

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

(Pronounced through Virtual Mode from Srinagar)

Reserved on: 02.04.2024
Pronounced on: 30.04.2024

WP (C) 81/2023
c/w
CCP (S) 149/2023

**Jasvinder Singh Dua, Age 47 years
s/o S. Joginder Singh Dua
R/o H.No. 15 (First Floor)
Sector – 3, Nanak Nagar, Jammu
Managing Director (under suspension),
J&K Handicrafts (S&E) Corporation**

... Petitioner/Appellant(s)

Through: Mr. Abhinav Sharma, Sr. Adv.
with Mr. Abhirash Sharma, Adv.

V/s

- 1. UT of J&K through
Principal Secretary to Govt.
Industries and Commerce Department, Civil Sectt. Jammu.**
- 2. Commissioner/Secretary to Govt. GAD
Civil Secretariat Jammu.**
- 3. Sh. Hasmat Ali Yauto
A/P Administrator Associated Hospitals
Srinagar/Enquiry Officer.**

... Respondent(s)

Through: Mr. Eishaan Dadhichi, GA

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
30-04-2024

1. The petitioner in the instant petition implores for the following reliefs:

- i) Certiorari seeking to quash impugned Govt. order bearing No. 271-JK(GAD) of 2020 dated 20.02.2020, whereby and whereunder the petitioner has been placed under suspension, for nearly three years now without there being any material with the respondents warranting such action, and also the same has not been reviewed from time to time as provided under rule.
- ii) Certiorari seeking to quash impugned Govt. order bearing No. 271-JK(GAD) of 2020 dated 20.02.2020, whereby and whereunder, the petitioner has been placed under suspension, for nearly three years now inasmuch as the respondent no. 2 was not competent and has no jurisdiction to place the petitioner under suspension.
- iii) Certiorari seeking to quash impugned "Statement of Articles of Charges" and "Statement of Imputation in support of the Articles of Charges" framed against the petitioner and conveyed to the petitioner vide memorandum No. IMD/SICOP/4L20tB-51 dated 20.04.2020, inasmuch as once the FIR no. 23/2079 dated 02.10.2019 on the same allegation(as are contained in Articles of Charges) has been quashed by the Hon'ble Court vide his judgment dated 0t.04.2022 pronounced on 12.05.2022, the aforesaid impugned "Statement of Articles of Charges" and "Statement of Imputation in support of the Articles of Charges" framed against the petitioner have no legal legs to stand upon.
- iv) Mandamus, commanding and directing the respondents to revoke the impugned order of suspension issued vide Govt. order No. 27L-J(GAD) of 2020 dated 20.02.2020, whereby and whereunder the petitioner has been placed under suspension with immediate effect and attached with the office of Divisional Commissioner, Jammu, with further direction to release all consequential benefits in favour of the petitioner.
- v) Prohibition; restraining the respondents from going ahead with the inquiry proceedings initiated in the year 2020 (and not concluded till date even after three years), inasmuch as, despite lapse of three years the inquiry has not been concluded; with further direction restraining the

respondents from taking action against the petitioner on the initiated in the year 2020.

2. Facts:

- The petitioner came to be appointed as Junior Engineer (Civil) on *ad hoc* basis in J&K Small Scale Industries Development Corporation Limited (for short “the corporation”) vide order No. 05-Admin of 1998 dated 15.01.1998 whereafter the services of the petitioner came to be regularized vide order No. 109-Adm. of 2002 dated 10.02.2002 as also sanction to the release of grade of Rs.7300-10800 as well, came to be accorded in favour of the petitioner and one Shri Atul Sharma, Estate Manager, Kathua.
- Subsequently, the petitioner herein along with other employees in the corporation was promoted as Deputy General Manager on 27.3.2006 whereafter the petitioner came to be posted as General Manager and thereafter Senior General Manager vide order No. SICOF/MD/PS/1121 dated 01.01.2013 and consequently the release of grade of the said post of Senior General Manager came to be proposed to be released in favour of the petitioner along with another officer namely Shri Javid A. Rah.
- In terms of Government order No. 125-Ind of 2014 dated 02.06.2014 the petitioner came to be transferred from the corporation and posted as Incharge Managing Director, State

Industrial Development Corporation (SIDCO) by the order of the Financial Commissioner, Industries and Commerce Department.

- In the year 2016 itself, above named Shri Atul Sharma who had been accorded release of grade in the corporation while working as Estate Manager, Kathua, along with the petitioner as well came to be transferred out of the corporation and posted as Managing Director, J&K Cements Limited.
- Vide Government order No. 01-Ind of 2019 dated 03.01.2019 issued by Principal Secretary to Government, Industries and Commerce Department, J&K Government, the petitioner came to be transferred from SIDCO and posted as Managing Director J&K Handicrafts (S&E) Corporation.
- In the year 2019 an FIR No. 23/2019 dated 09.10.2019 came to be registered against the petitioner in police station Anti-Corruption Bureau, Jammu (ACB) along with other persons namely Shri A. K. Khullar (now deceased) and Shri B. S. Dua (now retired) being uncle of the petitioner, the then Managing Director and General Manager of the corporation respectively for commission of offences under section 5(1)(d) read with section 5(2) of J&K Prevention of Corruption Act, Svt. 2006 and Section 120-B of RPC. The allegations in the said FIR were regarding the initial engagement of the petitioner in the corporation being illegal as also his accelerated promotion to the post of Managing Director in the

corporation within 16 years of his service in a dubious manner.

- The petitioner as also his above named uncle Shri B. S. Dua challenged the FIR *supra* independently before this court in CRM (M) 635/2019 and CRM (M) 587/2019 respectively on the grounds that the petitioner was not the only person appointed on *ad hoc* basis in the corporation but many others were also appointed in similar manner since 1986 and that only the petitioner's appointment is being termed as illegal and none of the other similarly appointed employees had been proceeded against and that the mode and manner of appointment in the corporation in which the petitioner and other persons were appointed were followed by the corporation since 1985 and none of the appointments since 1985 was being termed as dubious except that of the petitioner and that the above named uncle of the petitioner Shri B. S. Dua was holding the post of General Manager in the corporation and had no power or authority to appoint the petitioner in the corporation.
- The aforesaid petitions upon consideration by this court came to be allowed and the FIR impugned therein came to be quashed vide judgment dated 12.5.2022 while observing that the petitioner was appointed on *ad hoc* basis and subsequently regularized and promoted from time to time like other appointees in the corporation incidentally during

working of his above named uncle Shri B. S. Dua in the corporation, and that the mode and manner in which the petitioner had been initially appointed and regularized was also followed in respect of other Managing Directors of the corporation from time to time and none of the initial appointments had been made in accordance with the constitutional mandate and that though the appointment of the petitioner was irregular, the fact remains that the petitioner was not only such appointee and that the allegation of accelerated promotion of the petitioner was negated on the premise that the said promotions earned by the petitioner were not ordered by any particular individual officer by abusing or exceeding his official position but upon the recommendations of the Departmental Promotion Committee constituted for the said purpose. Besides, it also came to be observed, noticed and found by this court in the judgement *supra* from the perusal of the CD file that the enquiry officer while enquiring into the allegations levelled against above named uncle of the petitioner Shri B. S. Dua had opined that the service rules of the corporation were vague and required to be revisited and the allegations against the said uncle of the petitioner were not substantiated. The court thus found no incriminating material or evidence worth the name in support of the allegations levelled against the petitioner and his said

uncle Shri B. S. Dua and as such quashed the FIRs in question.

- After the registration of FIR 23/2019 *supra* the petitioner was placed under suspension vide Government order no. 271-JK(GAD) of 2020 dated 20.02.2020 and vide Memorandum No. IMD/SICOP/412018-51 dated 20.04.2020 the petitioner came to be served with “Statement of Articles of Charges” and “Statement of Imputation” in support of the said Articles of Charges.
3. The petitioner in the instant petition has impugned the aforesaid Government order No. 271-JK (GAD) of 2020 dated 20.02.2020 as also Memorandum No. IMD/SICOP/ 412018-51 dated 20.04.2020 along with “Statement of Articles of Charges” and “Statement of Imputation” in support of the said Articles of Charges on the following grounds urged in the petition.
4. The respondents have filed reply/objections to the petition wherein it has been stated that the enquiry was initiated against the petitioner pursuant to Anti-Corruption Bureau letter No. ACB-FIR-23/2019-ACB-J-15741-42 dated 27.11.2019 and the petitioner was placed under suspension vide order dated 20.02.2020 issued in terms of Rule 31 of the J&K Civil Services (Classification, Control and Appeal) Rules of 1956 (for short “the Rules of 1956”) further stating that the respondent 1 herein has come up with the enquiry report recommending therein imposition of major penalty upon the petitioner as his basic

appointment in the corporation was not found in consonance with the Rules and Regulations and that based on the findings of the enquiry officer proposed to impose major penalty upon the petitioner in terms of Rule 31(vii) of the Rules of 1956 i.e. removal from service of the state which does not disqualify for future employment. It has also been averred in the reply that the suspension of the petitioner was reviewed from time to time and since the charges against him are grave in nature the said suspension was continued. It has been lastly stated in the reply that the approach and objective in the criminal proceedings and disciplinary proceedings is altogether different and there is no bar in law to run both the proceedings simultaneously.

Heard learned counsel for the parties and perused the record.

5. Before proceeding to address to the controversy involved in the matter, it is deemed appropriate to extract and reproduce hereunder the contents of the FIR No. 23/2019, as also the Statement of Articles of Charges & Statement of Imputation in support of the said Articles of Charges, being relevant and germane to the controversy:

Contents of FIR:

“On the basis of allegation received against Shri B.S.Dua, then MD SICOP on various aspects inter-alia illegal appointment of his nephew S. Jasvinder Singh Dua in SICOP, a detailed verification was conducted to ascertain the actual facts, During probe records of the SICOP, were scrutinized wherein it surfaced that S. Jasvinder Singh Dua

had a sudden meteoric rise i.e. within a span of (16) years of his service career he rose to the post of MD SICOP. It has further surfaced that S. Jasvinder Singh Dua had initially been appointed in SICOP as JE on 15.01.1998 for a period of three months with the approval of the then MD SICOP Sh. A.K. Khullar. After approximately three years his service as JE were regularized i.e. on 20.04.1998 by the then MD illegally and under pre-designed conspiracy hatched with Sh. B.S.Dua, then GM SICOP who happened to be uncle of the beneficiary Sh. B.S.Dua clandestinely and covertly extended support to the backdoor appointment of S. Jasvinder Singh Dua which is illegal per se,

1. As per further scrutiny of records of SICOP, it has also come on fore that during the period of Sh. B.S.Dua as MD SICOP, his nephew got three promotions i.e. on 10.10.2002, 05.05.2006 and 17.04.2008 in violation of rules and norms governing the subject.
2. Thus, on analysis of records of SICOP coupled with other incriminating circumstances, it is crystal clear that Shri A.K. Khullar, the then MD SICOP and Shri B.S.Dua, the then GM and MD SICOP of the relevant time have by misuse of their position illegally and in a dubious manner facilitated backdoor appointment and subsequent promotions of S.Jasvinder Sing Dua in SICOP who is not only a beneficiary but privy to conspiracy of commission of offence as huge pecuniary advantage has been conferred un him (presently posted as MD Handicrafts corporation) by ignoring due procedure of not putting the post to advertisement, if at all same was available in SICOP.
3. Since, allegations which have sustained during verification disclose commission of criminal misconduct by Shri. A.K. Khullar, then MD SICOP (now retired) and Shri B.S.Dua, then GM SICOP (now retired) vis-a-vis beneficiary conspirator S.Jasvinder Singh Dua (now MD Handicrafts Corporations S&E) under section 5(1)(d) r/w section 5(2) of J&K P.C.Act Svt. 2006, r/w 120-B RPC.”

Statement of Articles of Charges:

“S. Jasvinder Singh Dua was engaged as Junior Engineer in SICOP vide Order No. Q5-Admn of 1998 dated 15-01-1998, in a covert manner, through backdoor process, ignoring all norms and without putting the post of -Junior Engineer to open advertisement under a criminal conspiracy hatched between him, Mr. A.K.Khullar then MD SCIOIP and Mr. B.S.Dua (his real uncle), the then General Manager, SCIOIP. He was regularised vide Order No. 39-Admn of 1998 dated 20.04.1998 and his probation cleared / confirmed vide Order No.51 Admn of 1999 dated 20.04.1999 in a planned manner under an act of favouritism/nepotism. He was promoted as Divisional Manager vide Order No-61-Admn of 2008 dated 17.04.2008 and as General Manager-vide Order No. 83-SGM of 2010 dated 18.01.2010. He was further promoted as Senior General Manager vide Order No. 01-MD of 2013 dated 03.01.2013 in league with Managing Director/General Manager. His engagement as Junior Engineer, regularisation and subsequent promotions are totally illegal as his initial engagement was done under a well knit conspiracy hatched between him, his real uncle Mr. B.S Dua and the then Managing Director SICOP in a covert manner by ignoring all the norms/rules regulating such engagements and without putting the post of Junior Engineer to open advertisement, thus, depriving other eligible candidates of the State to apply for the said post.

The officer in active connivance with others managed backdoor entry into SICOP as Junior Engineer on temporary basis and subsequently in furtherance of conspiracy got regularised as Junior Engineer and elevated to the post of Managing Director with mala fide intention and well knit conspiracy. The officer failed to maintain absolute integrity and honesty thereby violating the provisions of Rule 3 of Jammu and Kashmir Government Employees Conduct Rules, 1971.”

Statement of Imputation in support of the Articles of Charges:

On the basis of allegations received in the Anti Corruption Bureau against Sh. B.S.Dua, the then MD SICOP and various aspects inter-alia illegal appointment of his nephew s. lasvinder singh Dua in SICOP (Flag A), a detailed verification was conducted

to ascertain the actual facts' During probe record of the SCIOB was scrutinized by the Anti Corruption Bureau wherein it surfaced that S. Jasvinder Singh Dua had a sudden meteoric rise i.e. within a span of 16 years of his service career he rose to the post of MD. It further surfaced that S. Jawinder Singh Dua had initially been appointed in SICOP as JE on 15-01-1998 for a period of three months with the approval of the then MD SICOP Sh A. K.Khullar' After approximately three months, his services as JE were regularized i.e. on 20-04-1998 by then then illegally and under pre-designed conspiracy hatched with Sh. B.S.Dua, the then GM SICOP who happened to be uncle of the beneficiary' Shri B.S.Dua clandestinely and covertly extended support to the backdoor appointment of S. Jasvinder Dua which is illegal perse. As per further scrutiny of records of SCIOB, it also come to fore that during the period of sh. B.s.Dua as MD SICOP, his nephew got three promotions i.e. 10-02- 2002, 05-05-2006 and t7-04-2008 in violations of rules and norms governing the subject. Thus, an analysis of records of SICOP coupled with other incriminating circumstances makes it is crystal clear that Sh' A.K.Khullar, the then MD SICOP and sh. B.s. Dua the then GM and MD SICOP of the relevant time have by misuse of their position illegally and in a dubious manner facilitated backdoor appointment and subsequently promotions of S. Jasvinder Singh Dua in SICOP who is not only a beneficiary but privy to conspiracy of commission of offence as huge pecuniary advantage has been conferred upon him by ignoring due procedure of not putting the post to advertisement, if at all same was available in SICOP. Since allegation which have sustained during verification disclose commission of criminal misconduct by Sh. A.K.Kullar the then MD SICOP (now retired) and Sh. B.S.Dua, then GM SICOP (now retired) vis-i-vis beneficiary conspirator Sh. Jasvinder Singh Dua under section 5 (1) (d) r/w section 5 (2) of J&K PC Act Sv. 2006 r/w 120-B RPC. Consequently, case FIR No. 23/2019 has been registered in Police Station Anti Corruption Bureau Jammu. (Flag B).

During the course of investigation the record pertaining to the selection process of JE during the year 1997-98, advertisement notices, no. of candidates who applied for the post, original application forms of candidates, qualification criteria, detail of

recruitment committee members, vacancies position of the post of JEs in SICOP during the year 1997-98, rules governing recruitment process/temporary engagement of JE's in SICOP and orders pertaining to the engagement regularization and promotions of accused J.S.Dua were requisitioned from MD SICOP. The MD SICOP has intimated that vide No. SICOP/MD|2019/1500 dated: 29-11-2019 (Flag C) that there are no specific guidelines in the order/rules approved and there were two posts of JE civil which were available in SICOP in the year 1997-98 and there is no advertisement on record which would suggest that the management has invited application, for post of J. Engineers (Civil) during/in the year 1997-98. Copies of the orders of appointment regularization and promotion of Jasvinder Singh Dua were also obtained and the noting regarding initial engagement and regularization of S. Jasvinder Singh Dua were also obtained (Flag D, E, F, G, H & I).

During the course of investigation into the case, it has been established that the posts of JE during the year 1997-98 were not put to open advertisement and Jasvinder Singh Dua was engaged as JE by the then MD A.K.Khullar to order NO: 05-Admn of 1998 dated: 15-01-1998 (Flag J) by ignoring the recruitment norms and depriving other eligible candidates by not putting the post to advertisement. He was subsequently regularized vide order No. 39-Admn dated: 20-04-1998, 51-Admn of 1999 dated 20.04.1999 (Flag K & flag L) , vide order No: 109-Admn of 2002 dated: 10-02-2002 (Flag M), he was promoted as Estate Manager vide order No: 61-Admn of 2008 dated: 17-04-2008 (Flag N), as Divisional Manager vide order No: 83-SGM of 2010 dated: 18-08-2010 (Flag O), promoted as General Manager vide order NO. 01-MD of 2013 dated: 03-01-2013 (Flag P), as sr. Manager vide order No. 125-IND of 2014 dated: 02-06-2014 (Flag Q as I/C MD SIDCO and vide order No: 01-IND of 2019 dated 03-01-2019 (Flag R) of Principal Secretary to Government Industries and Commerce, as I/C Managing Director Handicraft.

The process of initial engagement of Jasvinder Singh Dua as JE, regularization and subsequent promotion is totally illegal and has been done with mala fide intention in a covert manner under a well knit conspiracy in connivance with the beneficiary to confer undue benefits to S. Jasvinder Singh Dua.”

6. In view of the case set up by the parties in their respective pleadings, following questions emerge for consideration of this court:

- a) **Whether the government can suspend and punish an employee of the corporation in terms of provisions of the Rules of 1956, even if, the said corporation is owned and controlled by the Government?**
- b) **Whether with the quashment of an FIR, departmental proceedings initiated on similar and same allegations as are contained in FIR, the departmental proceedings initiated on such similar charges can be quashed by this court in exercise of a writ jurisdiction?**

Question (a):

In the present case the corporation admittedly is an independent entity distinct and separate from the Government incorporated under the Companies Act of 1956 having its own Articles of Association inasmuch Service Rules being Rules of 1977 which Rules govern and regulate the service conditions of the employees of the corporation. **Chapter 6 of the Rules of 1977** deals with the conduct, discipline and appeal, etc. Rule 64 enumerate the acts which constitute misconduct, whereas Rule 65 provides for the penalty which can be imposed on an employee of the corporation. Rule 66 deals with suspension of an employee and provides that an employee may be placed under suspension for sufficient reasons by the competent authority provided the scale of pay of the employee does not

exceed 2000–3800. Rule 3 (G) of the Rules define the competent authority to mean the Managing Director of the corporation. Thus in terms of Rule 66 read with Rule 3 (G) it is the Managing Director alone who is competent to place an employee of the corporation under suspension subject to the condition that the pay scale of such employee does not exceed 2000–3800. However, in the case of petitioner who admittedly is of the rank of Managing Director, the competent authority in this regard would be the Board of Directors and not the Government as in terms of clause 78 (V) of the Articles of Association, it is the Board of Directors of the corporation which is competent to appoint, remove or suspend officers of the corporation. For the sake of brevity and convenience clause 78 (v) supra is extracted and reproduced hereunder:

“To appoint officers and determine duties etc.—To appoint at their discretion, remove or suspend such managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services as they may from time to time think fit and to determine their powers and duties and fix their salaries or emoluments and to require security of such amounts as they think fit in such instance.

Similarly, Rule 65 of the Rules of 1977 as noticed in the preceding paras provide that no penalty shall be imposed on an employee unless the appointing authority or such other authority empowered in this behalf after giving an opportunity to the employee to explain and after taking into account the explanation of the employees is satisfied that a fair and proper

enquiry was made and the charges leading to the penalties were proved, provided further that the appointing authority shall decide the procedure for enquiry and also quantum of punishment on the authority empowered in this behalf.

As long as the petitioner continued to be on the establishment of the corporation his service would be governed by the Articles of Association and the Rules of 1977 more so in view of the fact that Rules of 1977 also provide that where the Rules are silent then the Rules applicable to Government would apply.

Thus, in this view of the matter the respondents lack competence and jurisdiction to issue the impugned order of suspension against the petitioner or for that matter to draw, frame and serve Statement of Articles of Charges and Statement of Imputation in support of the Articles of Charges. A reference in this regard to the judgement of this court passed in case titled as **Ajaz A. Kar versus State of J&K reported in 1995 SLJ 145** would be relevant wherein following has been held:

“1. This petition calls in question Government order No. 640GR (Home of 1990) dated 19.5.1990, whereby the petitioner has been dismissed from service.

2. The only point which is agitated by the L/C for the petitioner is that the petitioner is an employee of SICOP which is a corporation governed by its own bylaws. According to those bylaws it is the Board of Directors who is the appointing authority and could only have passed an order of dismissal. According to him the petitioner was neither a member of civil service of Union or State nor did he hold the post under them. As such the provision of section 126 of the Constitution of the Jammu and Kashmir was not applicable. The impugned order having been passed in terms of the said provision of law is therefore beyond jurisdiction and nullity. The L/C for the petitioner has taken me through Government order

No.299Ind (DIC) of 1989 dated 12.10.1989. Whereby sanction was granted to the adjustment of the petitioner in SICOP on permanent basis. This order also postulates that the service conditions and pay of the petitioner would thereafter be governed by the rules of the said corporation. Para 78 (V) of the memorandum of association of the said corporation vests the power of appointment and removal with the Board of Directors. The corporation has its distinct rules called the Jammu and Kashmir Small scale Industries Development Corporation limited (staff) service rules 1977. Rule 65 provides for the punishment of an employee. Sub Rule (2) of Rule 65 contemplates as under:

"No penalty shall be imposed on any employee unless the appointing authority or such other authority empowered in this behalf, after giving an opportunity to the employee to explain after taking into account the explanation of the employee, is satisfied that a fair and proper enquiry was made the charges loading to the penalty were proved. The procedure for the enquiry and also the form and quantum of punishment shall empowered in this behalf"

3. A perusal of this provision of law makes it clear that any order of punishment passed by an authority other than the appointing authority is not within jurisdiction. Governor is no doubt the head of the State but he cannot pass orders like the one impugned in this petition which relates to the termination of an employee of a corporation.

Mr. U.K. Jalali, AAG, has fairly conceded to this position of law and he had no argument to repel this point.

On the foregoing analogy I find the order impugned by way of this petition to be beyond jurisdiction and nullity. That being so I have no alternative but to quash the same. Therefore, while allowing the writ I quash the order impugned in the petition. No order as to costs."



Question (b):

The two proceedings being criminal and departmental indisputably are different and distinct, operating in different fields, having different objectives. The object of criminal proceeding is to inflict appropriate punishment on the offender whereas the purpose of departmental proceeding is to impose penalty upon the delinquent official in accordance with the service rules.

In the present case admittedly both the proceedings are not running simultaneously, in that, as has been stated by the respondents in their reply and noticed in the preceding paras the disciplinary action has been initiated against the petitioner on the basis of letter of Anti-Corruption Bureau (ACB) dated 27.11.2019 and the verification conducted by the Anti-Corruption Bureau (ACB) in the matter led to the registration of FIR 23/2019 *supra* and on the same set of facts and allegations the respondents have initiated the impugned departmental proceeding. Once the FIR registered by the Anti-Corruption Bureau (ACB) is quashed by this court by an order having been upheld by the Apex court, the departmental proceedings/disciplinary action initiated against the petitioner on the identical and similar set of facts/allegations cannot be continued as same would amount to sitting over the judgement of this court and order of the Apex court which by no stretch of imagination would be in any case permissible. A reference to the judgement of the Apex Court passed in case titled as **“Ram Lal versus State of Rajasthan (civil appeal no. 7935 of 2023) dated 04.12.2023** would be appropriate herein, wherein at para 13 following came to be observed:

“13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes 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, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]”

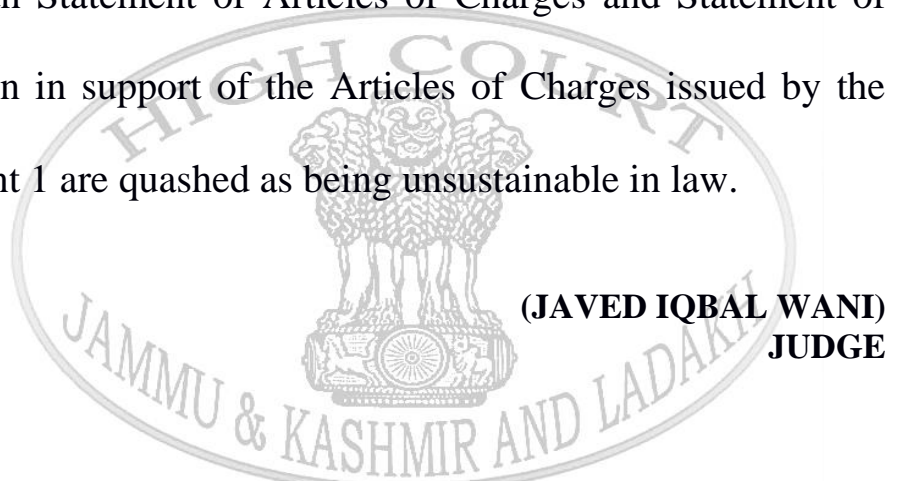
It is pertinent and significant to note here that it is not the case of the respondents that they themselves were of the opinion that the initial appointment of the petitioner and his subsequent regularisation and promotions earned by him were illegal and found other officers involvement in the said illegality, however on the contrary the respondents in the reply have categorically stated that the disciplinary proceedings were initiated on the basis of letter of ACB dated 27.11.2019. Therefore, once the FIR *supra* was quashed by this court as the court was of the opinion that the allegations levelled against the petitioner did not constitute an offence much less those covered therein and such quashment of the FIR was upheld by the Apex Court, the disciplinary proceedings on the similar set of allegations cannot be allowed to continue and, as such, the principle of law laid down by the Apex Court in **Ram Lal** case *supra* can safely be borrowed and applied in the present case as well on the admitted facts and once the very basis of a criminal prosecution i.e. FIR 23/2019 came to be quashed, disciplinary proceedings on similar set of allegations/charges cannot be allowed to be continued in

that having a deeper and closer examination of the allegations contained within the FIR and the Statement of Articles of Charges and the Statement of Imputation in support of the Articles of Charges are not just similar but identical.

7. Viewed thus, what has been observed, considered and analysed hereinabove, the only inescapable conclusion that can be drawn is that the petition deserves to be allowed. Resultantly, by issuance of a writ of certiorari the impugned order No. 271-JK(GAD) of 2020 dated 20.02.2020 issued by respondent 2 and Memorandum No. IMD/SICOP/412018-51 dated 20.04.2020 along with Statement of Articles of Charges and Statement of Imputation in support of the Articles of Charges issued by the respondent 1 are quashed as being unsustainable in law.

Srinagar
30-04-2024

N Ahmad



**(JAVED IQBAL WANI)
JUDGE**

Whether the order is speaking: Yes

Whether the order is reportable: Yes