



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 5940 of 2024.
Decided on : 22nd September, 2026

Dinesh Kumar		...Petitioner.
	Versus	
State of H.P. & Ors.		Respondents.

Coram:
Ms. Justice Jyotsna Rewal Dua, Judge.
Whether approved for reporting?¹ Yes.
For the Petitioner: Mr. Sanjeev Bhushan, Senior Advocate
with Mr. Saurav Rattan, Advocate.
For the respondents: Mr. L. N. Sharma, Additional Advocate
General.

Jyotsna Rewal Dua, Judge.

Petitioner seeks his reinstatement in service with all consequential benefits. His such prayer has been turned down by respondent No.4 under order dated 07.08.2025.

2. Petitioner joined the respondent-Police Department on 30.08.1997 as Constable. He was promoted as Head Constable in February 2011. On 15.01.2016, FIR No. 6/2016 was registered against the petitioner and others under Sections 20 and 29 of the Narcotics Drugs and Psychotropic Substances Act (NDPS) at Police Station Kotkhai, District Shimla. Petitioner remained in police

¹ Whether reporters of the local papers may be allowed to see the judgment?

custody from 16.01.2016 to 22.01.2016 and was sent to judicial custody thereafter.

2(i). In view of petitioner's involvement and arrest in FIR No. 6 of 2016, departmental inquiry was also ordered against him by the respondents on 27.09.2016. It appears that petitioner requested the department to withhold the departmental inquiry in view of criminal trial. Respondent No.4 on 28.07.2017 ordered to keep the departmental inquiry in abeyance.

2(ii). The court of learned Special Judge (Forest), Shimla, convicted the petitioner on 05.04.2018 in Sessions Trial No. 8-S/7 of 2016 and sentenced him to rigorous imprisonment for a period of 14 years, along with fine with default clauses.

2(iii). Respondent No. 4, on 10/12.07.2018 (Annexure P-2), ordered petitioner's dismissal from Police Department in accordance with Rule 16.2 of Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh. The dismissal order was based upon conviction of the petitioner by the learned trial court. While dismissing the petitioner, respondent No.4 also ordered closure of departmental inquiry against the petitioner that had been

kept in abeyance. The dismissal order specifically recorded that since the petitioner had been convicted by the learned court, "*hence, it is not in the fitness of things to proceed further in the departmental inquiry..... the D.E. ordered against him is hereby closed.*" The relevant portion of order dated 10/12.07.2018 dismissing the petitioner from service and ordering closure of departmental inquiry is as under:

"And whereas, in the light of the judgment delivered by the Ld. Court on 21.04.2018, the criminal misconduct committed by him has been proved against HC Dinesh Kumar No. 213. Being a member of discipline force/ Police Department of the state, it was his duty to detect the commission of such offences and nab the culprits. But it was he, who indulged in such type of heinous type of crime in which 4.130 KG Charsas has been recovered from him. The prime duty of the police is to prevent the crime and detect the crime, but in this case he himself indulged in such misconduct, which speaks volume for such type of his involvement in heinous nature of crime. As such, the act of HC Dinesh Kumar No. 213 amounts to serious misconduct and misuse of official's position and breach of public trust.

And whereas, the further continuation of HC Dinesh Kumar No. 213 in Police service is not in the larger public interest and thus has to be dismissed from Police Department in accordance with HPPR 16.2. Since he has been convicted by the learned Court, hence, it is not in the fitness of things to proceed further in Departmental Enquiry.

Now, therefore. 1IC Dinesh Kumar No. 213 is hereby DISMISSED from service with immediate effect in accordance with under PPR 16.2 as applicable in the State of HP. He will deposit all the Govt. articles. equipments and Identity card etc issued to him with the concerned Branches accordingly. The D.E. ordered against him is hereby closed."

2(iv). Criminal Appeal No. 117 of 2018, preferred by the petitioner against the judgment dated 05.04.2018, was allowed by Division Bench of this Court on 20.10.2023 (Annexure P-4). It was held that prosecution had not been able to prove its case against the appellants (including the petitioner), beyond reasonable doubt. The impugned judgment and order of conviction and sentence passed by the learned trial court were set aside. The appellants (including the petitioner), were ordered to be released immediately.

"96. In view of the aforesaid discussions and in the given facts and circumstances, it can conveniently be held that the prosecution has not been able to prove its case against the appellants beyond reasonable doubt. Therefore, the impugned judgment and order of conviction and sentence passed by the learned Special Judge are set aside. Consequently, the appellants, in the instant case, are ordered to be released immediately, if not required in any other case.

97. The Registry is directed to prepare release warrant of the appellant. In view of the provisions of Section 437A Cr.P.C., each of the appellants is directed to furnish personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court, which shall be effective for a period of six months with a stipulation that in an event of an SLP being filed against this judgment or on grant of the leave, the appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

98. The instant appeal is allowed in the aforesaid terms. Pending application(s), if any, also stands disposed of."

2(v). Petitioner preferred representation to Respondent No. 4 on 26.10.2023 (Annexure P-5), seeking reinstatement in

service. Hearing no response, he instituted present writ petition on 29.05.2024, seeking following substantive reliefs:-

"(i) Issue a writ of certiorari for quashing the impugned order dated 12.07.2018 for all intents and purposes.

(ii) Issue a writ of mandamus or direction the nature of mandamus directing the respondent department to reinstate the petitioner in service with the respondent department with the consequential benefits.

(iii) That an appropriate writ, order or direction be issued to the respondent department to re-fix the pay of the petitioner and release the arrears of monetary benefits of his service accrued from the date of his dismissal from service i.e. 12.07.2018 to till date along with interest @12% per annum, including his salary and all the consequential benefits for regularization and promotion etc., in the interest of justice."

3. From the reply filed by the respondents, it becomes evident that the respondents had assailed the judgment rendered on 20.10.2023, whereby Criminal Appeal No. 117 of 2018 preferred by co-accused persons, including the petitioner, was allowed. The Special Leave to Appeal (Crl.) No. 16413 of 2024 filed against the aforesaid judgment was dismissed by the Apex Court on 28.07.2025, i.e. during the pendency of the instant writ petition. Pursuant to the dismissal of the aforesaid SLP, Respondent No. 4 sat down to consider the representation of the petitioner seeking his reinstatement in service consequent upon finality attached to the

judgment dated 20.10.2023 passed in Cr. A No. 117 of 2018.

Petitioner's request was turned down on 07.08.2025 vide Annexure R-4/3.

4. Heard and considered the case file.

The facts have already been noticed in paras-2 and 3 above. The above facts have not been disputed by the learned Additional Advocate General.

4(i). In order to examine the case of the petitioner for his reinstatement in service, it would be in place to first consider the reasoning assigned by Respondent No. 4 for declining such prayer. The order dated 07.08.2025, being relevant, is extracted hereinafter in totality:

"ORDER

WHEREAS, Ex-Head Constable Dinesh Kumar, formerly of the Himachal Pradesh Police, was dismissed from-service-vide Order No. OSI/18-51962, dated 12.07.2018, pursuant to departmental inquiry conducted under Rule 16.2 of the Punjab Police Rules, 1934 (as applicable in Himachal Pradesh). The dismissal was based on his involvement and conviction by the Ld. Trial Court in a criminal case registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), vide FIR No. 6/16 at Police Station Kotkhai.

AND WHEREAS, the Departmental Enquiry, conducted on the principle of preponderance of probabilities, established the applicant's involvement in activities constituting grave misconduct, unbecoming of a police officer, and a breach of public trust as per the standards of discipline mandated under

the Himachal Pradesh Police Act, 2007, and the Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh.

AND WHEREAS, the Learned Trial Court, vide its judgment dated 05.04.2018, convicted the applicant in the aforementioned criminal case. However, the Hon'ble High Court of Himachal Pradesh, vide its judgment dated 20.10.2023, set aside the conviction, holding that "the prosecution has not been able to prove its case against the appellants beyond reasonable doubt."

AND WHEREAS, the applicant submitted a representation dated 26.10.2023, seeking reinstatement in service, contending that he was falsely implicated in the criminal case and relying on the Hon'ble High Court's as he was acquitted, hence made instant representation.

AND WHEREAS, the representation has been thoroughly examined in light of the facts of the case, the Hon'ble High Court's judgment, the applicable service rules, and settled legal principles governing disciplinary proceedings and reinstatement.

AND WHEREAS, it is a well-established legal principle that acquittal in a criminal case, based on the strict standard of proof "beyond reasonable doubt," does not ipso facto entitle an employee to reinstatement in governed by the principle of service. Disciplinary proceedings are preponderance of probabilities, which is distinct from the evidentiary standards applied in criminal adjudications. The departmental inquiry independently established the applicant's involvement in drug trafficking, an act of grave misconduct that undermines the integrity and discipline expected of a police officer.

AND WHEREAS, the Hon'ble High Court's acquittal of the applicant was based on technical grounds, as the prosecution failed to meet the high threshold of proof required in criminal proceedings. However, this acquittal does not negate the findings of the departmental inquiry, which were based on cogent evidence and corroborated the applicant's involvement in activities under the NDPS Act.

AND WHEREAS, the involvement of a police officer in drug trafficking, even if not conclusively proven in a criminal court, constitutes a gravest misconduct, serious breach of discipline, public trust, and the core duties of a police officer to combat such offences. Thereby the acquittal of the applicant was on technical grounds thereby as such does not accrue any rights in so far him to re-instate in the Police Department. Further, it will

not leave healthy example in the police organization. It is fundamental and core duty of any police officer to combat drug trafficking truth and nails. In view of the above, conditions it will not be appropriate to induct him in the services.

NOW, THEREFORE, *in view of the above conditions, it will not be appropriate to induct the applicant in service and accordingly, representation stand rejected and same may be informed to the applicant.*

Sd/-

Sanjeev Kumar Gandhi, IPS,
Sr. Superintendent of Police
Shimla, Shimla-1."

In the afore-extracted order, Respondent No. 4 has *inter alia* held out that:

- Petitioner was dismissed from service vide order dated 12.07.2018 pursuant to a departmental inquiry conducted under Rule 16.2 of Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh.
- Departmental inquiry, conducted on the principle of preponderance of probabilities, established petitioner's involvement in activities constituting grave misconduct, unbecoming of a police officer and in breach of public trust, as per standards of discipline mandated under the Himachal Pradesh Police Act, 2007 and the Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh.

- Departmental inquiry independently established petitioner's involvement in drug trafficking, an act of grave misconduct that undermines the integrity and discipline expected of a police officer.
- Conviction of the petitioner by the learned Trial court vide judgment dated 05.04.2018 was set aside by the High Court on 20.10.2023, holding that prosecution had not been able to prove its case against the appellants beyond reasonable doubt. Petitioner's acquittal was based upon technical grounds. The acquittal does not negate the findings of the departmental inquiry, which was based on cogent evidence and corroborated petitioner's involvement in activities under the NDPS Act. Therefore, acquittal of the petitioner on technical grounds does not bestow upon him any right to be reinstated in Police Department.

For the foregoing reasons, petitioner's representation seeking reinstatement in service was rejected.

4(ii). The less said about the aforesaid order passed by a high ranking police officer of the rank of Senior Superintendent of

Police, the better. The said order is completely de hors the factual position and is classic example of non application of mind. It appears that the concerned officer did not even deem it proper to look into the record of the case or else it would have been evident to him that departmental inquiry, ordered to be initiated against the petitioner, was initially kept in abeyance on 28.07.2017 by respondent No. 4. After conviction of the petitioner by the learned Trial court on 05.04.2018, respondent No. 4 issued an order on 10/12.07.2018, not only dismissing the petitioner from service, but also ordered closure of departmental inquiry against him on the ground that it was not in the fitness of things to proceed further with the same. During hearing of the case, learned Additional Advocate General also produced the record of the case. The record does not demonstrate any proceeding of the departmental inquiry having been conducted by the respondents after ordering its closure while dismissing the petitioner under order dated 10/12.07.2018. From where the Senior Superintendent of Police, held that departmental inquiry had established petitioner's involvement in drug trafficking, an act of misconduct undermining the integrity & discipline of police officer

or that departmental inquiry had independently established petitioner's involvement in drug trafficking, is beyond comprehension. So much so that the concerned officer has even gone on to assign the reason that petitioner's acquittal in the criminal case does not negate the findings of the departmental inquiry, which were based upon cogent evidence and corroborated petitioner's involvement in activities under the NDPS Act. When there was no departmental inquiry conducted in the matter, no proceedings were held, no evidence was led, the question of leading any evidence therein and its construction as cogent or corroborative piece of evidence does not arise. The record does not reflect any such evidence having been recorded by the respondents in the departmental inquiry that was though initiated against the petitioner, but kept in abeyance on 28.07.2017 and closed on 10/12.07.2018. It appears some imaginary evidence led in the non existing departmental inquiry proceedings was considered by the concerned officer, which was held to be cogent and sufficiently corroborated the involvement of the petitioner under the NDPS Act. The order is not just legally and factually untenable but is also

absurd. It is classic example of non application of mind to the record and does not withstand judicial scrutiny for a single moment.

In view of the above, the order dated 07.08.2025 passed by the Senior Superintendent of Police, Shimla, has to held as an order based upon imaginary facts and non-existent record. The officer should have been sensitive to the fact that he was deciding the prayer of an employee who was seeking his reinstatement in service, and should have been careful in considering the prayer after examining the record in accordance with law. The order, which has no foundational basis attached to it, passed during the pendency of the petition, is, therefore, quashed and set aside.

4(iii). Examining the case of the petitioner on merits vis-a-vis his prayer for reinstatement in service:

Admittedly, departmental inquiry was closed against the petitioner under order dated 10/12.07.2018. Under the same order, petitioner was dismissed from service under Rule 16.2 of Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh. Said rule reads as under:

" Rule 16.2

16.2. Dismissal.-(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the service of the offender and his claim to pension.

(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed:

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette."

It may be in place to refer to Rule 16.3, which permits action as under following a judicial acquittal:-

"16.3. Action following on a judicial acquittal. - (1) When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless-

(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence admissible under rule 16.25 (1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.

The respondents could not have taken recourse to Rule 16.3 since they had themselves closed the departmental proceedings against the petitioner. Admittedly, recourse to the above rule was not even taken by the respondents.

While allowing Criminal Appeal No. 117 of 2018 filed by the petitioner and other co-accused against the judgment dated 05.04.2018, the Court held that prosecution was not able to prove its case against the petitioner and other co-accused beyond reasonable doubt.

Here it would be relevant to take note of decision rendered by the Hon'ble Apex Court in **Deputy Inspector General of**

Police and Another vs. S. Samuthiram² wherein it was clarified that there is nothing in criminal law like “honourable acquittal”. When the accused is acquitted after full consideration of prosecution evidence and prosecution failed to prove charges levelled against the accused, it can be said that the accused was honourably acquitted. Relevant portion of the judgment is as under:

“24. 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.”

To the similar effect is ratio of ***S. Bhaskar Reddy & another vs. Superintendent of Police & another***³.

²(2013)1 SCC 598

³(2015)2 SCC 365

Ram Lal v. State of Rajashtan & Ors.⁴ holds that mere use of words "benefit of doubt" does not in any manner alter the character of the acquittal. Relevant paragraph thereof reads as under:-

"28. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used."

In **Narender Singh vs. State of Himachal Pradesh & Ors.**⁵, request of the petitioner therein to reinstate him in service on account of his acquittal in criminal case was rejected by the respondent police department. The defence of the respondent-State was that petitioner's acquittal was based upon technical grounds. The court allowed the writ petition, holding it was after discussing the entire evidence that the petitioner therein was acquitted,

⁴(2024)1 SCC 175

⁵CWPOA No. 7404 of 2019 decided on 13.08.2021

therefore, it cannot be said that he was not honourably acquitted.

Relevant portion of the judgment is as under:

7. *Though, learned Deputy Advocate General while referring to the judgment of acquittal passed by Division Bench of this Court argued that since appeal having been filed by the petitioner came to be allowed on technical grounds, his acquittal cannot be said to be hounourable, but this Court after having scanned the material available on record, finds no force in the aforesaid submission made by learned Deputy Advocate General. As has been observed hereinabove, Division Bench of this Court has discussed the entire evidence led on record by the prosecution, appeal of the petitioner has been not only allowed on the ground of non-adherence of statutory provisions contained under the Act, rather Division Bench taking into consideration entire evidence, proceeded to acquit the accused. Division Bench of this Court while acquitting may not have specifically mentioned that prosecution witnesses have not supported the case of the prosecution, but while acquitting the accused of offences Sections 20(b)(ii)(C) read with Section 29 of the Act, Division Bench of this Court has discussed the entire evidence and has not extended the benefit of doubt to the petitioner, rather has acquitted him honourably.*

8. xxxxxx xxxxxxxx xxxxxx

9. *Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court is unable to accept the reasoning assigned by the competent authority while rejecting the representation having been filed by the petitioner pursuant to his acquittal in criminal case. Since, Division Bench of this Court after having discussed the entire evidence, proceeded to acquit the accused that too without extending benefit of doubt, it cannot be said that he was not honourably acquitted and as such, order dated 12.4.2016, passed by Director General of Police, Himachal Pradesh, is quashed and set-aside and respondents are directed to reinstate the petitioner in service forthwith. Consequential*

*benefits, if any, be also released in favour of the petitioner.
Pending applications, if any, also stand disposed of.*

Petitioner in the instant petition was acquitted after a full fledged trial.

4(iv). Instant is not a case where the respondents had kept the disciplinary proceedings alive. The disciplinary proceedings were given quietus while dismissing the petitioner on 10/12.07.2018. It is not a case where the respondents had reserved for themselves liberty to proceed further in the disciplinary proceedings after recording of evidence in the criminal trial. Position might have been different had the respondents resorted to that recourse. Almost eight years have gone by from the date of dismissal of the petitioner and closure of the disciplinary proceedings ordered by the respondents. The evidence in the criminal trial was over certainly before 05.04.2018 (date of judgment passed by learned Trial Court). Had the respondents desired to continue with the disciplinary proceedings, it was for them to have resorted to such procedure at the relevant time. By specifically closing the disciplinary proceedings on 10/12.07.2018 and not even endeavoring to open them after the

evidence in the criminal case was over, the respondents cannot even be granted such liberty now to proceed with the disciplinary proceedings eight years after the date of judgment rendered by the learned Trial Court. In any case, as noticed earlier, such recourse has not even been adopted by the respondents.

4(v). Effect of acquittal in criminal proceedings was one of the questions deliberated in **Ram Lal**⁴, as under:

“Questions for consideration:

8. The following two questions arise for consideration:

8.1. (a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified?

8.2 (b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

Effect of Acquittal in the Criminal Proceeding - Question No. 2:

25. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable.

26. Though the Trial Court convicted the appellant under [Section 420](#) of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

“....Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the *Ld. Subordinate Court* merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed.”
[Emphasis supplied]

27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are

supposed to see is the substance of the judgment. A reading of *the entire judgment* clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See *S. Samuthiram* (Supra).]

28. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” [See *Vijayee Singh and Others v. State of U.P.* (1990) 3 SCC 190].

30. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in

exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in [G.M. Tank](#) (supra).

33. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

34. Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today."

In the aforesaid case, the respondents therein had proceeded with the disciplinary proceedings and contrary to the acquittal of the petitioner in the criminal case held that charges had been proved against the petitioner in the disciplinary proceedings. This was not accepted by the Apex Court, holding that charges in both the proceedings, that is criminal and disciplinary were not only similar, but identical and the evidence, witnesses, and circumstances were all the same. Accordingly, the order of the disciplinary authority as also the appellate authority were quashed.

The instant case is on a much better footing since the respondents had dismissed the petitioner solely on the basis of his conviction in the criminal case by the learned Trial Court under judgment dated 05.04.2018 and also ordered closure of disciplinary proceedings against him. That being the position and once the petitioner stands acquitted by the Appellate Court as affirmed by the Apex Court, there is no legal justification available to the respondents not to reinstate the petitioner. It would also be beneficial to refer to ***State Bank of India and another vs. Mohammed Abdul Rahim***⁶:-

"9. In the present case, the Respondent was acquitted by the appellate court. There can be no manner of doubt that the said acquittal would relate back and the initial order of conviction would stand obliterated. On that basis, there can be no manner of doubt that the substratum of the cause that had led to the Respondent's dismissal/discharge in the present case had ceased to exist. The same would entitle him to be reinstated in service, an act that has been duly performed by the Appellant-bank."

Since the petitioner stands acquitted, the acquittal would relate back and his initial order of conviction would also stand obliterated. Petitioner's dismissal was solely based upon his conviction in the criminal trial on 05.04.2018. His conviction by the learned Trial Court

⁶ (2013)11 SCC 67

was overturned by the Appellate Court on 20.10.2023, as affirmed by the Apex Court on 28.07.2024.

5. Fore the foregoing reasons, this writ petition is allowed. Respondents are directed to reinstate the petitioner in service with all consequential benefits, including seniority, notional promotions, fitment of salary and all other benefits. As far as back wages are concerned, following the ratio of **Ram Lal**⁴, 50% of the back wages are awarded to the petitioner. The directions be complied with within a period of four weeks from today.

Pending applications, if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

22nd September, 2026.
(jai)