reddi*[5], *Manisha Tyagi v. Deepak Kumar*[6], *Sujata Uday Patil v. Uday Madhukar Patil*[7], *Chanderkala Trivedi v. Dr. S.P. Trivedi*[8] and *Pranay Majumdar v. Bina Majumdar*[9], the High Court came to hold that the material brought on record showed that the wife had gone to the parental home on 3.1.1996 and made no efforts to get reunited with the husband and, as per the evidence on record, she had admitted in the testimony recorded in O.P. No. 568 of 1995 that the relations between her and her husband were cordial till she left the matrimonial home. The High Court found that her depositions were contradictory inasmuch as on one hand she had stated that she had been ill-treated and on the other that there was cordial relationship. As is noticeable, the High Court referred to the xerox copy of the letter Exhibit R-8 dated 18.10.1995 written in her handwriting to her parents and observed that when the said letter was summoned from her father she stated that there was no such letter and on that

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1. (1975) 2 SCC 326.
2. AIR 1990 Kerala 1.
3. (2002) 5 SCC 706.
4. (2002) 2 SCC 619.
5. (1988) 1 SCC 105.
6. (2010) 4 SCC 339.
7. (2006) 13 SCC 272.
8. (1993) 4 SCC 232.
9. (2007) 9 SCC217.

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ground the admissibility was called in question. The High Court opined that when the efforts were made to get the primary evidence and it could not be obtained, the secondary evidence could be adduced and that would be admissible under Section 65 of the Evidence Act. Be it noted, the English translation of the said letter was marked as Exhibit R-9 which indicated that the wife had clearly stated that she had spoken ill of her mother-in-law and others and had expressed her desire to seek divorce as she could not stay any longer in the matrimonial home. It was observed by the Bench that the conduct of the wife clearly established desertion and her behaviourial pattern exhibited mental cruelty meted out to the husband. The High Court also took note of the fact that a stage had reached where it had become well nigh impossible for the couple to live together. Regard being had to the totality of the circumstances, the High Court gave the stamp of approval to the common judgment and decree passed by the learned Family Court.

11. We have heard Mrs. K. Sarada Devi, learned counsel for the appellant, and Mr. K. Ramamoorthy, learned senior counsel for the respondent. It is contended by Mrs. Sarada Devi that the learned Family Judge as well as the High Court had failed to appreciate that neither mental cruelty nor desertion had been established as per the law. It is contended by her that Exh. R-8 and R-9 were not admissible in evidence inasmuch as they could not be treated as secondary evidence as envisaged under Section 65 of the Evidence Act. It is further urged that the whole decision for granting divorce and denying restitution of conjugal rights has been based regard being had to the total break down of marriage but the said ground is not a legally permissible one to grant divorce.

12. Mr. K. Ramamoorthy, learned senior counsel appearing for the respondent, per contra, would submit that the said observation is one of the facets, but the High Court has, after due deliberations, returned findings relating to cruelty and

desertion and the same being founded on proper appreciation of the material on record, this Court should not interfere in exercise of appeal entertained by grant of leave under Section 136 of the Constitution of India.

13. At this juncture, we may note with profit that as a matter of fact, the High Court has observed that it has become well nigh impossible for the husband and the wife to live together and the emotional bond between the parties is dead for all purposes. We have noted this aspect for completeness, but we will not address the said facet and will restrict our delineation only towards the justifiability of the conclusions pertaining to mental cruelty and desertion.

14. Before we dwell upon the tenability of the conclusions of desertion and mental cruelty, we think it condign to deal with the submission whether the photostat copy of the letter alleged to have been written by the wife to her father could have been admitted as secondary evidence. As the evidence on record would show, the said letter was summoned from the father who had disputed its existence. The learned Family Court Judge as well as the High Court has opined that when the person is in possession of the document but has not produced the same, it can be regarded as a proper foundation to lead secondary evidence. In this context, we may usefully refer to the decision in *Ashok Dulichand v. Madahavlal Dube*[10] wherein it has been held that according to clause (a) of Section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it. Thereafter, the Court addressed to the facts of the case and opined thus: -

10. (1975) 4 SCC 664.

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"In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on July 4, 1973, before Respondent 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case Respondent 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of Respondent 1. There was also no other material on the record to indicate that the original document was in the possession of Respondent 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent 1 in his affidavit denied being in possession of or having anything to do with such a document."

Be it noted, in this backdrop, the High Court had recorded a conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy and this Court did not perceive any error in the said analysis.

15. In *J. Yashoda v. K. Shobha Rani*[11]*,* after analyzing the language employed in Sections 63 and 65 (a), a two-Judge Bench held as follows:-

"Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary

11. (2007) 5 SCC 730.

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evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section."

16. In *M. Chandra v. M. Thangamuthu and Other*[12], It has been held as follows:-

"It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party."

17. Recently, in *H. Siddiqui (Dead) by Lrs. v. A. Ramalingam*[13], while dealing with Section 65 of the Evidence Act, this Court opined though the said provision permits the parties to adduce secondary evidence, yet such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or

12. (2010) 9 SCC 712.

13. (2011) 4 SCC 240.

other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It has been further held that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

18. In the case at hand, the learned Family Judge has really not discussed anything relating to foundational evidence. The High Court has only mentioned that when the letter was summoned and there was a denial, the secondary evidence is admissible. In our considered opinion, such a view is neither legally sound nor in consonance with the pronouncements of this Court and, accordingly, we have no hesitation in dislodging the finding on that score.

19. The next facet which is to be dwelled upon is whether the appellant had treated her husband with mental cruelty. The legal sustainability of the said conclusion has to be tested keeping the photostat copy of the letter out of consideration. At the very outset, we may state that there is no cavil over the proposition as to what cruelty includes. Regard being had to the same, we shall refer to certain authorities.

20. In *Samar Ghosh v. Jaya Ghosh*[14], a three-Judge Bench, after dealing with the concept of mental cruelty, has observed thus:-

> "99. … The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.
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> 100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances…."

14. (2007) 4 SCC 511.

21. In *Ravi Kumar v. Julmidevi*[15], this Court has expressed thus: -

> "In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety-it may be subtle or even brutal and may be by gestures and words."

22. Recently, this Court, in *Vishwanath Agrawal, s/o*

15. (2010) 4 SCC 476.

Sitaram Agrawal v. Sarla Vishwanath Agrawal[16], while dealing with the conception of cruelty, has stated that it has inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperament and emotions that have been conditioned by the social status. The two-Judge Bench referred to the decisions in *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasikhan*[17], *Shobha Rani* (supra), *Sheldon v. Sheldon*[18], *V. Bhagat v. D. Bhagat*[19], *Parveen Mehta* (supra), *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*[20], *A. Jayachandra v. Aneel Kaur*[21], *Vinita Saxena v. Pankaj Pandit*[22], *Samar Ghosh* (supra) and *Suman Kapur v. Sudhir Kapur*[23], and opined that when the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable, it would amount to mental cruelty. Emphasis was laid on the behavioral pattern of the wife whereby a dent is created in the reputation of the husband, regard being had to the fact that reputation is the salt of life.

23. In the case at hand, the husband has clearly deposed about the constant and consistent ill-treatment meted out to him by the wife inasmuch as she had shown her immense dislike to his "sadhna" in music and had exhibited total indifference and, in a way, contempt to the tradition of teacher and disciple. It has graphically been demonstrated that she had not shown the slightest concern for the public image of her husband on

16. (2012) 7 SCC 288.
17. (1981) 4 SCC 250.
18. (1966) 2 WLR 993.
19. (1994) 1 SCC 337.
20. (2003) 6 SCC 334.
21. (2005) 2 SCC 22.
22. (2009) 1 SCC 422.
23. (2009) 1 SCC 422.

many an occasion by putting him in a situation of embarrassment leading to humiliation. She has made wild allegations about the conspiracy in the family of her husband to get him re-married for the greed of dowry and there is no iota of evidence on record to substantiate the same. This, in fact, is an aspersion not only on the character of the husband but also a maladroit effort to malign the reputation of the family. The learned Family Judge as well as the High Court has clearly analysed the evidence and recorded a finding that the wife had treated the husband with mental cruelty. True it is, there is some reference in that regard to the photostat copy of the letter which we have not accepted as admissible in evidence but the other evidence brought on record clearly support the findings recorded by the learned Family Judge and the High Court and the said finding remains in the realm of fact.

24. This Court, in *State of U. P. v. Babul Nath*[24], while considering the scope of Article 136 as to when this Court is entitled to upset a finding of fact, has observed thus: -

> "5. At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

25. In *Bharat Coking Coal Ltd. v. Karam Chand Thapar & Bros. Pvt. Ltd.*[25], this Court opined that the jurisprudence under Article 136 stands out to be extremely wide but that does

24. (1994) 6 SCC 29.
25. (2003) 1 SCC 6.

not, however, warrant intervention in a situation having concurrent set of facts and an appeal therefrom on the factual issue. The article has been engrafted by the founding fathers of the Constitution for the purposes of avoiding mischief and injustice on the wrong assumption of law. The justice delivery system of the country prompts this Court to interfere under Article 136 of the Constitution when the need of the society stands established and the judgment, if left outstanding, would not only create prejudice but would also have an otherwise adverse effect on the society. Further elaborating, the Bench ruled thus:-

> "The jurisdiction under Article 136 stands out to be extremely wide but that does not, however, warrant intervention having concurrent set of facts and an appeal therefrom on the factual issue. The article has been engrafted by the founding fathers of the Constitution for the purposes of avoiding mischief of injustice on the wrong assumption of law. The justice delivery system of the country prompts this Court to interfere under Article 136 of the Constitution when the need of the society stands established and the judgment, if left outstanding, would not only create prejudice but would have an otherwise adverse effect on to the society - it is this solemn objective of administration of justice with which the Constitution-makers thought it prudent to confer such a power on to the Apex Court of the country. It is the final arbiter but only when the dispute needs to be settled by the Apex Court so as to avoid injustice and infraction of law."

26. In *Ganga Kumar Srivastava v. State of Bihar*[26], after referring to the earlier authorities, this Court culled out certain principles which would invite exercise of power of this Court under Article 136 of the Constitution:-

> (i) The powers of this Court under Article 136 of the Constitution *are very wide* but in criminal appeals this Court does not interfere with the concurrent findings of fact *save* in *exceptional circumstances*.
>
> (ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has *acted perversely or otherwise improperly*.
>
> (iii) It is open to this Court to invoke the power under Article 136 only in *very exceptional circumstances* as and when a question of law of general public importance arises *or a decision shocks the conscience of the Court.*
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> (iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.
>
> (v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or *where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.*

26. (2005) 6 SCC 211.

27. In *Dubaria v. Har Prasad and Another*[27], it has been held that when there is infirmity in the decision because of excluding, ignoring and overlooking the abundant materials and the evidence, if considered in proper perspective, would have led to conclusion contrary to the one taken by both the High Court as well as the fora below, it would be open to this Court to interfere with the concurrent findings of fact.

28. Tested on the touchstone of the aforesaid principles, we have no trace of doubt that the finding returned by the Family Judge which has been given the stamp of approval by the High Court relating to mental cruelty cannot be said to be in ignorance of material evidence or exclusion of pertaining

27. (2009) 9 SCC 346.

materials or based on perverse reasoning. In our view, the conclusion on that score clearly rests on proper appreciation of facts and, hence, we concur with the same.

29. Presently, we shall advert to the finding recorded by the learned Family Judge and the High Court relating to desertion by the wife. As the factual matrix would reveal, both the Courts have proceeded on the base that the wife had not endeavored to reunite herself with the husband and there had long lapse of time since they had lived together as husband and wife. On the aforesaid foundation, the conclusion has been drawn that there is an animus descerendi on the part of the wife. To test the tenability of the said conclusion, we have perused the petition for divorce from which it is evident that there is no pleading with regard to desertion. It needs no special emphasis to state that a specific case for desertion has to be pleaded. It is also interesting to note that the petition was not filed seeking divorce on the ground of desertion but singularly on cruelty. In the absence of a prayer in that regard, we are constrained to hold that the conclusion arrived at as regards desertion by the learned Family Judge which has been concurred with by the High Court is absolutely erroneous and, accordingly, we overturn the same.

30. From the foregoing analysis, it is established that the husband has proved his case of mental cruelty which was the foundation for seeking divorce. Therefore, despite dislodging the finding of desertion, we conclude and hold that the respondent husband has rightly been granted a decree of divorce.

31. The next issue that emerges for consideration pertains to the grant of permanent alimony. It is noticeable that the wife had filed a case for grant of maintenance and residence under the Hindu Adoptions and Maintenance Act, 1956 at Hyderabad. The High Court has granted Rs. 12,500/- per month from the date of filing of the petition for maintenance and Rs.5 Lacs each to the wife and son towards permanent alimony. Whether

the High Court should have granted Rs.12500/- as maintenance need not be addressed by us inasmuch as we are inclined to deal with this issue of grant of permanent alimony in a different backdrop. As is evincible from the orders of this Court when the matters were listed on 9.4.2012, the Court had taken note of the fact that the wife and son have been living separately at Hyderabad for about 16 years and, in that context, the following order was passed :-

> "Looking to the financial and social status of the parties, we request the learned senior counsel appearing for the respondent to ask his client to arrange for one flat for the petitioner and their so that they can live in the said flat comfortably.
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> On this suggestion, being given by the Court, learned senior counsel appearing for the respondent prayed for time to seek instructions."

32. On 30.4.2012, the following order came to be passed:-

> "As per the Order passed by this Court on 09.04.2012, learned senior counsel appearing for the respondent-husband informed that respondent is ready and willing to buy a flat for the petitioner in Hyderabad, so that she will have a roof over her head for all the times to come.
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> However, the details of the same are required to be worked out.
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> It is, therefore, desirable that both the parties should remain present in this Court on 10.07.2012.
>
> Without prejudice, a sum of Rs. 10 lakhs by way of Demand Draft is being paid by the respondent- husband to petitioner-wife. Other Rs. 10 lakhs is in deposit with the Family Court at Chennai. Petitioner will be at liberty to withdraw this amount."

33. We have reproduced the aforesaid orders to highlight that the husband had agreed to buy a flat at Hyderabad. However, when the matter was listed thereafter, there was disagreement with regard to the locality of the flat arranged by the husband and, therefore, the matter was heard on merits. We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In *Vinny Parmvir Parmar v. Parmvir Parmar*[28], while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

34. Keeping in mind the aforesaid broad principles, we may proceed to address the issue. The respondent himself has asserted that he has earned name and fame in the world of music and has been performing concerts in various parts of India and abroad. He had agreed to buy a flat in Hyderabad though it did not materialise because of the demand of the wife to have a flat in a different locality where the price of the flat is extremely high. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune. Regard being had to the status of the husband, the social strata to which the parties

28. (2011) 13 SCC 112

belong and further taking note of the orders of this Court on earlier occasions, we think it appropriate to fix the permanent alimony at Rs 50 lacs which shall be deposited before the learned Family Judge within a period of four months out of which Rs.20 lacs shall be kept in a fixed deposit in the name of the son in a nationalized bank which would be utilised for his benefit. The deposit shall be made in such a manner so that the appellant wife would be in a position to draw maximum quarterly interest. We may want to clarify that any amount deposited earlier shall stand excluded.

35. On the basis of the forgoing discussion, the decree for dissolution of marriage is affirmed only on the ground of mental cruelty which eventually leads to dismissal of the appeals. The parties shall bear their respective costs.

B.B.B. Appeals dismissed.

GIRISH CHANDRA GUPTA
v.
M/S UTTAR PRADESH INDUSTRIAL DEVELOPMENT CORPORATION LTD. & ORS.
(Civil Appeal No. 8920 of 2012)

DECEMBER 11, 2012.

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969:

s. 12-B - Power of MRTP Commission to award compensation - Compensation applications dismissed by the Competition Appellate Tribunal on the ground that the appellants had not initiated separate proceedings either u/s 10 or s. 36B of the Act - Held: The powers vested in the MRTP Commission under sub-s. (3) of s. 12B are independent of its powers u/s 10 and s. 36B - Impugned orders of the Competition Appellate Tribunal are set aside - Applications directed to be decided on merits.

The appellants filed two compensation applications u/s 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) before the Monopolies and Restrictive Trade Practices Commission (MRTP Commission). On coming into force of the Competition Act, 2002, the said applications stood transferred to the Competition Appellate Tribunal. The respondents raised preliminary objections to the maintainability of the applications on the ground that the appellants had not initiated separate proceedings before the MRTP Commission either u/s 10 or s. 36B of the MRTP Act alleging unfair trade practices by the respondents and in the absence of any such separate proceedings, the compensation applications were not maintainable. The

Competition Appellate Tribunal, accordingly, dismissed the applications.

Allowing the appeals, the Court

HELD: 1.1. The MRTP Commission has been vested with the powers under sub-s. (3) of s 12B of the MRTP Act to make an inquiry to the allegations of monopolistic or restrictive or unfair trade practice made in the application filed under sub-s. (1) of s. 12B and to determine the amount of compensation realizable from the undertaking or the owner thereof, or, as case may be, from the other person, towards loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person. These powers vested in the MRTP Commission under sub-s. (3) of s. 12B are independent of its powers u/s 10 and s. 36B. [para 11] [297-D-F]

1.2. In fact, s.12B was introduced in the MRTP Act by Act 30 of 1984 as an independent remedy for a claimant in addition to a suit that he may file to claim any loss or damage that he may suffer by reason of any monopolistic or restrictive or unfair trade practice as would be clear from sub-s.(4) of s. 12B. There is no reference at all in s. 12B to the provisions of either s. 10 or s. 36B, and if Parliament intended that the power of the MRTP Commission to award compensation u/s 12B was to be dependent on the exercise of power of MRTP Commission either u/s 10 or u/s 36B, Parliament would have made this intention clear in the language of some provision in s.12B. There is also no reference in either s. 10 or in s.36B to any of the provisions of s. 12B and if the Parliament intended to make ss. 10, 12B and 36B interdependent, there would have been some indication of this intention of Parliament in s. 10 or in s. 36B. Thus, the Competition Appellate Tribunal clearly erred in

coming to the conclusion that interdependence of the provisions of s. 10 or s. 36B with s.12B cannot be lost sight of and in the absence of a separate proceeding alleging unfair, monopolistic or restrictive trade practice, an application for compensation u/s 12B is not maintainable. [para 12] [297-G-H; 298-A-E]

1.3. The impugned orders of the Competition Appellate Tribunal are set aside. It will be open to the respondents to raise a plea before the Competition Appellate Tribunal that the appellants have not made out any case of monopolistic or restrictive trade practice or unfair trade practice in terms of s.12B of the MRTP Act and if such plea is raised it will be decided by the Competition Appellate Tribunal on its own merits following the decision of this Court in the case of Saurabh Prakash. [para 13] [298-F-G]

M/s Pennwalt (I) Ltd. & Anr. v. Monopolies and Restrictive Trade Practices Commission & Ors. **AIR 1999 Delhi 23; and** *R.C. Sood And Co. (P.) Ltd. & Ors. v. Monopolies and Restrictive Trade Practices Commission & Anr.* **1996 Vol.86 Company Cases 626 Delhi - approved.**

Saurabh Prakash vs. DLF Universal Ltd. **2006 (9) Suppl. SCR 625 = 2007 (1) SCC 228 - referred to.**

Case Law Reference:

2006 (9) Suppl. SCR 625	**referred to**	**para 3**
AIR 1999 DELHI 23	**approved**	**para 4**
1996 Vol.86 Company cases 626 Delhi	**approved**	**para 6**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8920 of 2012.

From the Judgment & Order dated 20.5.2011 of the

Competition Appellate Tribunal, New Delhi in CA. No. 110 of 1997.

WITH

C.A. No. 8921 of 2012.

Siddharth Bhatnagar, Pawan Kumar Banasal, T. Mahipal, Alex Joseph, Manoj V. George, K. Gireesh, Mohd. Irshad Hanif, Purvish Jitendra Malkan, Kiran Suri, S.J. Amith, Rakesh Uttamchandra Upadhyay for the appearing parties.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. Leave granted.

2. The facts very briefly in these two appeals are that the appellants filed compensation applications C.A. No.110 of 1997 and C.A. No.126 of 2008 under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (for short 'the MRTP Act') before the Monopolies and Restrictive Trade Practices Commission (for short 'the MRTP Commission') constituted under the MRTP Act. By Section 66(1) of the Competition Act, 2002, the MRTP Act was repealed and the MRTP Commission was dissolved. Section 66(3) of the Competition Act, 2002 provided that all cases pertaining to monopolistic trade practices or restrictive trade practices pending before the MRTP Commission shall, on the commencement of the Competition (Amendment) Ordinance, 2009, stand transferred to the Competition Appellate Tribunal constituted under the Competition Act, 2002 and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the MRTP Act as if the MRTP Act had not been repealed. Consequently, the two compensation applications filed by the appellants stood transferred to the Competition Appellate Tribunal. Before the Competition Appellate Tribunal, the respondents in the two appeals raised preliminary objections to the maintainability of the compensation applications filed by the appellants. They contended that the appellants had not initiated separate proceedings either under

Section 10 or under Section 36B of the MRTP Act alleging unfair trade practices by the respondents and in the absence of any such separate proceedings initiated by the respondents before the MRTP Commission, the compensation applications of the appellants under Section 12B of the MRTP Act were not maintainable.

3. This preliminary question raised by the respondents was also raised in C.A. No.108 of 2005 filed by Info Electronics System Ltd. against Sutran Corporation and the Competition Appellate Tribunal by its order dated 29.03.2011 passed in C.A. No.108 of 2005 (Info *Electronics System Ltd. v. Sutran Corporation*) held, relying on a judgment of this Court in *Saurabh Prakash v. DLF Universal Ltd.* [(2007) 1 SCC 228], that in the absence of separate proceedings alleging unfair, monopolistic or restrictive trade practice, an application for compensation under section 12B of the MRTP Act is not maintainable and accordingly dismissed C.A. No.108 of 2005. Following the aforesaid order dated 29.03.2011 in C.A. No.108 of 2005, the Competition Appellate Tribunal also dismissed C.A. No.126 of 2008 on 26.04.2012 and C.A. No.110 of 1997 on 20.05.2011 filed by the appellants in the Civil Appeals before us. Aggrieved, the appellants have filed these appeals.

4. Mr. Siddharth Bhatnagar, learned counsel for the appellant in the Civil Appeal arising out of S.L.P. (C) No.28463 of 2011, submitted that this Court has not held in *Saurabh Prakash v. DLF Universal Ltd.* (supra), on which the Competition Appellate Tribunal has placed reliance, that in the absence of any separate proceedings either under Section 10 or Section 36B of the MRTP Act, an application for compensation under Section 12B of the MRTP Act is not maintainable. He submitted that a reading of Section 12B of the MRTP Act rather shows that an independent proceeding under Section 12B of the MRTP Act for compensation can be initiated by an applicant. He relied on the decision in *M/s Pennwalt (I) Ltd. & Anr. v. Monopolies and Restrictive Trade Practices Commission & Ors.* [AIR 1999 DELHI 23] in which,

after examining the provisions of Sections 10, 36B and other provisions of the MRTP Act, the Delhi High Court has held that the proceedings under Section 12B of the MRTP Act are not dependent on proceedings under Section 10 or 36B of the MRTP Act and that a preliminary inquiry as envisaged in Section 11 or Section 36C is not a condition precedent to the maintainability of the claim under Section 12B of the MRTP Act.

5. Mr. Rakesh Uttamchandra Upadhyay, learned counsel for the respondents in the Civil Appeal arising out of SLP(C) No.28463 of 2011, on the other hand, submitted that a claim for compensation under Section 12B of the MRTP Act cannot be decided without an inquiry either under Section 10 or under Section 36B of the MRTP Act. He submitted that the view taken by the Competition Appellate Tribunal that without a proceeding either under Section 10 or Section 36B of the MRTP Act a claim for compensation under Section 12B of the MRTP Act was not maintainable is, therefore, correct. He further submitted that the case of the respondent U.P. Industrial Development Corporation Limited in C.A. No.110 of 1997 was that the grievance of the appellant did not relate to any unfair trade practice but relates to a breach of contract and such a claim for compensation cannot be entertained under Section 12B of the MRTP Act.

6. Mr. Alex Joseph, learned counsel for the appellants in the Civil Appeal arising out of S.L.P. (C) No.17380 of 2012, submitted that the Delhi High Court in yet another decision in *R.C. Sood And Co. (P.) Ltd. & Ors. v. Monopolies and Restrictive Trade Practices Commission & Anr.* [1996 Vol.86 Company cases 626 Delhi] has held that it is not necessary that the MRTP Commission should first inquire or investigate into the allegations of monopolistic, restrictive and unfair trade practices carried on by any person or undertaking under Section 10, Section 36B or Section 37(1) of the MRTP Act before issuing notice in the application filed under Section 12B of the MRTP Act and sub-section (3) of Section 12B of the MRTP Act clearly shows that the MRTP Commission is

required to make an inquiry into the allegations set out in the application filed under sub-section (1) of Section 12B and only after making such an inquiry pass an order directing the owner of the undertaking or the person who has indulged in monopolistic, restrictive and unfair trade practice, to make payment to the applicant of the amount determined by the MRTP Commission.

7. Mrs. Kiran Suri, learned counsel for the respondent in the Civil Appeal arising out of S.L.P. (C) No.17380 of 2012, submitted that the jurisdiction of the MRTP Commission is based on a finding of unfair trade practice and such finding can only be recorded under Section 36B of the MRTP Act. She submitted that Section 11 of the MRTP Act empowers the Director General to make an inquiry and there is no mechanism of inquiry in Section 12B of the MRTP Act. She vehemently argued that Section 12B of the MRTP Act, therefore, cannot be read as an independent Code.

8. We have considered the submissions of the learned counsel for the parties and we find that in *Saurabh Prakash v. DLF Universal Ltd.* (supra) this Court was called upon to decide whether the MRTP Commission had jurisdiction to entertain an application under Section 12B of the MRTP Act when no case of indulgence in unfair trade practice or restrictive trade practice was made out and this Court held that the power of the MRTP Commission to award compensation is restricted to a case where loss or damage had been caused as a result of monopolistic or restrictive or unfair trade practice but it had no jurisdiction where damage is claimed for mere breach of contract. In the aforesaid decision in *Saurabh Prakash v. DLF Universal Ltd.* (supra) on which reliance has been placed by the Competition Appellate Tribunal in the impugned orders, this Court did not at all consider the question whether an application under Section 12B of the MRTP Act was maintainable without initiation of separate proceedings either under Section 10 or under Section 36B of the MRTP Act.

9. The decision of the Division Bench of the Delhi High

Court in *M/s Pennwalt (I) Ltd. & Anr. v. Monopolies and Restrictive Trade Practices Commission & Ors.* (supra) and the decision of the learned Single Judge of the Delhi High Court in *R.C. Sood And Co. (P.) Ltd. & Ors. v. Monopolies and Restrictive Trade Practices Commission & Anr.* (supra), cited before us by the learned counsel for the appellants, however, hold that an application for compensation under Section 12B of the MRTP Act was maintainable without any proceeding being initiated under Section 10 or Section 36B of the MRTP Act. We have perused the aforesaid two decisions of the Division Bench and the learned Single Judge of the Delhi High Court and in our considered opinion the Division Bench as well as the learned Single Judge of the Delhi High Court have correctly interpreted the provisions of Sections 10, 12B and 36B of the MRTP Act.

10. Sections 10, 12B and 36B of the MRTP Act are extracted hereinbelow:

"**10. Inquiry into monopolistic or restrictive trade practices by Commission -** The Commission may inquiry into -

(a) any restrictive trade practice -

(i) upon receiving a complaint of facts which constitute such practice from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon an application made to it by the Director General, or

(iv) upon its own knowledge or information;

(b) any monopolistic trade practice, upon a reference made to it by the Central Government or upon an application

made to it by the Director General or upon its own knowledge or information.

12B. Power of the Commission to award compensation. - (1) Where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class or traders or any consumer, such government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.

(2) Where any loss or damage referred to in sub-section (l) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application, under that sub-section, for and on behalf of, or for the benefit of, the persons so interested, and thereupon the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other

person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person.

(4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (l) has been passed by any court in favour of any person or persons referred to in sub-section (1), or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section(3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off.

36B. Inquiry into unfair trade practices by Commission - The Commission may inquire into any unfair trade practice, -

(a) upon receiving a complaint of facts which constitutes such practice from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not; or

(b) upon a reference made to it by the Central Government or a State Government; or

(c) upon an application made to it by the Director General; or

(d) upon its own knowledge or information."

11. On a reading of sub-section (1) of Section 12B of the MRTP Act, it will be clear that where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government

or any trader or class or traders or any consumer, such government or, as the case may be, trader or class of traders or consumer may make an application to the MRTP Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the MRTP Commission may determine, as compensation for the loss or damage so caused. Sub-section (3) of Section 12B of the MRTP Act further provides that the MRTP Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person. Thus, the MRTP Commission has been vested with the powers under sub-section (3) of Section 12B of the MRTP Act to make an inquiry to the allegations of monopolistic or restrictive or unfair trade practice made in the application filed under sub-section (1) of Section 12B of the MRTP Act and to determine the amount of compensation realizable from the undertaking or the owner thereof, or, as case may be, from the other person, towards loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person. These powers vested in the MRTP Commission under sub-section (3) of Section 12B of the MRTP Act are independent of its powers under Section 10 and Section 36B of the MRTP Act.

12. In fact, Section 12B was introduced in the MRTP Act by Act 30 of 1984 as an independent remedy for a claimant in addition to a suit that he may file to claim any loss or damage that he may suffer by reason of any monopolistic or restrictive or unfair trade practice as would be clear from sub-section (4) of Section 12B quoted above. There is no reference at all in

Section 12B of the MRTP Act to the provisions of either Section 10 or Section 36B of the MRTP Act and if Parliament intended that the power of the MRTP Commission to award compensation under Section 12B of the MRTP Act was to be dependent on the exercise of power of MRTP Commission either under Section 10 or under Section 36B of the MRTP Act, Parliament would have made this intention clear in the language of some provision in Section 12B of the MRTP Act. There is also no reference in either Section 10 or in Section 36B of the MRTP Act to any of the provisions of Section 12B of the MRTP Act and if the Parliament intended to make Sections 10, 12B and 36B of the MRTP Act interdependent, there would have been some indication of this intention of Parliament in Section 10 or in Section 36B of the MRTP Act. In the absence of any such indication of this intention of Parliament to make the provisions of Section 12B of the MRTP Act dependent on initiation of an inquiry or proceeding under Section 10 or Section 36B of the MRTP Act, the Competition Appellate Tribunal clearly erred in coming to the conclusion that interdependence of the provisions of Section 10 or Section 36B with Section 12B cannot be lost sight of and in the absence of a separate proceeding alleging unfair, monopolistic or restrictive trade practice, an application for compensation under Section 12B of the MRTP Act is not maintainable.

13. We, therefore, set aside the impugned orders of the Competition Appellate Tribunal, but leave it open to the respondents to raise a plea before the Competition Appellate Tribunal that the appellants have not made out any case of monopolistic or restrictive trade practice or unfair trade practice in terms of Section 12B of the MRTP Act and if such plea is raised it will be decided by the Competition Appellate Tribunal on its own merits following the decision of this Court in *Saurabh Prakash v. DLF Universal Ltd.* (supra). The appeals are allowed. There shall be no order as to costs.

R.P. Appeals allowed.