HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

WRIT PETITION No.21578 OF 2013

Between:-

Ch. China Galaiah,
S/o. Galaiah, Aged about 41 years,
Occ: A.R.P.C.2773 (Under Dismissal),
D.A.R. Guntur,
R/o. Guntur – 522 001. ...Petitioner.

Versus

The Inspector General of Police,
Guntur Range, Guntur and another. ...Respondents

****

DATE OF JUDGMENT PRONOUNCED : 14.09.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.V. SESHA SAI
&
THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copy of Judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

JUSTICE A V SESHA SAI

JUSTICE VENKATA JYOTHIRMAI PRATAPA

*** THE HON'BLE SRI JUSTICE A.V. SESHA SAI**
&
THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

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! Counsel for the Petitioner : Sri K.R. Srinivas

^ Counsel for the Respondents : Sri G.V.S. Kishore Kumar
GP for services-I

< Gist:

> Head Note:

? Cases referred:

1) **(1999) 3 Supreme Court Cases 679**
2) **(2006) 5 Supreme Court Cases 446**
3) **WP No.36081 of 2017 Dt.04.08.2023 of High Court of Andhra Pradesh.**
4) **2022 (1) SCC**
5) **2022 SCC Online SC 284**
6) **2022 SCC Online SC 1282**
7) **2022 (1) SCC 373**

HON'BLE SRI JUSTICE A.V. SESHA SAI

AND

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION No.21578 of 2013

ORDER:(***Per Hon'ble Sri A.V. Sesha Sai)***

In the present Writ petition challenge is to the order dated 5.7.2012, passed by the Andhra Pradesh Administrative Tribunal (herein after called as 'Tribunal'), dismissing O.A.No.3320 of 2010, instituted by the Writ Petitioner under Section 19 of the Administrative Tribunals Act, 1985. In the said Original Application, the petitioner herein challenged the order of dismissal dated 04.10.2008, passed by the Superintendent of Police, Guntur, Guntur District, as confirmed in appeal by the Inspector General of Police, Guntur range.

2. In view of the registration of crime against the petitioner, who was a constable, in connection with the death of his wife, the disciplinary authority issued a charge memo dated 15.09.2007, framing the following two articles of charges:

> ARTICLE-I
>
> ARPC 2773 Ch China Galaiah of DAR, Guntur now under suspension has exhibited grave misconduct by brutally murdered his wife by name Ch. Devamani, 30 years and subsequently involved as an accused in Criminal case in Cr. No. 86/07 U/s. 302, 201 IPC of Nagarampalem L&O PS. He was arrested on 02.04.07 at 11.00 PM and sent for remand.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of articles of charge framed against ARPC 2773 Ch. China Galaiah of DAP, Guntur now under suspension.

ARTICLE-II

ARPC 2773 Ch. China Galaiah worked in DAR, Guntur till he was placed under suspension. While working in DAR, Guntur, his marriage was performed with Ch Devamani in the year 1989 and he was blessed with a son and 2 daughters. While he was residing in Lakshmi Raghavaiah Colony, he developed illicit intimacy with one Macherla Sarala and convincing his wife by coercion, he kept Sarala also under the same roof. After 6 months Macherla Sarala demised due to ill-health. He again developed illicit intimacy with Sandya Rani, working as Nurse in a hospital. He took a house for rent and kept Sandya Rani in same house along with her two children and began to cohabit with her. When the wife of charged officer questioned, he used to bet her black and blue. As the charged officer devotee of Sandya Rani, he continued his lecherous link with her. On 24.03.07 the charged officer roamed in Lakshmi Raghavaiah Colony along with Sandya Rani, the wife of charged officer visited the house Sandya Rani and cursed her as she was damaging her goodwill in the view of her relatives at Lakshmi Raghavarah Colony. On learning the same from Sandya Rani on 25.03.07 when the charged officer came for lunch, he questioned his wife and abused her. As the wife of charged officer paid her coins, the charged officer went on beating her till evening. At about 04.30 PM when the wife of charged officer set out for police station to report the matter, the charged officer followed her, caught her near Medical College brought her back to house and beat her black and blue. The charged officer made her penny less to prevent lier from leaving the house

As the wife of charged officer in nagging him in the matter of his illicit intimacy with Sandhya Rani, became hurdle for his enjoyment and she prepared to give police report against the charged officer, and decided to put an end to the life of his wife. On the Same day I.e. 25.03.07 at 07.00

PM, concealing his propensities, exhibiting love and affection, made her to eat food, served by him. While she was in fast sleep at about 12 clock midnight, the charged officer woke up her, but she was drowsy, caught hold her throat closing her mouth, pressed her to a wall in a bed-room till death. To gloss over his guilt, in order to create the scene as if it is a suicidal death he tried to hang his deceased wife to fan, to brought a rope also.

During the course of investigation, on 02.04.07 the charged officer admitted his guilt and he was arrested at 11.00 PM and sent for remand. His misconduct led to unbecoming of Govt servant violating conduct rules prescribed.

03. A regular enquiry officer was appointed under the provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal Rules, 1991) and the enquiry officer, after conducting enquiry, submitted a report, holding the petitioner guilty of the charges. Thereafter enclosing a copy of the enquiry report, a show cause notice was issued and subsequently the disciplinary authority who is the second respondent herein passed an order dated 04-10-2008, dismissing the applicant/ Writ petitioner from the service.

04. After unsuccessfully availing the statutory remedy of the appeal before the appellant authority, the writ petitioner herein by invoking the provisions of Section 19 of the Administrative Tribunal Act, 1985, filed Original Application No.3320/2010 before the Tribunal. The Tribunal vide the order impugned, dismissed the said original application.

05. Challenging the said order passed by the Tribunal, confirming orders of the disciplinary and appellate authorities, the present Writ Petition came to be instituted.

06. Heard Sri K.R.Srinivas, learned counsel for the writ petitioner and Sri G.V.S.Kishore Kumar, learned Government Pleader for Services-I for the respondents, apart from perusing the material available on record.

07. It is contended by the learned counsel for the petitioner that the order of the Tribunal, confirming the orders of the disciplinary and appellant authorities is highly erroneous, contrary to law and opposed to basic principles of service jurisprudence. It is further contended by the learned counsel that, in view of the clean acquittal of the writ petitioner in S.C.No.61 of 2008, the disciplinary authority ought to have exonerated the petitioner and ought to have dropped the disciplinary proceedings against the writ petitioner. It is also the submission of the learned counsel that witnesses examined in the Sessions Case as well as the Departmental enquiry being the same, the writ petitioner is entitled for the relief sought in the Original Application.

08. In support of the submissions and contentions, learned counsel for writ petitioner places reliance on the Judgments of Hon'ble Apex Court in **Capt. M. Paul Anthony Vs. Bharat Gold Mines**

Ltd., and another[1] and G. M. Tank Vs. State of Gujarat and others[2] and.

09. Per contra, strongly resisting the contentions of the learned counsel for the Writ Petitioner, Sri G.V.S. Kishore Kumar, learned Government Pleader for Services-I contended that there is absolutely no error nor there exists any infirmity in the procedure adopted by the authorities while holding departmental enquiry, as such orders of the disciplinary and appellate authorities cannot be faulted; It is further submitted that by examining the relevant witnesses during the course of disciplinary enquiry, the respondent authorities could prove the guilt of the applicant-petitioner herein. It is further submitted that unlike in the criminal prosecution, strict proof is not necessary in departmental proceedings and the preponderance of probabilities is the only criteria to be adhered to during the departmental enquiry. It is further submitted that on mere acquittal by Sessions Court, the petitioner herein is not entitled for the relief sought in the original application automatically. It is further argued that since the departmental enquiry was conducted strictly adhering to the rules as provided under Andhra Pradesh Civil Rules (Service, Classification and Control, 1991), the writ petitioner is not entitled to any relief under Article 226 of the Constitution of India. It is further submitted that the Writ Petitioner cannot request this Court

[1] (1999) 3 Supreme Court Cases 679
[2] (2006) 5 Supreme Court Cases 446

to sit over the conclusions arrived by disciplinary and appellate authorities. It is further submitted that in the absence of any jurisdictional error, patent perversity and complaint of violation of principles of natural justice, this writ petition cannot be maintained under Article 226 of Constitution of India.

In support of his submissions and contentions, learned Government Pleader placed reliance on the Judgment of co-ordinate Bench of this Court in **G. Govinda Rajulu Vs. State of Andhra Pradesh[3];** and the judgments of the Hon'ble Apex Court **Union of India and others Vs. Methu Meda[4]; Union of India and others Vs. Managobinda Samantaray[5]; Inspector of Panchayats and District Collector, Salem Vs. S. Arichandran and others[6]; Union of India and others Vs. Ex. Constable Ram Karan[7].**

10. In the above background now the issues, which this Court is called upon to consider and answer in the present Writ Petition, are:

(1) Whether the order passed by the Tribunal, in the facts and circumstances of the case, is sustainable and tenable?

(2) Whether the questioned order warrants any interference of this Court under Article 226 of Constitution of India?

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[3] WP No.36081 of 2017 Dt.04.08.2023
[4] 2022 (1) SCC
[5] 2022 SCC online SC 284
[6] 2022 SCC Online SC 1282
[7] 2022 (1) SCC 373

11. It is absolutely not in controversy that the very genesis for initiation of departmental enquiry by the respondent authorities against the Writ petitioner being launching of Criminal prosecution against the petitioner in connection with the death of the wife of the Writ petitioner. Practically, the principal witnesses examined in Departmental enquiry and the Sessions Case were the same.

12. At this Juncture, it would be necessary to refer to certain findings in the Judgment in S.C.No.61 of 2008 on the file of the Court of II Additional Sessions Judge, Guntur. Paragraph 12 and 13 of the said judgment reads as follows:

> "The prosecution to prove other elements of the offence charged examined a number of witnesses said to be eye witnesses, circumstantial witnesses and the witnesses before whom accused made extra judicial confession. PW.1 Manika Samulu is the mother of deceased. She failed to support case of the prosecution. On the contrary she stated that she has not given any complaint to the police against accused. Accused and deceased lived happily. PW2 Chilakabathuni Suwartha co-sister in law of the deceased. She stated that deceased died due to stomach pain. PW3 Chilakabathuni Latha another co-sister-in-law of the deceased also stated that deceased died due to stomach pain. PW4 B. Nancharaiah is the neighbor of the accused. His evidence is that accused and deceased lived happily. The evidence of PW5 Manika Rajarao father of the deceased is that accused and deceased lived very happily. Evidence of PW6 K. Subbaiah, brother of deceased is that deceased and accused lived happily. Evidence of PW6 K. Subbaiah, brother of deceased and accused lived happily. PW7 Manika Lakshmi is that more than one year before death of deceased, she was residing in the house along with accused and deceased. On the day of death of deceased, she and children after taking dinner, went to bed at TV hall where as deceased was sleeping in her room. On that night accused was not present in the village as he went to some other village on work. Next day morning accused came

back to house at early hours at about 5 PM and knocked the doors. They opened the door, then accused noticed the dead body of the deceased, then shouted at them. The evidence of PW8 Chilakabathuni Swapna Kumari and PW9 Chilakabathuni Ramesh children of deceased is that they do not know why their mother died by hanging and why she committed suicide. Their parents i.e., accused and deceased used to live very happily. On the day of death of deceased, their father/accused was not in the house as he went to another village on work. Evidence of PW10 Sarikonda Ramana is that she is the neighbor of the accused. Deceased committed suicide by hanging. She does not know the reasons.

All the above witnesses were declared as hostile at the request of learned in-charge Addl. Public Prosecutor for prosecution. When they were cross examined by the prosecution, no incriminating facts creeped against the accused to prove that in any way directly or indirectly accused connected with the death of deceased. There is no grain of incriminating evidence even in the evidence of parents of deceased as well as children of deceased who were practically living with the deceased at the alleged offence. On the contrary, their evidence goes to show that accused is not in the house at the time of death of deceased. Evidence of other witnesses, coupled with photos have no meaning in view of the failure of parents and children of the deceased to support the case of the prosecution case. Hence needs no discussion.

The another important evidence of prosecution is that LW22 Mallela Danaiah examined as PW18 before Court. As per prosecution, accused made extra judicial confession about the commission of offence before said witnesses. Fortunately or unfortunately the said witness failed to support the case of the prosecution. He categorically stated that he runs a tea stall near Red cross road building, Kannavari thota, Guntur. He does not know accused and accused never approached him or made any confession about the commission of this crime. Police has not recorded his statement but obtained his signature on white paper. Therefore evidence of the prosecution discussed above will not prove other elements of the offence charged to say that accused is the author of the death of deceased. Therefore now the marshalling the evidence of investigating officer remains a formal and it is futile exercise. Therefore needs no discussion with regard to evidence of PW20-J. Bhaskara Rao who is one of the investigating officer.

> In view of the foregoing discussions, this court has no hesitation to come to conclusion that the evidence of the prosecution brought on record is not sufficient to prove all the elements of the offence charged and guilt of the accused therefore beyond the shadow reasonable doubt. As such the case of the prosecution has no force and must come to naught. In turn accused is entitled for acquittal.
>
> Accordingly point for determination is answered.
>
> In the result, court finds the accused as not guilty for the offences charged U/Sec.302 IPC and U/Sec.201 IPC or for any other offence and acquitted him U/Sec.235 (1) Cr.P.C."

13. As the very basis for departmental enquiry being the initiation of criminal prosecution against the petitioner and since the Sessions Court acquitted the petitioner cleanly the disciplinary authority ought to have dropped the proceedings. But the disciplinary authority, in a peculiar and unwarranted and without any authority of law, took a view different from the view taken by the learned Sessions Judge. In this context this Court consider it appropriate to refer to certain findings of the disciplinary authority in the impugned order of dismissal dated 04.10.2008, which read as follows:

> "It is clear from the evidence of the above witnesses, that the charged officer has developed illicit intimacy with Sandhya Rani and misbehaved with his wife, man handled and harassed her and as the charged officer was not taking care of the family, she used to iron the clothes of the neighbours and earn money. Later she became a hurdle to continue his illegal contacts.
>
> As far as acquittal by the court is concerned, it was done U/s.302 and 201 IPC, which deals with murder and screening of evidence. No charges were framed regarding harassment U/s.498 A IPC and illegal intimacy with other woman in the court of law. Court has not deliberated about

these charges which were framed in departmental enquiry separately along with murder charge."

14. In this context, it may be appropriate to refer to the judgments cited by the learned counsel for writ petitioner. In **CAPT. M. Palanthony's case** referred to supra, the Hon'ble Apex Court held at paragraphs 34 and 35 as follows:

> "34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand.
>
> 35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

15. In **G.M. Tank**'s case referred to supra, the Hon'ble Apex Court at paragraphs 30 and 31 held thus:

> "30. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.
>
> 31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings

challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

16. Since the principle witnesses in both the disciplinary enquiry and the criminal prosecution were the same, the principle laid down in the above-referred judgments is squarely applicable to the case on hand.

17. Coming to the judgments cited by the learned Government Pleader; a Coordinate Bench of this Court in W.P.36081 of 2017 held at Paras 62 to 64 as under:

62. In Pravin Kumar (supra), upon which learned GP placed reliance, the Hon'ble Apex Court referred to a three-Judge Bench of the Apex Court in B.C.Chaturvedi v. Union of India9, on the point as to when the finding/conclusions of the disciplinary authority are open to judicial review.

63. It is apt to refer para-26 in Pravin Kumar (supra) as under:

"26. These principles are succinctly elucidated by a three-Judge Bench ofthis Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, para 12 : 1996 SCC (L&S) 80] in the following extract: (SCC pp. 759-60, paras 12-13).

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal concerned is to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority

to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR pp. 728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

64. In Pravin Kumar (supra) on the point of judicial review in service matters, the Hon'ble Apex Court held that the judicial review is an evaluation of the decision making process, and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice, or in case of bias or gross unreasonableness of outcome. It was further held that the Constitutional Courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of

correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice, which we find are not present to invoke the power of judicial review.

18. In **Methu Meda's** case, the Hon'ble Apex Court held as follows.

"The expression 'honourable acquittal' has been considered in the case of S. Samuthiram (supra) after considering the judgments of Reserve Bank of India vs. Bhopal Singh Panchal (1994)1 SCC 541, R.P. Kapur (supra), Raghava Rajagopalachari (supra); this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance and probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so.

15. Recently, this Court in Union Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Anr. (2018) 1 SCC 797, relying upon the judgment of S. Samuthiram (supra) said that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. It is observed, acquittal or discharge of a person cannot always be inferred that he was falsely involved or he had no criminal antecedent. The said issue has further been considered in Mehar Singh (supra) holding non-examination of key witnesses leading to acquittal is not honourable acquittal, in fact, it is by giving benefit of doubt. The Court said nature of acquittal is necessary for core consideration. If acquittal is not honourable, the candidates are not suitable for government service and are to be avoided. The relevant factors and the nature of offence, extent of his involvement, propensity of such person to

indulge in similar activities in future, are the relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues."

19. In **Managobinda Samantaray**'s case, the Hon'ble Apex Court held as follows:

"In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice.4 The decision are also disturbed when it is found to be ailing with perversity.5 On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters.6 In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate."

20. In **Inspector of Panchayats and District Collector, Salem**'s case, the Hon'ble Apex Court held as follows:

15. At this stage, a recent decision of this Court in the case of Rajit Singh (supra), in which this Court had considered its earlier decision in the case of A. Masilamani

(supra) is required to be referred to. In paragraph 15, it is observed and held as under:-

"15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-

> "16. 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 case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])."

16. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report.

21. In **Ex. Constable Ram Karan**'s case referred to supra, the Hon'ble Apex Court held as follows:

> "24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the Court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."
>
> 25. The principles have been culled out by a three-Judge Bench of this Court way back in B.C. Chaturvedi vs. Union of India and Others2 wherein it was observed as under:
>
> > "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

26. It has been further examined by this Court in Lucknow Kshetriya Gramin Bank vs. Rajendra Singh as under:

> "19. The principles discussed above can be summed up and summarised as follows: (SCC p. 382, para 19)
>
> 19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.
>
> 19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.
>
> 19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.
>
> 19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.
>
> 19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of chargesheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

22. The very basis and foundation for initiating departmental proceedings against the Writ petitioner being the registration of crime and the criminal prosecution conducted thereafter. Admittedly, after

holding full-fledged trial, the Court of the II Additional Sessions Judge, Guntur, acquitted the writ petitioner cleanly and honourably, but not by extending the benefit of doubt. The impugned action of authorities in holding the enquiry into the criminal offences alleged against the petitioner, in the teeth of judgment of Sessions Court, would tantamount to interference_with the judicial process, which cannot be permitted. The exercise undertaken by the disciplinary authorities is highly reprehensible, objectionable and the same is liable to be deprecated. The involvement in crime may be one of the factum while considering the candidature at the time of initiation of disciplinary proceedings, but it cannot be a ground for inflicting punishment. It is also pertinent to note that Article No.2 of the enquiry is an integral part of Article No.1. Perusal of the order passed by the Tribunal shows that the Tribunal did not consider the above aspects while arriving at the conclusions. The orders passed by the disciplinary authority, inflicting the punishment of dismissal in the teeth of the Judgment rendered by the Sessions Court suffer from inherent lack of jurisdiction.

23. In these circumstances, this Court has absolutely no hesitation nor any traces of doubt to hold that the order of punishment passed by the disciplinary authority as confirmed by the appellate authority and eventually by the Tribunal in O.A. No.3320 of

2010 cannot stand for judicial scrutiny and the said orders are liable to be set aside.

24. Accordingly, this Writ Petition is allowed, setting aside the impugned order dated 05.07.2012 passed by the Andhra Pradesh Administrative Tribunal in O.A.No.3320 of 2010 and the order of the punishment dated 04.10.2008 passed by the 2nd respondent as confirmed by the 1st respondent vide order dated 16.12.2009 and consequently, the respondents herein are directed to reinstate the petitioner into services with all consequential benefits. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.V. SESHA SAI, J

VENKATA JYOTHIRMAI PRATAPA, J

Date:14.09.2023
Note: LR copy to be marked.
B/o.
MNR

HON'BLE SRI JUSTICE A.V. SESHA SAI

AND

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION No.21578 of 2013

Date:14.09.2023.

Note: LR copy to be marked.

B/o.

MNR