

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 31st OF OCTOBER, 2023

WRIT PETITION No.27083 of 2023

BETWEEN:-

LAKHAN AHIRWAR

.....PETITIONER

(BY SHRI SANJEEV KUMAR CHANSORIYA - ADVOCATE)

AND

1. THE STATE OF M.P. THROUGH PRINCIPAL SECRETARY HOME DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. THE SUPERINTENDENT OF POLICE DAMOH, DISTRICT DAMOH (MADHYA PRADESH)
3. SUB DIVISIONAL POLICE OFFICER, TENDUKHEDA, DISTRICT DAMOH (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SWAPNIL GANGULY - DEPUTY ADVOCATE GENERAL)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed against the departmental charge-sheet dated 14/07/2019 issued by respondent No.2 in file No.S.P./Damoh/Steno/DE/05/19, order dated 11/09/2023 issued by Superintendent of Police, Damoh, by which

Enquiry Officer and Presenting Officer have been appointed and against notice dated 30/09/2023 issued by Enquiry Officer/ SDO(P), Tendukheda, District Damoh, by which petitioner has been directed to appear before Enquiry Officer on 09/10/2023.

2. It is the case of petitioner that on the basis of complaint made by prosecutrix "x", Police Station Damoh Kotwali, District Damoh registered FIR No.435/2019 against petitioner on 30/05/2019 for offence under Sections 376, 376(2)(N), 465, 201, 506 of IPC. Accordingly, a departmental enquiry was also initiated. Since investigation was pending, therefore petitioner filed Writ Petition No.22567/2019 for stay of departmental enquiry which was disposed of by order dated 27/11/2019 with a direction that departmental enquiry shall remain stayed during the pendency of investigation and if police files a final report and same is accepted by Trial Court, then enquiry can recommence on the basis of same charge-sheet. It was also observed that if police files a charge-sheet after investigation, then petitioner shall be at liberty to file afresh petition challenging the proceedings and may pray for stay of the proceedings in departmental enquiry. Thereafter, charge-sheet was filed against petitioner, therefore petitioner again filed Writ Petition No.3656/2020 and Co-ordinate Bench of this Court by order dated 12/02/2020 stayed the further proceedings of departmental enquiry in view of pendency of trial. Petitioner has been acquitted by the Trial Court by judgment dated 20/04/2023 passed in Sessions Trial No.16/2020. On 11/09/2023 impugned notice of recommencement of departmental enquiry was issued. Thereafter, petitioner filed an application dated 29/09/2023 to close the departmental enquiry. However, respondent No.3 has issued notice dated 30/09/2023 to

petitioner to appear before Enquiry Officer on 09/10/2023 or else *ex-parte* proceedings shall be conducted against him.

3. Challenging the charge-sheet, re-commencement of departmental enquiry, notice to appear before Enquiry Officer, it is submitted by counsel for petitioner that once petitioner has already been tried and acquitted for offence under Sections 376, 376(2)(N), 465, 201, 506 of IPC, then departmental enquiry on similar charges is bad in law.

4. Considered the submissions made by counsel for petitioner.

5. Charge-sheet dated 14/07/2019 has been issued on the following two charges:-

"01— अपचारी आरक्षक द्वारा पुलिस अधीक्षक कार्यालय, दमोह में संचालित साइबर सेल शाखा में पदस्थापना के दौरान पदीय प्रस्थिति का दुरुपयोग कर आवेदिका बबीता अहिरवार के विरुद्ध अशिष्ट, अमर्यादित एवं विधिविरुद्ध आचरण करना, इस प्रकार पुलिस रेग्युलेशन के पैरा 64(3) व (4) में दिये गये प्रावधानों का उल्लंघन करना।

02— अपचारी द्वारा अन्य आवेदिका सरिता अहिरवार के साथ अशिष्ट, अमर्यादित एवं विधिविरुद्ध आचरण करने की शिकायत प्राप्त होना, इस प्रकार अपचारी आरक्षक उपरोक्तानुसार कदाचरण करने का आदी होना।"

6. It is the case of petitioner that once petitioner has been acquitted in a criminal case involving similar charges, then departmental enquiry is not warranted.

7. Before considering the fact as to whether an employee can be proceeded departmentally even after his acquittal or not, this Court would like to consider the judgment pronounced by Trial Court in criminal case.

8. Petitioner has filed a copy of judgment passed by Second Additional Sessions Judge, District Damoh in Sessions Trial No.16/2020 decided on 20/04/2023. From the said judgment, it is clear that petitioner was tried for an offence under Sections 376, 376(2)(N), 465, 201, 506 of IPC. Allegations made by prosecutrix "x" against petitioner were that in the year 2011, she went to the Office of Superintendent of Police, Damoh to lodge a complaint with regard to missing of documents, bag and mobile phone etc. Thereafter, she came in contact with petitioner and they started talking to each other and thereafter they started meeting each other. It was alleged that in the month of July-August 2011, petitioner forcibly had a physical relationship with her. It was further alleged that by preparing false marriage agreement, petitioner was all the time giving false assurance to the prosecutrix that he would marry her. Petitioner had even extended threat to her as well as to her family members that in case if any complaint is made, then he would kill her father and brother, accordingly, Crime No.435/2019 was registered. Police after completing investigation filed the charge-sheet and charges under Sections 376(2)(N), 465, 201, 506 Part-II of IPC were framed. Petitioner took a defence that petitioner and prosecutrix had voluntarily lived in live-in relationship and in the year 2014, he and prosecutrix had performed marriage in front of a Notary and he has been falsely implicated. Prosecutrix had relationship with multiple boys and certain defence witnesses were also examined.

9. Prosecutrix supported the prosecution case. Photocopy of marriage agreement was also produced which was exhibited as Ex.P-6. Recorded conversations between petitioner and prosecutrix were also

produced before the Trial Court.

10. Trial Court after considering the evidence, came to a conclusion that it appears that there was a love relationship between petitioner and prosecutrix and on account of said love relationship, physical relations took place on multiple occasions. Trial Court had also considered the defence documents including photographs and after considering the evidence came to a conclusion that consent given by prosecutrix was a free consent and is not hit by Section 90 of IPC. So far as the question of marriage agreement is concerned, Trial Court was of the view that it was very easy for petitioner to prove that there was some marriage agreement between him and prosecutrix and therefore, he could have produced the same. Therefore, it was held that charge under Section 201 of IPC is not proved. Ultimately, by considering the evidence available on record, Trial Court came to a conclusion that since prosecutrix was herself an illiterate lady and she was voluntarily in live-in relationship with petitioner therefore, no offence punishable under Section 376 of IPC is made out and accordingly, petitioner was acquitted for offence under Sections 376(2)(N), 465, 201, 506 (Part-II) of IPC.

11. Although Trial Court has considered the effect of Section 90 of IPC but unfortunately, has ignored the definition of "rape" as defined under Section 375 of IPC. It was the case of prosecutrix that a marriage agreement was prepared by petitioner. Defence of petitioner has also been mentioned by Trial Court in paragraph 5 of judgment of acquittal.

12. From the facts narrated in paragraph 5 of the judgment, it is clear that even petitioner had taken a specific defence that he had married the prosecutrix in front of a Notary and thus, even it was the case of petitioner that a marriage agreement was executed.

13. Now the only question for consideration is as to whether allegation of marriage agreement and similar defence taken by petitioner will amount to offence of rape as defined under Section 375 of IPC or not?

14. Section 375 of IPC reads as under:-

"375. Rape.—A man is said to commit “rape” if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First.— Against her will.

Secondly.—Without her consent.

Thirdly.— With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.— With her consent when, at the time of giving such consent, by reason of unsoundness of

mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.— With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent."

15. From plain reading of Section 375 of IPC *fourthly*, it is clear that a man is said to have committed rape even with the consent of prosecutrix, when he knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

16. Undisputedly, marriage by executing a marriage agreement is not a valid form of marriage. In Hindu law, marriage is not a contract and it has to be performed by observing *Sapt padi* or by any other recognized mode of marriage either under the Anand Marriage Act, Special Marriage Act, Arya Marriage Validation Act etc.

17. This Court in the case of **Bundel Singh Lodhi Vs. State of M.P.** decided on 30/04/2021 in **M.Cr.C. No.15168/2021 (Gwalior Bench)** and **Mukesh S/o. Mr. Lakshman @ Lakshminarayan Vs. The state of M.P.** decided on 31/12/2020 in **M.Cr.C. No.44184/2020 (Indore Bench)** has held that it is not the duty of Notary to execute a marriage agreement and even directions were given to Law Department to take action against such Notaries who were involved in executing marriage agreements.

18. This Court in the case of **Bundel Singh Lodhi (supra)**, has held as under:-

"In Hindu Law, marriage is not a contract. The marriages cannot be performed by execution of a marriage affidavit. Either, the marriage is to be performed by performing Saptpadi, or in accordance with custom. Marriage can also be performed as per the provisions of Special Marriage Act or as per the provisions of other Statutes like Anand Marriage Act, 1909 etc. However, the Counsel for the applicant, could not point out any provision, under which, a marriage can be performed by execution of an Affidavit. Similarly, he could not point out any provision of law, by which a marriage can be dissolved by execution of an Affidavit.

Notaries have never been appointed as Marriage Officers. They cannot notarize an affidavit of marriage or divorce. Further more, Divorce can be granted only by a decree of a Court of competent jurisdiction or as per custom.

Now a days, it is being observed that Marriage affidavits are being executed on large scale, thereby giving a bonafide impression to the bride that now She is legally wedded wife as her Court Marriage has taken place, thereby facilitating the boy to commit rape on the innocent girl. Section 375 *Fourthly* of I.P.C. reads as under :

375. Rape

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

A Notary has not been appointed as a Marriage Officer. Section 8 of Notaries Act, reads as under:

8. Functions of notaries.—(1) A notary may do all or any of the

following acts by virtue of his office, namely:—

- (a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottomry and respondentia bonds, charterparties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;
- (h) translate, and verify the translation of, any documents from one language into another;
- (h-a) acts as a Commissioner to record evidence in any civil or

criminal trial if so directed by any court or authority;

(*h-b*) act as an arbitrator, mediator or conciliator, if so required;]

(*i*) any other act which may be prescribed.

(2) No act specified in subsection(1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

From the plain reading of Section 8 of Notaries Act, it is clear that execution of Marriage Affidavit and Divorce Affidavit is not the function of a Notary. Thus, it is clear that without any authority of law, marriage affidavits and divorce affidavits are being executed by Notaries, thereby, assisting the unscrupulous boys for committing rape as defined under Section 375 of I.P.C.

According to the State Counsel, Shri M.K. Choudhary, Notary, Bhopal had executed the affidavit of marriage and divorce.

Accordingly, Principal Secretary, Law and Legislative Department, State of M.P./competent authority is directed to initiate proceedings under Section 10 of Notaries Act against Shri M.K. Choudhary. The investigating officer is directed to supply a copy of the affidavits dated 8-5-2018 and 15-6-2018 along with the copy of the register of Shri M.K. Choudhary, Notary, Bhopal to the Principal Secretary, Law and Legislative Department/Competent Authority within a period of 15 days from today.

The Principal Secretary, Law and Legislative Department/Competent Authority is directed to pass a final order within a period of 4 months from today, and inform the Principal Registrar of this Court within a period of 5 months from today.

Needless to mention here that before passing the final order, the Principal Secretary, Law and Legislative Department/Competent Authority, shall follow the procedure as prescribed under Notaries Act/Notaries Rules."

19. A Co-ordinate Bench of this Court in the case of **Mukesh S/o Mr. Lakshman @ Lakshminarayan (supra)**, has held as under:-

"Not only the accused persons who have conspired in performing the forged marriage of the complainant, but the Notary who executed the marriage agreement is also equally responsible in this case. The job of the Notary is defined under the Notary Act. He is not supposed to perform the marriage by executing documents. Had he properly guided and refused to execute the marriage agreement to the complainant, then the present offence would not have been committed. This Court is repeatedly receiving the cases of forged marriage performed by the Notary, therefore, the Law Department of the State is required to look into these matters as to how the Notaries and Oath Commissioners are involving themselves in executing the document in respect of the marriage, divorce, etc, which are not permissible under the law. Neither the Notary is authorised to perform the marriage nor competent to execute the divorce deed. Therefore, strict guidelines are required to be issued to the Notaries and oath commissioners for not executing such type of deed, failing which their licence would be terminated. Let a copy of this order be sent to the Principal Secretary, Law Department of State of M.P. For taking action in the matter.

20. Thus, it is clear that by executing a marriage agreement, petitioner had given a false belief to the prosecutrix that she is lawfully married to petitioner whereas petitioner was knowing that he is not her husband.

21. Unfortunately, while deciding the offence punishable under Section 376 of IPC, Trial Court has not considered the definition of "rape" as defined under Section 375 of IPC and has not considered the pros & cons of executing a marriage agreement to falsely give an impression in the mind of prosecutrix that she is a lawfully married woman. Although, Trial Court has also acquitted the petitioner for offence under Section 201 of IPC but Trial Court itself has reproduced the defence taken by petitioner in paragraph 5 of her judgment and it has been specifically mentioned that petitioner had performed marriage with prosecutrix in front of a Notary.

22. Once the execution of marriage agreement was admitted by petitioner and if prosecutrix was alleging that original document is with petitioner, then more elaborate discussion was required for acquitting petitioner from offence under Section 201 of IPC.

23. Thus, this Court is of the considered opinion that the Trial Court i.e. Second Additional Sessions Judge Damoh has passed the judgment in Sessions Trial No.16/2020 on 20/04/2023 in a most casual and cursory manner. Whenever a Trial Court is dealing with heinous offence, then it is always expected that Trial Court must go through the definition of offence for which it was conducting trial. However, it appears that Trial Court even did not care to go through the definition of "rape" as defined under Section 375 of IPC.

24. Accordingly, Office is directed to place this file before Hon'ble The Chief Justice for his perusal and further action, if any.

25. Now coming back to the question involved in the present case, it is the contention of counsel for petitioner that since he has been acquitted in a criminal case, therefore departmental enquiry on the

similar charges is not permissible.

26. Charges which have been leveled against petitioner are with regard to his misconduct for his behaviour/ mis-behaviour with prosecutrix and have already been reproduced in previous paragraphs.

27. Under these circumstances, this Court is of the considered opinion that there is a substantial difference between charges leveled against petitioner in the Trial Court and in the departmental enquiry.

28. Furthermore, petitioner had also admitted before the Trial Court that he was in live-in relationship with prosecutrix and had also executed a marriage agreement.

29. Further, degree of proof in a criminal case is much different from that of degree of proof in a departmental enquiry. Departmental enquiries are decided on preponderance of probabilities, whereas in a criminal case charges are to be proved beyond reasonable doubt.

30. Be that whatever it may be.

31. The Supreme Court in the case of **State of Rajasthan and others Vs. Heem Singh** reported in (2021) 12 SCC 569 has held as under:-

"38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In *Southern Railway Officers Assn. v. Union of India* (2009) 9 SCC 24, this Court held : (SCC p. 40, para 37)

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. *It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.*”

(emphasis supplied)

39. In *State v. S. Samuthiram*, (2013) 1 SCC 598, a two-Judge Bench of this Court held that unless the accused has an “honourable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”. Noticing this, the Court observed : (SCC pp. 609-10, paras 24-26)

“Honourable acquittal

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in *RBI 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.

25. In *R.P. Kapur v. Union of India* AIR 1964 SC 787 it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam v. Raghava Rajgopalachari*, 1972 SLR 44 (SC) this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor*, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168 which is as follows : (*Raghava case*, SLR p. 47, para 8)

‘8. ... The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the

appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.’ (*Robert Stuart case*, ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. *It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings and preponderance of*

probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

(emphasis supplied)

32. The Supreme Court in the case of **Management of Bharat Heavy Electricals Limited Vs. M. Mani** reported in **(2018) 1 SCC 285** has held as under:-

"20. Similarly, in our considered view, the Labour Court failed to see that the criminal proceedings and departmental proceedings are two separate proceedings in law. One is initiated by the State against the delinquent employees in criminal court and other i.e. departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees.

21. The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic

enquiry, which the employer had every right to conduct independently of the criminal case.

22. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no avail. It is held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held—the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See *Karnataka SRTC v. M.G. Vittal Rao*, (2012) 1 SCC 442.)

23. In the light of this settled legal position, the Labour Court was not right in holding that the departmental enquiry should have been stayed by the appellant awaiting the decision of the criminal court and that it is rendered illegal consequent upon passing of the acquittal order by the criminal court. This finding of the Labour Court is, therefore, also not legally sustainable."

33. The Supreme Court in the case of **Maharashtra State Road Transport Corporation Vs. Dilip uttam Jayabhay** reported in (2022) 2 SCC 696 has held as under:-

"**11.** At the outset, it is required to be noted that in the departmental proceedings the misconduct alleged against the respondent driver of driving the vehicle rashly and negligently due to which the accident occurred in which four persons died has been proved. Thereafter, the disciplinary authority passed an order of dismissal, dismissing the respondent workman from service. The Labour Court did not interfere with the order of dismissal by giving cogent reasons and after reappreciating the entire evidence on

record including the order of acquittal passed by the criminal court. However, the Industrial Court though did not interfere with the findings recorded by the disciplinary authority on the misconduct proved, interfered with the order of dismissal solely on the ground that punishment of dismissal is disproportionate to the misconduct proved and the same can be said to be unfair labour practice as per clause 1(g) of Schedule IV of the MRTU & PULP Act, 1971. The same is not interfered with by the High Court.

11.1. Therefore, the short question which is posed for the consideration of this Court is whether in the facts and circumstances of the case the punishment of dismissal can be said to be an unfair labour practice on the ground that the same was disproportionate to the misconduct proved and therefore the Industrial Court was justified in interfering with the order of dismissal and ordering reinstatement with continuity of service.

11.2. Having gone through the findings recorded by the enquiry officer in the departmental enquiry and the judgment and order passed by the Labour Court as well as the Industrial Court and even the judgment and order of acquittal passed by the criminal court, it emerges that when the respondent was driving the vehicle it met with an accident with the jeep coming from the opposite side and in the said accident four persons died. From the material on record it emerges that the impact of the accident with the jeep coming from the opposite side was such that the jeep was pushed back 25 feet. From the aforesaid facts it can be said that the respondent workman was driving the vehicle in such a great speed and rashly due to which the accident had occurred in which four persons died. Even while acquitting the respondent accused driver who was facing the trial under Sections 279 and

304(a)IPC the criminal court observed that the prosecution failed to prove that the incident occurred due to rash and negligent driving of the respondent accused herein only and none else. Therefore, at best even if it is assumed that even driver of the jeep was also negligent, it can be said to be a case of contributory negligence. That does not mean that the respondent workman was not at all negligent. Hence, it does not absolve him of the misconduct.

11.3. Much stress has been given by the Industrial Court on the acquittal of the respondent by the criminal court. However, as such the Labour Court had in extenso considered the order of acquittal passed by the criminal court and did not agree with the submissions made on behalf of the respondent workman that as he was acquitted by the criminal court he cannot be held guilty in the disciplinary proceedings.

11.4. Even from the judgment and order passed by the criminal court it appears that the criminal court acquitted the respondent based on the hostility of the witnesses; the evidence led by the interested witnesses; lacuna in examination of the investigating officer; panch for the spot panchnama of the incident, etc. Therefore, the criminal court held that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. On the contrary in the departmental proceedings the misconduct of driving the vehicle rashly and negligently which caused accident and due to which four persons died has been established and proved. As per the cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standards of proof in both the cases are different and the proceedings operate in different fields and with different objectives. Therefore, the Industrial Court has erred in giving much stress on the

acquittal of the respondent by the criminal court. Even otherwise it is required to be noted that the Industrial Court has not interfered with the findings recorded by the disciplinary authority holding charge and misconduct proved in the departmental enquiry, and has interfered with the punishment of dismissal solely on the ground that same is shockingly disproportionate and therefore can be said to be an unfair labour practice as per clause 1(g) of Schedule IV of the MRTU & PULP Act, 1971.

11.5. Now so far as the order passed by the Industrial Court ordering reinstatement with continuity of service by invoking clause 1(g) of Schedule IV of the MRTU & PULP Act, 1971 is concerned, as per clause 1(g) only in a case where it is found that dismissal of an employee is for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

34. The Supreme Court in the case of **Uttaranchal Road Transport Corpn. and others Vs. Mansaram Nainwal** reported in (2006) 6 SCC 366 has held as under:-

"7. Challenging the order of the Labour Court, the respondent filed a writ petition which, as noted above, was allowed by the impugned judgment. The foundation of the High Court's judgment was to the effect that in the criminal trial the respondent was acquitted and placing reliance on a decision of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] the order of termination was set aside.

8. In support of the appeal, learned counsel for the appellant submitted that the ratio in *Anthony case* has no application to the facts of the present

case. It has not even been indicated as to how the factual position is similar. In any event, acquittal in a criminal case does not lead to an automatic reinstatement and also does not render the departmental proceedings invalid. It was, therefore, submitted that the High Court was clearly wrong in its conclusion.

9. On the other hand, learned counsel for the respondent submitted that the departmental authorities in the enquiry conducted against the respondent had clearly found that he was not responsible for the accident and there was no misconduct involved.

10. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in *Union of India v. Bihari Lal Sidhana [(1997) 4 SCC 385 : 1997 SCC (L&S) 1076]*. It was held in para 5 as follows : (SCC pp. 387-88)

“5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being

under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.”

11. The ratio of *Anthony case* can be culled out from para 22 of the judgment which reads as follows : (SCC p. 691)

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if

the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

12. Though the High Court had not indicated as to how the decision of this Court in *Anthony case* laid down as a matter of law that whenever there is acquittal in a criminal trial reinstatement is automatic, in all probabilities basis was para 36 of *Anthony case* which reads as follows : (SCC p. 695)

“36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. *In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts.* The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs

15,000.” (underlined [Ed. : Herein italicised.] for emphasis)

13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa v. Sudhansu Sekhar Misra* [(1968) 2 SCR 154 : AIR 1968 SC 647] and *Union of India v. Dhanwanti Devi* [(1996) 6 SCC 44].) A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathem* [1901 AC 495 :

(1900-03) All ER Rep 1 : 85 LT 289 (HL)], Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

14. Unfortunately, the High Court has not discussed the factual scenario as to how *Anthony case* had any application. As noted above, the position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in *Sidhana case*. As the High Court had not dealt with the factual scenario and as to how *Anthony case* helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order."

35. Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that no case is made out for quashment of charge-sheet as well as for quashment of orders dated 11/09/2023 issued by respondent No.2 and 30/09/2023 issued by respondent No.3.

36. Charge-sheet was issued in the year 2019 and departmental enquiry remained under suspended animation for four long years.

37. Accordingly, respondent No.2 is directed to positively conclude the departmental enquiry within a period of **six months** from today. If

necessary, he shall issue necessary instructions to the Enquiry Officer also for expeditious disposal of enquiry.

38. Registry is directed to send a copy of this order to respondents No.1 to 3 for necessary information and compliance.

39. With aforesaid observation, petition is finally **disposed of**.

(G.S. AHLUWALIA)
JUDGE

Shubhankar