
(2015) 07 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16041 of 2012

Dalbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19, 2(1)(h), 28, 32, 33
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 309

Citation : (2015) 07 P&H CK 0023

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : S.K. Monga, for the Appellant; Ashish Kapoor, A.A.G, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Amol Rattan Singh, J.—The petitioner is a retired Chief Engineer from the Irrigation Department of the Government of Haryana, having retired on 30.06.2008. He has challenged the issuance of the charge-sheet issued to him, dated 10.03.2009 (Annexure P-17), and the communication dated 28.06.2012 (Annexure P-25) addressed by the first respondent to the Deputy District Attorney, holding that disciplinary proceedings would lie against a Government servant even when he is acting as an Arbitrator, in a lis between two parties. The petitioner has also challenged the order of the Enquiry Officer, dated 24.07.2012 (Annexure P-27), dismissing two applications filed by the petitioner. By the first, the petitioner sought that the enquiry proceedings be dropped, because against the award made by him as an Arbitrator, the Government had already availed of its remedy under the Arbitration and Conciliation Act, 1996 (henceforth to be referred to as "the Act"), by challenging the same before the Civil Court. By the second application, the petitioner had stated that the disciplinary proceedings could not be initiated at the behest of a person with a suspicious conduct, who had acted in an injudicious manner with malafide intention and who was also

facing allegations of corruption levelled by five employees working in his own department.

2. Essentially, the petitioner has challenged the disciplinary proceedings initiated against him, charging him with mis-conducting himself while acting as an Arbitrator, in a dispute raised by a Government Contractor against the State of Haryana, with regard to alleged deficiency in payment to the Contractor, by the State, upon completion of a works contract.

The other orders/letter impugned, arise from the disciplinary proceedings.

He further seeks a writ of mandamus directing the respondents to release the amount of gratuity, leave encashment and commuted pension, as have been withheld by the respondent-State, on account of the pendency of the disciplinary proceedings against him.

3. The petitioner was appointed as an Arbitrator to settle the dispute between the parties, vide an order of the Government (the first respondent) dated 09.08.2007. He had announced the award on 23.06.2008.

In addition to the State of Haryana, which has been impleaded through its Financial Commissioner-cum-Principal Secretary to the Government, in the Department of Irrigation; and the Engineer-in-Chief of the Irrigation Department, the petitioner has also impleaded one Shri R.N. Prashar, a former Financial Commissioner-cum-Principal Secretary to Government of Haryana, in the Department of Irrigation, under whose orders disciplinary proceedings have been initiated and, in fact, is the officer who had issued the chargesheet to the petitioner. He has also impleaded Sh. O.P. Garg, retired Additional District Judge, who was the enquiry officer appointed by the respondent-Government, to enquire into the charges against the petitioner.

The Accountant General (A and E), Haryana, has been impleaded as the last respondent (not by name).

Since respondents No. 3 and 4 (Sh. R.N. Prashar and Sh. O.P. Garg) chose not to defend the petition despite service, they were ordered to be proceeded against ex parte, vide an order of this Court dated 20.09.2013.

It needs mention that at the time when notice was issued on 29.08.2012, disciplinary proceedings were ordered to be stayed, by this Court.

4. Though a reply has been filed on behalf of respondent No. 1, the necessary contents of which will be referred to subsequently, and the petitioner has also filed a replication thereto, however, learned counsel for the petitioner raised a preliminary issue at the outset, which would require consideration before coming to the merits of the other contentions made in the petition.

5. Before addressing arguments on merits, Mr. S.K. Monga, learned counsel appearing for the petitioner, first submitted that no disciplinary proceedings would lie against the petitioner in respect of any act done by him or orders

passed by him, in his capacity as an Arbitrator, as such appointment is not a part of the duties to be discharged by him as a Government servant but, in fact, is an appointment given outside his capacity as such Government servant and, in fact, the petitioner was paid remuneration to act as an Arbitrator, over and above the salary drawn by him in his capacity as a Chief Engineer, working in the employment of the respondent-State.

Hence, learned counsel submitted, disciplinary proceedings initiated under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (hereinafter to be referred as to the "Rules of 1987"), can only be in respect of acts of omission and commission done during the discharge of an employees' duties as a Government servant.

In support of his contention, Mr. Monga, relied upon the following judgments:

- 1) Cassidy Vs. Ministry of Health All England Law Reports (Vol.I)-574;
- 2) Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, AIR 2006 SC 1165 : (2006) 6 CompLJ 296 : (2006) 108 FLR 996 : (2006) 2 JT 137 : (2006) 2 SCALE 115 : (2006) 2 SCC 482 : (2006) SCC(L&S) 339 : (2006) 1 SCR 1006 : (2006) 3 SLJ 28 : (2006) AIRSCW 844 : (2006) 2 Supreme 221 ;
- 3) Smt. Savita Garg Vs. The Director, National Heart Institute. Civil Appeal No. 4024 of 2003, decided on 12.10.2004 by the hon"ble Supreme Court.

6. The thrust of learned counsel's arguments on the issue, was that once the petitioner had been appointed as an Arbitrator, the said appointment was a "contract for service" and not a "contract of service". In fact, the judgments listed above, were cited by him essentially on that issue.

In Cassidy's case (supra), a Bench of three Judges observed as follows:-

"A servant is a person subject to the command of his master as to the manner in which he shall do his work."

HILBERY, J., summarized the distinction in this way:

"...in a contract for services the master can order or require what is to be done, while in the other case [a contract of service] he can not only order or require what is to be done but direct how it shall be done."

With respect, I think that in the first case the word "master" is inappropriate, and the later test would, I think, if applied in the ordinary meaning of the words, exclude many cases where the relationship of master and servant clearly exists. To take the example given by MACKINNON, L.J., in Gold's case (1) of a certified captain of a ship, the owner can, of course, tell him where to go, but he cannot tell him how to navigate. BUCKLEY, L.J., in Simmons' case (5) referred ([1910]) 1 K.B. 552) to the football player in Walker v. Crystal Palace Football Club, Ltd. (7) who, though under a contract of service, had in certain respects to exercise his own judgment uncontrolled by anybody. Later (ibid., 553) he puts various

tests, one of which I find difficult. He gives as a test for a contract for services:

"... was he employed to exercise his skill and achieve an indicated result in such manner as in his judgment was most likely to ensure success?"

In *Vaghelas*" case (supra), while considering whether or not a contractual employee falls within the definition of "Government servant", the Hon"ble Supreme Court, after referring to *Cassidys*" case and other English law on the subject and thereafter by reference to the relevant Rules in question, defining a Government servant, held as follows:-

"20. For the reasons discussed above, we are clearly of the opinion that respondent No. 1 cannot be said to be a Government servant as he was working on contract basis and, therefore, he was not eligible for any relaxation in upper age limit. The view taken by the High Court is clearly erroneous in law and is liable to be set aside."

In *Savitas*" case (supra), which arose out of a consumer complaint against the respondent-Hospital therein, alleging that the death of the petitioners" husband was on account of deficient services etc., the issue with regard to the difference between "contract for service" and "contract of service" was also considered and it was observed as follows:-

"In this connection, learned counsel appearing for the respondent ably tried to make a distinction between "contract for service" and "contract of service". He submitted that those persons who are on contract for service are different from those persons who are on contract of service. He submitted that in a contract for service there is a contract whereby one party undertakes to render service e.g. Professional or technical service, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A "contract of service" implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance."

7. Learned counsel next submitted on this issue, that as per Section 19 of the Act, the Arbitrator is free to conduct proceedings in the manner he considers appropriate, if there is any disagreement on such proceedings, between the parties to the agreement. Therefore, since the Arbitrator is working as such in a judicial capacity and, in fact, as per learned counsel, he can be termed as a "private judge", any action taken by him in the discharge of such function, cannot be subject matter of disciplinary proceedings, especially by any of the parties to the lis.

In this regard, he also brought attention to the definition of a Government employee, as per Rule 2(d) of the Rules of 1987 and the exclusion thereafter, in Rule 2-A, both of which shall be reproduced while considering the arguments addressed.

8. Mr. Monga further submitted that since the Government was a party to the arbitration agreement in terms of Section 2(1)(h) of the Act, and Section 7 thereof further refers to the Arbitration agreement as an agreement between the parties, in which either a separate arbitration clause is included or it is a separate agreement for arbitration in respect of a contract/contracts, respondent No. 1 cannot be a judge in its own cause, inasmuch as the petitioner is being charged with having mis-conducted himself, by awarding against the 1st respondent, and in favour of the Contractor, an amount of money which, according to the respondents, is far in excess of what was due to him.

Mr. Monga submitted that other than the fact that actually no Arbitrator should be a Government servant where the Government is a party to the lis, in any case, no disciplinary proceedings would lie against the Arbitrator so appointed by the Government itself, on the ground that, in the discharge of his judicial function, he has committed any error.

This is, he submitted, *de hors* the merits of the case that the petitioner had actually awarded what he found to be due to the Contractor, in terms of the contract.

He further submitted that if such disciplinary proceedings are allowed to be sustained, every Arbitrator who is also a Government servant and has been appointed by the Government, would shy away from doing his duty as an Arbitrator, except to give an award in favour of the Government, if a sword of Damocles keeps hanging on his head, that he may be accused of misconduct and corruption, in case he makes an award against the Government.

Therefore, Mr. Monga submitted that the disciplinary proceedings being non-maintainable, *ab initio*, against an Arbitrator, who is also a Government servant, especially by one of the parties to the agreement, such proceedings deserve to be quashed on this ground alone, *de hors* the merits of the contention with regard to the contents of the award.

9. Other than the above preliminary issue of maintainability of disciplinary proceedings against the Arbitrator, Mr. Monga submitted that the disciplinary proceedings initiated against the petitioner, are actually at the instance of respondent No. 3, who was the Principal Secretary to the Government of Haryana in the Department of Irrigation, at the time when the petitioner was appointed as the Arbitrator, as well as when he announced the award.

10. The reason for the petitioner earning the wrath of respondent No. 3, was because the Xen who was incharge of the project in respect of which the contract had been granted to the Contractor, i.e. one R.N. Arichwal (Executive Engineer), was close to respondent No. 3 and, as the petitioner discovered during the course of arbitration proceedings, he had demanded Rs. 1 lac from the Contractor, in order to ensure early payment of his dues. Mr. Monga pointed to the affidavits submitted by the Junior Engineer and the Head Draftsman posted in the area in question, dated 28.04.2008, stating therein that the said R.N.

Arichwal had actually demanded a bribe of Rs. 1 lac from the Contractor in their presence, so as to release his payment. These affidavits are stated to have been filed during the arbitration proceedings and copies thereof have been annexed with the present petition (Annexures P-8 and P-9).

Mr. Monga also pointed to the answers given by the Contractor, Parhlad Singh, to questions put to him during arbitration proceedings, on 29.04.2008, a copy of which has also been placed on record as Annexure P-10. It is seen that in the said list of answers, Contractor Parhlad Singh had also stated to the effect that the Executive Engineer had demanded a bribe of Rs. 1 lac from him.

Learned counsel submitted that these documents were then forwarded by the petitioner to the Head of the Department, as also to the Government, for considering initiation of disciplinary proceedings against the said R.N. Arichwal. However, respondent No. 3 spoke to the petitioner and asked him and, in fact, tried to bring pressure upon him, not to forward the said affidavits against the Executive Engineer.

Learned counsel further submitted that when the petitioner refused to yield to the pressure of respondent No. 3, even though he (petitioner) was a Chief Engineer in the Department of which respondent No. 3 was the Principal Secretary, the latter decided to inflict his wrath on him. Thus, the petitioner was put to harassment immediately upon his retirement on 30.06.2008 (about two months after the affidavits were submitted), by ensuring that he was neither paid any retirement benefits nor even provisional pension. Eventually the provisional pension was released to the petitioner after 9-10 months, which was as per the pre-revised scale, even though the revised scale had very much come into existence by then. The petitioner then had to fight his way even to get provisional pension as per the revised scale, which again took another few months.

Further, Mr. Monga submitted that though there were no disciplinary proceedings pending against the petitioner on the date of his retirement on 30.06.2008, the retirement order (Annexure P-5) was issued on 24.06.2008 "subject to the final decision of the inquiry report regarding mining activity in Dadupur Nalvi pending against him."

11. He next submitted that the petitioner was issued another chargesheet by respondent No. 3 on 19.03.2009, almost 9 months after his retirement (Annexure P-28) with regard to approval of rates in respect of certain works conducted in the year 2006. As per the chargesheet, had the rates not been cancelled by the Government, there would have been a loss of Rs. 1,07,78,465/- to the State exchequer.

The petitioner filed his reply to the said chargesheet and submitted it to the Enquiry Officer (again respondent No. 4 in this case also), who, upon a perusal of the reply, as per learned counsel, recommended dropping of the chargesheet, as no objectionable act of omission or commission was found to have been

committed in any manner. Hence, eventually the chargesheet was dropped on 25.11.2010 vide order Annexure P-13, after respondent No. 3 had demitted charge and another officer had assumed charge in his place.

12. Learned counsel for the petitioner next submitted that mala fides on the part of respondent No. 3 become more obvious, in view of the fact that when one Sh. M.K. Gupta, Superintending Engineer, was issued a chargesheet for giving an allegedly excessive award as an Arbitrator in another case, respondent No. 3, who was the enquiry officer in that case, made the following observations in his enquiry report dated 29.09.2004 (Annexure P-31):-

"Before I apply my mind to the facts relating to the charges, I consider it proper that the issue of legality and propriety of disciplinary proceedings against an Arbitrator appointed by the Court needs to be decided. This is important because if the legality and propriety of the disciplinary proceedings is questionable then the proceedings before me also become questionable."

Thereafter, Mr. Monga pointed out, that after discussing the facts of that case, as also provisions of the Act, including Sections 28, 32, 33 and 34, respondent No. 3 further observed as follows:-

"The arguments given by Shri M.K. Gupta regarding the legality and propriety of the present disciplinary proceedings have to be seen in the light of the following facts:-

- i) Shri Gupta was appointed Arbitrator by a Court.
- ii) The Arbitral proceedings terminated after he gave the award.
- iii) The mandate of Shri Gupta as an arbitrator continues till the proceedings under Section 34 are pending before the Court.

Thus, Shri Gupta working as Arbitrator, worked under the authority of the Court which appointed him as the Arbitrator. The arbitration proceedings have been terminated by his giving the final award. Yet the mandate of Shri Gupta as Arbitrator and hence his being an appointee of the Court continues till the proceedings under Section 34 are pending before the Court."

Thereafter, after discussing some law on the issue, the said respondent again observed as follows:-

"If this conclusion is taken as correct then Shri Gupta while performing as an Arbitrator and even today under the mandate as an Arbitrator cannot be amenable to superintendence and control of the State qua his functions as an Arbitrator. Since he cannot be deemed to be a servant of the State qua these functions and there cannot be any superintendence and control of the State qua these functions, then the obvious conclusion is that the disciplinary proceedings cannot be commenced against him regarding his functions and mandate as an Arbitrator."

He (respondent No. 3) finally concluded that if the allegations of the State, against the Arbitrator, are accepted by the Civil Court, in proceedings under Section 34 of the Act, then at that stage, disciplinary proceedings may be initiated, but before that, since Sh. M.K. Gupta was appointed as an Arbitrator by the Court, no disciplinary proceedings would lie against him.

Thus, respondent No. 3 recommended that the State would not have any authority to initiate disciplinary proceedings against the said Sh. Gupta, even on the merits of the award, till such time as the Civil Court did not record a finding against the Arbitrator, in proceedings under Section 34 of the Act.

Mr. Monga, therefore, submitted that once respondent No. 3 was himself fully aware of the "knitty-gritty" of the law and, in fact, the reasoning adopted by him in Sh. M.K. Gupta's case was completely logical, rational and correct, then for him to make a complete volte face, in not applying the same rationale in the case of the petitioner, obviously smacks of complete mala fides on the part of respondent No. 3.

He further submitted that the fact that the said respondent has chosen not to file a reply, or even to defend himself otherwise before this Court, would mean acceptance of all the allegations made against him in the petition, and as such, the petition deserves to be allowed on that ground itself, other than the fact that mala fides have actually been shown to this Court, by the petitioner.

13. Mr. Monga next submitted on the merits of the Award, to the effect that even a perusal of the judgment of the Civil Court, in the application filed by the respondent-State under Section 34 of the Act, shows that though the Court had reduced the award in favour of the Contractor, on the reasoning adopted therein, there was no finding at all, of misconduct, against the Arbitrator, in any manner.

Learned counsel further submitted that the respondents not having challenged the judgment of the learned Civil Court, and having accepted it, obviously means that there was no substance in the charges against the petitioner.

In this regard, learned counsel referred to the second issue framed by the Civil Court as follows:-

"2) Whether the Arbitral award dated 23.06.2008 is also in conflict with the Public Policy? OP A"

The above issue was dealt with by the Court, holding that there was no evidence produced by the State to show that the award dated 23.06.2008 is in conflict with the Public Policy of India. Consequently that issue was decided against the State.

Mr. Monga further pointed to paragraph 53 of the judgment, to submit that the Court had specifically upheld claims No. 2 and 3(i), as decided by the Arbitrator, and had observed that it did not find that the findings of the Arbitrator were perverse or against the rules.

Even with regard to the allegations of Shri R.N. Arichwal, (Xen, later Superintending Engineer, who was arrayed as respondent No. 3 in the application under Section 34), with regard to collusion between the Contractor and other officials of the department and bias of the petitioner against Shri Arichwal, Mr. Monga pointed out that after discussing all the facts from the record, the Civil Court held that the petitioner (Arbitrator) had given sufficient opportunities to both the parties, including Shri Arichwal, and it was actually respondent No. 3 who had not conducted himself in a proper manner by leaving the Court without signing any papers and as such, the said respondent (R.N. Arichwal) could not claim that the Arbitrator was biased against him.

14. Finally, learned counsel submitted that a perusal of the judgment of the Civil Court shows that the amount awarded by the Arbitrator was wholly on the merits of the claim, as perceived by him, for which no mala fides could be attributed to the petitioner in any manner, as perception of one Court/Forum, to another, on issues of fact and law, can obviously differ.

He, therefore, submitted that the petition be allowed and the impugned disciplinary proceedings be quashed.

15. Per contra, Mr. Ashish Kapoor, learned Addl. Advocate General, Haryana, argued first with regard to the preliminary issue of non-maintainability of disciplinary proceedings against an Arbitrator who is otherwise a Government servant. He submitted that this issue was raised before the enquiry officer himself, who has dealt with it in his order dated 24.07.2012, dismissing the applications of the petitioner. The enquiry officer had observed as follows:-

"In the instant case, before initiating the inquiry proceedings, the competent authority had got conducted preliminary inquiry from the then Chief Engineer, Irrigation Department, Haryana, who had come to the conclusion that the charged officer had prima facie mis-conducted himself in the announcement of the award. The Hon"ble Apex Court in *Union of India and Others Vs. K.K. Dhawan*, AIR 1993 SC 1478 : (1993) 1 JT 236 : (1993) LabIC 1028 : (1993) 1 LLJ 777 : (1993) 1 SCALE 199 : (1993) 2 SCC 56 : (1993) 1 SCR 296 : (1993) 1 SLJ 102 has held that Disciplinary Proceedings can be initiated against the Government servant even with regard to exercise of quasi judicial powers. Even the Hon"ble Apex Court in *Union of India and others Vs. A.N. Saxena*, AIR 1992 SC 1233 : (1992) 2 JT 532 : (1992) LabIC 1139 : (1993) 2 LLJ 747 : (1992) 1 SCALE 800 : (1992) 3 SCC 124 : (1992) 2 SCR 364 : (1992) 1 UJ 744 has held that an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi judicial proceedings, is not correct and that when an officer is performing judicial or quasi judicial functions, disciplinary proceedings regarding any of his action in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant, the inquiry proceeding should be initiated. The same view has been held in the case of *K.K. Sharma Vs. State of Punjab* 1995(2) 266 by the Hon"ble Punjab and Haryana

High Court. Since the competent authority had prima facie come to the conclusion on the basis of the preliminary inquiry conducted by Shri Harmail Singh the then Chief Engineer, so the present inquiry proceedings against the charged officer cannot be dropped."

16. Thereafter, Mr. Kapoor drew attention to the aforesaid judgment referred to by the Enquiry Officer, in the case of Union of India and Others Vs. K.K. Dhawan, AIR 1993 SC 1478 : (1993) 1 JT 236 : (1993) LabIC 1028 : (1993) 1 LLJ 777 : (1993) 1 SCALE 199 : (1993) 2 SCC 56 : (1993) 1 SCR 296 : (1993) 1 SLJ 102 , to reiterate what has been held therein and has been relied upon by the enquiry officer. An earlier judgment, in Govinda Menon Vs. Union of India (UOI), AIR 1967 SC 1274 : (1967) 2 LLJ 249 : (1967) 2 LLJ 219 : (1967) 2 SCR 566 , was quoted in Dhawan's case as follows:-

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in his service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

Eventually, their Lordships concluded, in Dhawans" case, as follows:-

"29. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in present case, we are not concerned with the correctness of legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- iii) if he has acted in a manner which is unbecoming of the government servant;
- iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- v) if he had acted in order to unduly favour a party;
- vi) if he had been actuated by corrupt motive however, small the bribe may be

because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

30. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

Hence, learned Addl. Advocate General submitted, that disciplinary proceedings were very much maintainable, especially in view of the fact that even the Civil Court, in proceedings under Section 34 of the Act, has reduced the amount awarded to the Contractor by the petitioner. And even though it has not specifically held the petitioner to be guilty of any misconduct, yet, while dealing with the claim of the Contractor on rehandling of material, for which the petitioner had awarded a sum of Rs. 2,25,000/- (50% of the amount claimed under that head), it was held that no clause of the agreement allowed a Contractor to claim any amount for rehandling material and that when the Contractor had taken the contract, it was in his knowledge that he could not transport the material at the spot and, therefore, he had to inspect adjoining places and thereafter take the material there.

Eventually, the Court held that the Arbitrator had exceeded his jurisdiction while awarding 50% of Rs. 4,50,000/- (Rs. 2,25,000/-) to the Contractor, for rehandling of the material, as claimed by him.

Mr. Kapoor further submitted that this sum awarded by the petitioner is the third charge against him, in the chargesheet issued to him (Annexure P-17). Thus, he submitted that, in fact, the judgment of the learned Civil Court actually fortifies the fact that the petitioner had indeed mis-conducted himself.

17. Mr. Kapoor then referred to claims No. 5 and 6 of the Contractor, before the Arbitrator, whereby he claimed a sum of Rs. 4,70,000/- for labour force remaining idle and another sum of Rs. 1,10,000/- for the machinery remaining idle, with further additional claims of Rs. 3,12,600/- and Rs. 87,400/- in respect of these two individual components.

The petitioner (Arbitrator) had allowed the full amount of Rs. 4,70,000/- and Rs. 1,10,000/- for idle labour and machinery respectively and also had awarded 60% of the additional claims in respect of these components.

The learned Civil Court again held that there being no provision in the agreement with regard to payment for idle labour or machinery, the amounts so awarded by the petitioner were again beyond the terms of the contract. It had, consequently, set aside the same.

This again, Mr. Kapoor submitted, was the 8th charge against the petitioner.

18. Learned Additional Advocate General also referred to the written statement

filed by the respondents, to submit that the Contractor had actually accepted the measurement made and bills claimed by the department and had also signed the measurement book in token thereof, at least qua the measurement. Thereafter, when the "draft final bill" of Rs. 11,35,000/- was prepared, that too was accepted by the Contractor, but was not passed by the Xen, as the Contractor did not remove the defects within the liability period.

After that, the Contractor in fact served a notice under Section 80 CPC upon the respondents, wherein again he requested only for payment of the remaining amount and did not raise any other claim, such as rehandling of material, idle machinery, idle labour, construction and re-construction of service road etc. However, since the defects were not removed by him, as had been pointed out after inspection of the site, on audit, the Xen deducted the amount of security from the draft final bill and thereafter issued the final bill to a negative amount of Rs. 56,608/-.

Mr. Kapoor submitted that the petitioner, thereafter, awarded Rs. 47,56,242/- to the Contractor, who had actually accepted Rs. 11,35,000/- as due to him in the draft final bill. As such, the amount awarded by the petitioner is about four times more than what was originally accepted by the Contractor himself. Hence, initiation of disciplinary proceedings was not misplaced.

He further submitted that, in fact, another Chief Engineer, Sh. Harmail Singh, was asked to enquire into the Arbitration award passed by the petitioner and vide his report dated 16.09.2008, Shri Harmail Singh had opined that the award was, in fact, excessive.

Mr. Kapoor further pointed out that amongst components for which excessive amounts were awarded by the petitioner, the report of Sh. Harmail Singh also states that despite the fact that the Arbitrator knew very well that the bank rates, even of fixed deposits, were only 6 to 9% per annum, he awarded interest @ 18% p.a., to be compounded quarterly.

Hence, learned State counsel submitted, that the chargesheet having been issued to the petitioner considering all these facts, and further, since at least some parts of the charges against the petitioner have been fortified by the finding of the learned Civil Court also, in proceedings under Section 34 of the Act, the writ petition be dismissed and the order staying operation of the disciplinary proceedings be vacated.

19. Rebutting the arguments of the Additional Advocate General, Mr. Monga again reiterated, that despite what was held by the Civil Court with regard to certain components of the award made by the petitioner, the Civil Court had not found the petitioner guilty of any misconduct.

Further, that the petitioner was being unnecessarily harassed, can be seen from the fact that yet another enquiry was ordered against him on 22.01.2008, which was found to be without any basis and was consequently given up by the

Government.

Still further, learned counsel submitted that even the enquiry sought to be initiated against the petitioner after his retirement, which was referred to in the retirement order itself, with regard to mining activity at Dadupur Nalvi, was dropped at the preliminary stage itself.

As regards the judgment cited by Mr. Kapoor in K.K. Dhawans" case (supra), learned counsel submitted that it was based on an earlier judgment in Govinda Menons" case (supra), which was in relation to a Government officer holding a post by virtue of which he was also appointed as a Commissioner under The Madras Hindu Religious and Charitable Endowments Act, 1951. Thus, firstly, the judgments in K.K. Dhawan and Govind Menons" cases were with regard to the quasi-judicial function of an officer holding an additional authority other than the substantive post on which he was posted, and further, in the said judgments, it is obvious that the principle laid down with regard to the difference between a "contract of service" and "contract for service" was not brought to the notice of the hon"ble Court and as such, Mr. Monga submitted, in relation to the present controversy, the judgments would not apply and would, in fact, have to be considered to be per incuriam, especially in the light of what has been held in Vaghela"s and Savitas" cases (supra) on the issue.

Still further, Mr. Monga submitted that the Act of 1996 was not in existence when the judgment in K.K. Dhawans" case was pronounced, in the year 1993.

On the issue as to when a judgment can be held to be per incuriam, Mr. Monga relied upon V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Another, (2011) ACJ 500 : (2010) 4 JT 630 : (2010) 4 SCALE 662 : (2010) 5 SCC 513 .

Other than that, learned counsel reiterated the submissions already made with regard to the discrimination meted out, between the petitioner and Sh. M.K. Gupta and the fault in appointing serving officers as Arbitrators.

20. Having hearing learned counsel for the parties in detail and having gone through the pleadings, it is seen that there are essentially three grounds of challenge raised by Mr. Monga, to the disciplinary proceedings initiated against the petitioner:- (i) That no disciplinary proceedings are maintainable against a Government servant who is appointed as an Arbitrator; (ii) that the disciplinary proceedings initiated against the petitioner essentially arise out of the malafide intention of respondent No. 3; (iii) that even on merits, the Award made by the petitioner is unassailable.

21. The first issue which is required to be adjudicated upon by this Court, is whether or not any disciplinary proceedings are, ab initio, maintainable against a civil servant who is appointed as an Arbitrator, in terms of an arbitration agreement between two parties. Mr. Monga, as seen, strenuously argued on this issue, to contend that no such proceedings can even be initiated, in view of the fact that once a public servant is appointed as an Arbitrator, he goes outside the

terms of his "contract of service" with the Government and enters into an agreement for service, i.e. a particular service, namely arbitration; as such, in that capacity, he ceases to be a public servant for that limited purpose and hence, goes outside the purview of the jurisdiction of the Punishment and Appeal Rules governing his service, while discharging the function of an Arbitrator.

To appreciate the issue better, it would be appropriate to look at "what" a Government employee is, which was also an issue on which Mr. Monga drew attention to, from the Rules of 1987.

A Government employee has been defined in Rule 2(d) of the Rules of 1987, as follows:-

"(d) "Government employee" means any person appointed to any Civil Service or post in connection with the affairs of the State of Haryana."

Further, Rule 2-A reads as follows:-

"2-A. Application. (1) These rules shall apply to every Government employee, but shall not apply to:-

- (a) any member of the All India Services;
 - (b) any person in casual employment;
 - (c) any person subject to discharge from service on less than one month's notice;
 - (d) any person for whom special provision is made in respect of matters covered by these rules by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Governor before or after the commencement of these rules, in regard to matters covered by special provisions;
- (2) Notwithstanding anything contained in sub-rule (1), these rules shall apply to every Government employee temporarily transferred to a service or post coming within clause (d) of sub-rule (1) to whom, but for such transfer these rules would apply;
- (3) If any doubt arises whether these rules or any of them apply to any person; the matter shall be referred to the Government which shall decide the same."

Rule 2-A(1)(d) thus excludes from the purview of the Rules, any person for whom a specific provision is made in respect of matters covered by the Rules, or under any other law in force or under any agreement entered into by or with the approval of the Government of Haryana.

Though no exclusive special provision in respect of the service of the petitioner, as provided in sub-rule (1)(d), has been shown to this Court, however, even presuming his appointment as an Arbitrator, in terms of an agreement between the Govt. and the Contractor (not being an agreement between Govt, and the

petitioner), to be somehow included in that ambit, sub-rule (2), thereafter, negates the exclusion in respect of a Government employee temporarily transferred to a service or to a post coming within clause (d) of sub-rule (1) who, but for such transfer, would come within the ambit of the Rules. Thus, even considering the appointment of the petitioner as an Arbitrator, to be a special provision, though no such special provision exists in his order of appointment as an Arbitrator, he, being a whole time Government servant, would still not be included in exclusion clause (1)(d) of Rule 2-A, because of what is stipulated in Clause (2) of the same Rule.

In any case, the appointment as an Arbitrator being in addition to the petitioner's primary duties as a Chief Engineer, he, in the opinion of this Court, would not cease to be a Government employee, even upon such additional duty being cast upon him. More is to be said on this, further ahead.

Sub-rule (3) further provides that in case of any doubt, the matter would be referred to the Government for decision.

In the present case, the objections of the petitioner to disciplinary proceedings, on the ground that, as an Arbitrator, he falls outside the purview of disciplinary proceedings by the Government, especially as a remedy of appeal lies and has been availed of by the Government against his award, was effectively rejected by the 1st respondent (Government) in a communication addressed to the Deputy District Attorney who had also raised a similar objection. Thus, as regards Government, it had exercised its discretion in terms of sub-rule (3) of Rule 2-A of the 1987 Rules. However, that communication, dated 28.06.2012 (Annexure P-25), is one of the orders impugned in the present petition, as already noticed earlier, on the ground that it was passed with mala fide intention, by respondent No. 3, in his capacity as respondent No. 1.

Yet, Mr. Monga submitted that the petitioner cannot be treated to be a Government servant while acting as an Arbitrator, in terms of Rule 2-A(d) of the 1987 Rules.

22. I find myself unable to accept this argument for various other reasons also, as are given hereinafter.

Firstly, as already noticed in detail earlier, the petitioner was appointed as an Arbitrator by virtue of the post that he was holding as a public servant, i.e. the post of Chief Engineer. This was so, in view of the specific condition contained in the arbitration clause of the agreement signed between the Contractor and the respondent-State, by which only a person holding the post of a Chief Engineer could have been appointed as an Arbitrator. Thus, one limb of the reasoning, due to which Mr. Monga's contention has to be rejected, is that the petitioner, by virtue of the arbitration agreement itself, was only exercising a duty cast upon him, as a Chief Engineer, to discharge an additional function, albeit a judicial function, to arbitrate in a dispute concerning his department and a Contractor.

Could this be, therefore, termed as a "contract for service" rather than a "contract of service? In my opinion, the answer has to be in the negative, because even while discharging his duties as an Arbitrator, the petitioner was still discharging a "contract of service" by performing a duty which was cast upon him, upon an order being passed by the 1st respondent, i.e. the State through its Government. Thus, that being so, the additional duty cast upon him as an Arbitrator, was part of the "contract of service", whereby an employee is bound to do what he has been asked to do by his employer.

Mr. Monga's contention is that because the difference between a "contract of service and "contract for service", is that in the former case the employer can not only tell an employee what to do, but also how to do it, whereas in the latter case, though the employer obviously tells the employee what he has to do, he cannot control the manner in which such job is to be done or executed; hence, according to learned counsel, since an Arbitrator actually acts as a private judge performing a judicial function, where he has to exercise his independent discretion to decide the claims between the parties, therefore, when a Government servant becomes an Arbitrator in a dispute, even upon appointment by the employer, such function is only a "contract for service" and thus goes outside the purview of his normal duties as a Government servant, thereby ousting the jurisdiction of the rules governing his conduct as a Government servant.

23. Is that so? That brings us to the second limb of the reasoning by which Mr. Monga's contention has to be rejected. If the contention were to be accepted, then every Government servant, exercising jurisdiction even in a quasi-judicial capacity, or even in an administrative capacity, or a "semi quasi-judicial capacity", whereby he has to exercise his own discretion to decide a dispute either qua two parties, or in disciplinary proceedings, or even in wholly administrative matters, it would amount to a "contract for service", just because, while exercising such quasi-judicial powers or even administrative powers, he has to apply his independent mind to a situation/a dispute at hand, and is not to act on the dictates of his superiors or his employer.

Take for example, the case of a revenue authority who is exercising quasi-judicial powers to settle disputes between the parties solely by virtue of being a public servant exercising powers of a Collector/Commissioner/Financial Commissioner. In the exercise of such powers, while deciding disputes before him, he has to apply his independent mind and give a decision himself, not by reverting to his employer as to how that decision is to be given. Though obviously the manner in which he has to act, is as per statute/rules prescribed, however, that would not make his decision subservient to any directions issued by his employer, as to how his discretion is to be exercised. Thus, he exercises his independent discretion for any such action, quasi-judicial, or administrative. Yet, if such a decision is wholly perverse and smacks of mala fides, then, disciplinary proceedings, would not be precluded if it can be shown that indeed the decision was for extraneous

considerations and not on a bona fide difference of opinion or an error of judgment; and if such considerations can be proved, the civil servant would be liable to be punished for conducting himself in a manner unbecoming of a public servant and against the rules of conduct governing him.

Hence, if a quasi-judicial authority or a civil servant giving a decision as per his own discretion and understanding, is liable to suffer disciplinary proceedings on allegations of such a decision having been taken for extraneous considerations, there would be no reason to not apply the same parameters to the case of an Arbitrator, who is functioning as such, wholly by virtue of his being a civil servant holding a particular post.

In fact, this is what was held in K.K. Dhawans" case (supra), wherein their Lordships, after discussing the earlier judgment of the Supreme Court in Govinda Menons" case (supra), held that:-

"Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a judge."

Having held as above, their Lordships laid down the parameters, where disciplinary action can be taken against an officer even acting in a judicial/quasi-judicial capacity, as have already been reproduced earlier (paragraph 16).

24. Mr. Mongas" contention that the judgment in K.K. Dhawans" case has to be considered to be in the facts of its own circumstances and actually, has been rendered per incuriam, is wholly without basis. No doubt, the said judgment does not go into the difference between a "contract of service" and a "contract for service". However, the rationale governing the reasoning for initiating disciplinary action in certain circumstances and on given parameters, has been arrived at by the hon"ble Apex Court by reference to not just basic principles governing the same, but also after discussion of the law on the subject, the underlying principle being that public policy would require accountability of public servants acting even in a judicial or quasi judicial capacity, provided of course, the disciplinary action is based upon cogent reasons pointing to mala fides on the part of the public servant and not simply because of an error of judgment or a genuinely different point of view on any particular issue.

25. Other than that, even the judgments cited by Mr. Monga in Girish Jayanti Lal Vaghelas" and Smt. Savita Gargs" cases (supra), were not rendered in a situation similar to the one at hand.

In Vaghelas" case, as already noticed, the issue was whether or not a Drug Inspector, appointed on contract basis, acquired a right to be considered for regular appointment, by giving him relaxation in the recruitment rules.

It was in that context, where the Drug Inspector was not a whole time Government employee in the first place, but only a wholly contractual employee, that the Supreme Court went into the issue of the difference between a "contract

of service" and a "contract for service".

However, even while going into that issue, eventually their Lordships also went into the question of the status of a Government servant and after referring to the judgment of a Constitution Bench in *Roshan Lal Tandon Vs. Union of India (UOI)*, AIR 1967 SC 1889 : (1968) 1 LLJ 576 : (1968) 1 SCR 185 , held that there is an essential difference between private and Government service. To quote:-

".... It, therefore, follows that employment under the Government is a matter of status and not a contract even though the acquisition of such status may be preceded by a contract, namely, an offer of an appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by the rule making authority, namely, the Government".

26. In the present case, the petitioner was, without doubt, not a contractual Government servant but a whole time civil servant, who by virtue of the post he held, i.e. Chief Engineer, was appointed as an Arbitrator in the claim raised by the Contractor against the respondent-State. Though a copy of the agreement is not on record, however, the judgment of the learned Addl. District Judge, Bhiwani, deciding the application under Section 34 of the Act, against the award passed by the petitioner, has been placed on record (the judgment came to be delivered on 30.08.2013, during pendency of the present writ petition).

In the said judgment, the learned Addl. District Judge has observed (in para 36 thereof) that since the approved arbitrators and those initially suggested by the parties, were in the rank of Superintending Engineers, they could not be appointed as Arbitrators and as such, only an officer in the rank of Chief Engineer could be appointed as per the agreement (contract between the Government and the Contractor).

27. Therefore, it is obvious that the petitioners' appointment as an Arbitrator was by virtue of the post that he held, in terms of the contract between the parties, with regard to work to be executed by the Contractor. Hence, it is not a case where an Arbitrator has been appointed from the "open field", but by virtue of a clause in the contract itself, he could have been appointed only from amongst Civil Servants/Government Servants, working on the post of Chief Engineers in the State of Haryana.

27-A. A copy of the order dated 09.08.2007 (Annexure P-7) appointing the petitioner as an Arbitrator, reads as follows:-

"The Government has decided to appoint Sh. Dalbir Singh, Chief Engineer, Construction as Arbitrator for the work of rehabilitation of Dadri Feeder by raising capacity from RD-0 to 28500 (District Bhiwani)"

Though, on perusal of the aforesaid order, no extra remuneration is shown to

have been payable to the petitioner for acting as an Arbitrator in the dispute between the parties, however, Mr. Monga had submitted that, in fact, the petitioner was paid remuneration beyond his own salary as a Chief Engineer and as such, the appointment has to be accepted to be one beyond his normal terms of service as a Civil Servant/Government servant and, hence, any action taken by him in the capacity of an Arbitrator would fall outside the discharge of his duties as a public servant because of the extra remuneration too, and, therefore, no such act can be made amenable to jurisdiction of the Rules of 1987.

I am afraid that argument is also without basis in the light of what has been discussed hereinabove, especially with regard to the status of a Government servant, as held in Vaghelas" case.

Thus, no mileage can be taken by learned counsel for the appellant, even from Girish Jayanti Lal Vaghelas" judgment, because as seen, the petitioner, without doubt, being a permanent Government servant, was simply assigned an additional duty of being an Arbitrator to a dispute, with extra remuneration for the same, which appointment, to again repeat, was only by virtue of his holding the post of Chief Engineer with the Government.

28. The judgment in Smt. Savita Gargs" case again was rendered in wholly different circumstances; where the issue was allegedly deficient medical services by a hospital, due to which that petitioners" husband unfortunately died. It was in the context of considering the kind of service that a hospital/a medical facility provides, that the Supreme Court discussed the difference between a "contract for service" and a "contract of service".

Therefore, that case is not even remotely connected to the present one, except to the extent that it reiterates the difference between a "contract of service" and a "contract for service".

Of course, the contention of the learned counsel for the petitioner is that since his appointment as an Arbitrator was a responsibility to be discharged as a "private judge", by virtue of which the manner in which such responsibility had to be discharged was not controlled by the Government, and hence, it being a "contract for service" and outside the general permanent "contract of service" between the petitioner and the respondent-Government, therefore, the petitioner is not liable to any disciplinary proceedings under rules governing such "contract of service" as a civil servant. However, other than the fact that as has been held in Dhawan"s and Tandon"s cases, that a Government servant, once appointed, no longer strictly remains in a "contract of service" and is in fact in a status of employment different from any such status of a private employee, it further needs elaboration, that even the difference between a "contract of service" and "contract for service", is not always wholly differentiable so as to always use it as a firm identifiable parameter to be applied to all the situations and cases of employment.

On this issue, the Supreme Court, in Workmen of Nilgiri Coop. Mkt. Society Ltd.

Vs. State of Tamil Nadu and Others, AIR 2004 SC 1639 : (2004) 101 FLR 137 : (2004) 2 JT 51 : (2004) 2 LLJ 253 : (2004) 2 SCALE 311 : (2004) 3 SCC 514 : (2004) SCC(L&S) 476 : (2004) 3 SCR 159 : (2004) AIRSCW 973 , cited from the earlier decision in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, AIR 1957 SC 264 : (1957) 1 LLJ 477 : (1957) 1 SCR 152 , wherein it was held as follows:-

"16. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer or to use the words of Fletcher Moulton, L.J., at p. 549 in *Simmons v. Health Laundry Co* 29 (KB at pp. 549, 550):

"In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service."

Hence, obviously, it has been universally recognised that no hard and fast rule can be laid down to even distinguish between a "contract of service" and a "contract for service".

In this regard, it needs also to be observed that an administrative authority, even in a private company, who may otherwise be, under a "contract of service", may have to exercise its discretion on any decision, as considered best, by independent application of mind. Can it be said that a person acting as such an administrative authority, wholly as per his own discretion in a given situation, within the course of his employment, is to be considered, even for that situation, under a "contract for service"? Naturally, the answer cannot be in the affirmative. He would continue to be on a contract of service, but exercising his own discretion in a given situation, during the course of such service.

29. Yet another argument was raised, on this issue, to the effect that if a retired public servant, or a wholly private individual, by virtue of his/her qualification, experience etc. is appointed to be an Arbitrator in a dispute between a private Contractor and Government, and if such Arbitrator then acts, in the course of his being an Arbitrator, with any mala fide intent and for extraneous consideration, obviously no disciplinary proceedings, under rules applicable only to Government servants, can be brought about, and as such, when no such proceedings can be brought about against an Arbitrator who is not a Government servant, no such proceedings are liable to be brought against an Arbitrator who is a Government servant.

That reasoning too, is wholly flawed; firstly, by virtue of the fact that a Government servant is answerable for conduct unbecoming of a Government

servant, whether while acting as an Arbitrator or otherwise. Secondly, if this argument is to be accepted, then it would amount to saying that if a project of Government is executed by an engineer who is a civil servant, who then embezzles money from such project or acts in league with any private party to give undue favour to such party, then he cannot be proceeded against departmentally, because if such project had been outsourced by Government to a private engineer, who also embezzled money/acted for extraneous consideration, such "private engineer" could not have been subjected to any disciplinary proceedings, but only to criminal proceedings. Obviously, that reasoning would be wholly absurd, because a Government servant, in such a situation, may also be liable to criminal proceedings in addition to disciplinary proceedings, whereas a private engineer, would only be liable to criminal proceedings.

30. Coming to the next argument of Mr. Monga, to the effect that if a Government servant, in his capacity as an Arbitrator, is to be made subject to disciplinary proceedings for any reason, it would take away his independence to act as an Arbitrator. This contention too does not merit acceptance, in view of the fact that if it is to be accepted, then any civil servant acting even in a quasi-judicial capacity, or in an administrative capacity, where he or she has to take harsh decisions, would also be under fear of the proverbial sword of the Damocles; which in any case, is a situation that many civil servants have to face even in the course of the discharge of their normal duty.

Obviously, any civil servant, whether acting in a judicial or quasi-judicial or administrative capacity, has to rise above such fear and act independently as per his or her own conscience and deliver judgments/orders as he or she considers to be just and good.

The same rationale would apply even to the case of a civil servant, who has been appointed as an Arbitrator even by his own Government.

31. Hence, on this issue, it is held that even when a Government servant has been appointed as an Arbitrator, in pursuance to an arbitration clause contained in any agreement, even one in which Government is a party, he would not cease to be a Government servant.

Therefore, if an Arbitrator, for good reasons, is seen to have conducted himself dishonestly in any manner, then, he would be liable to face disciplinary proceedings.

32. Thus, as regards the petitioner, it is held that, first, being a Government servant enjoying a special status, he cannot be considered to be on a "contract for service" while acting as an Arbitrator, with or without extra remuneration, especially as he was acting as such Arbitrator by virtue of the fact that he was holding the post of a Chief Engineer. Second, even as per Mr. Monga's definition of "contract for service", even wholly on the parameters of the difference between a "contract of service"/"contract for service", though not applicable to a Government servant, the petitioner would not cease to be on a contract of

service, if in the course of an additional assignment, he had to act as per his discretion, upon an independent application of mind.

33. Having said that, the question then would be, as to whether such proceedings can be initiated immediately upon the Award having been scrutinized, or whether such proceedings would have to await the outcome of proceedings initiated under Section 34 of the Act of 1996, against the Award.

In this regard, it needs to be first observed that disciplinary proceedings are subject to a limitation period if a Government servant retires from Government service. Under Rule 2.2(b) of the Punjab Civil Service Rules, Volume-II (also applicable to the State of Haryana), in effect, no disciplinary proceedings can be initiated after an employee has retired from service, if more than four years have gone by since the occurrence in respect of such proceedings are sought to be initiated. Though, of course, there is a point of view that if the misdemeanor/act of omission or commission in question, is suppressed by the employee concerned, perhaps in connivance with another employee, then such proceedings can be initiated within a reasonable period after the discovery of the act of omission or commission, even if the employee concerned has retired from service more than 4 years prior thereto. However, that not being the subject matter of the present controversy, is not being gone into.

Suffice to say, that since there is a time limit of four years prescribed in Rule 2.2(b) aforesaid, it may not always be feasible or practicable to delay disciplinary proceedings till the outcome of any litigation brought against the Award in which an Arbitrator is alleged to have acted for extraneous considerations.

Thus, proceedings would actually be initiated the moment a misconduct is discerned by the competent authority, though, obviously, such action would only be liable to be initiated if the Award is seen to be perverse in any manner. Disciplinary proceedings cannot be brought simply because the Arbitrator (civil servant) has taken a different point of view to that of his superior authority. Naturally, each case would have to be seen in its own circumstances.

However, in the opinion of this Court, disciplinary proceedings though can be initiated at any time after the Award in question has been pronounced, especially if limitation to initiate such proceedings is an issue, but, generally, after initiation, such proceedings should await the outcome of any proceedings brought before a Civil court, upon a challenge to the Award under Section 34 of the Act, 1996. Thereafter, upon scrutinising the judgment, if in the opinion of a competent authority, the judgment also wrongly absolves the Arbitrator, then, upon giving cogent reasons as to why it is seen to be perverse, disciplinary proceedings may be allowed to continue, or be initiated if not already initiated.

34. Coming next to the merits of the present case, before taking up the issue of mala fides. The stand of the petitioner, as strenuously argued by Mr. Monga, is that once a Civil Court has adjudicated upon an Award in proceedings under Section 34 of the Act, and has largely upheld it, without recording any

misconduct against the Arbitrator, then no disciplinary proceedings would, in any case, lie against the Arbitrator, even on merits.

In my opinion, again that is an issue which has to be decided on the facts and circumstances of each case, where, even though a Civil Court may have upheld the findings of an Arbitrator, but if the judgment of the Civil Court itself is also palpably perverse, that would not be a ground to absolve the Arbitrator from disciplinary proceedings. Or, as in the present case, though the judgement of the Civil Court is obviously not perverse, it having been accepted by the respondents without further challenge; however, as the learned Additional Advocate General pointed out, even the Civil Court has, on some of the claims raised by the Contractor, observed that the Award is beyond the terms of the agreement. Thus, just because the Civil Court did not specifically attribute mala fides to the petitioner, but nevertheless held, qua some claims raised by the Contractor, that the Award was beyond the terms of the agreement, in my opinion, it should be left to the discretion of the competent authority, i.e. respondent No. 1, to go into the issue as to whether those observations of the Civil Court, (that the amounts awarded by the Arbitrator (petitioner) in his award, were beyond the terms of the agreement on certain claims), actually amount to only a difference of perception between the Arbitrator and the Civil Court, or whether the Award in respect of such claims, is actually wholly perverse.

After examining that issue, respondent No. 1/the concerned competent authority, would decide whether or not to re-initiate disciplinary proceedings against the petitioner, in respect of any of the charges as have, prima-facie, been borne out by the finding of the Civil Court, even though the Civil Court has not specifically recorded that the petitioner mis-conducted himself. Of course, if the competent authority comes to such a conclusion, then he would have to give cogent reasons for re-initiating the disciplinary proceedings, in respect of those limited charges.

However, all other charges, in respect of which the judgment of the Civil Court has upheld the petitioners' Award on specific claims made by the Contractor, would not be made subject matter of any such disciplinary proceedings as may be initiated, if at all found to be necessary to be initiated. This would, in the opinion of this Court, be the correct course to be adopted, the Government having accepted the Civil Courts' judgment in respect of those claims as have been upheld. Hence, the respondents cannot be seen to proceed with charges against the petitioner on the ground that he awarded payments/compensation to the Contractor with malafide intent, in regard to issues that have been accepted by them finally, as per the Civil Courts' judgment.

The disciplinary proceedings as are under challenge in the present petition and have been stayed by this Court, would need to be quashed, in view of the fact that, during the pendency of this petition, the judgment of the Civil Court, in proceedings under Section 34 of the Act, has been pronounced. However, continuing even with those charges against the petitioner, in respect of claims for which the award made by the petitioner has been reversed, would still not be the

proper course, in view of the fact that the reasoning adopted by the Civil Court, in respect of such claims also, would need to be examined by the competent authority, i.e. respondent No. 1, to arrive at a conclusion as to whether the petitioners' award, qua those claims, was perverse or only on account of difference of perspective from that of the Civil Court. Hence, if the conclusion arrived at by the 1st respondent, on valid and sound basis, is that the award qua such claims was indeed perverse, only then fresh proceedings would lie against the petitioner.

35. Consequently, in view of what has been held above, this petition is partly allowed, to the extent that the impugned charge-sheet (Annexure P-28) and consequent disciplinary proceedings against the petitioner are quashed, but with liberty to respondent No. 1 to examine the matter in the light of the judgment of the Civil Court dated 30.08.2013 (Annexure P-34) and to thereafter take a decision, as to whether, for cogent and valid reasons, the petitioner is liable to fresh disciplinary proceedings in respect of the claims made by the Contractor, as have been reversed by the Civil Court being beyond the terms of the agreement between the Contractor and the Government. If such cogent and valid reasons are found to be existent by respondent No. 1, then Government would be at liberty to initiate fresh disciplinary proceedings against the petitioner, qua charges pertaining to the same. The fact that the petitioner has retired on 30.06.2008, which is more than four years ago, would not preclude respondent No. 1 to initiate fresh disciplinary proceedings, if found so necessary, in terms of what has been held above, in view of the fact that the disciplinary proceedings which have now been quashed were initiated well within time and it is only on account of the fact that they had been stayed by this Court, vide order dated 29.08.2012, that they were delayed.

Since the petitioners' retirement benefits, or at least some of them, have been withheld by the respondent-State, on account of the impugned disciplinary proceedings having been initiated against him, respondent No. 1 would take the decision on whether or not to initiate fresh disciplinary proceedings, in terms of what has been held above, within a period of two months from the date of receipt of a certified copy of this judgment. If a decision is taken not to re-initiate disciplinary proceedings, then all retirement benefits, as have been withheld from the petitioner, shall be released to him, within a period of one month thereafter.

36. Despite having already partly allowed the petition, with the aforesaid liberty to respondent No. 1, a word still needs to be said with regard to the alleged mala fides and conduct of respondent No. 3. In fact, this issue is deliberately being taken up in the end, because of the fact that, whether or not disciplinary proceedings were initiated partly because of any mala fides on the part of respondent No. 3 or R.N. Arichwal, XEN, the petitioners' own conduct as an Arbitrator, would still need to be examined independently by respondent No. 1.

The fact that the petitioner may or may not have acted for any extraneous consideration, while making his Award as an Arbitrator, would be seen by the 1st

respondent. However, that still does not detract from the fact that respondent No. 3, who has chosen not to file a reply to the allegations made against him, and has thereby accepted them, obviously did not act against the petitioner with, at least, a wholly bona fide intention. The very fact that he himself, as a Financial Commissioner, recommended dropping of proceedings against Shri M.K. Gupta, on the ground that an application under Section 34 of the Act of 1996 was pending in the Civil Court, against the Award made by M.K. Gupta as an Arbitrator, but in the case of the petitioner, he chose to even reject the advice given by the Deputy District Attorney that the same situation also applies to the petitioner, shows that respondent No. 3 was either acting for malafide reasons against the petitioner, or had made the recommendation in favour of M.K. Gupta for considerations that were not wholly bona fide. Thus, either way, the conduct of respondent No. 3 was obviously at least not wholly bona fide.

No doubt the said respondent No. 3 stressed on the fact in Shri M.K. Gupta's case, that Mr. Gupta was appointed as an Arbitrator by the Court. However, only because the petitioner was appointed as an Arbitrator by Government, would not make a difference, because respondent No. 3 recognized the fact that both, Shri Gupta and the petitioner, were arbitrating in disputes in which one party was the Government and further, he had also, in the case of the former, discussed the provisions of the Act. Moreover, the reasoning as given by the 3rd respondent, would have applied equally to M.K. Gupta and the petitioner. The fact that such reasoning has now been held to be incorrect by this Court, on the issue of non-maintainability of disciplinary proceedings against a Government servant appointed as an Arbitrator, would obviously not detract from the seemingly mala fide action of respondent No. 3, since he applied different yardsticks in similar situations, to the petitioner and M.K. Gupta.

Be that as it may, since, on query from learned State counsel, made at the time of hearing of this case, it has come out that respondent No. 3 has retired from service, no further comment is being made in that regard.

As regards Mr. Mongas' contention with regard to Mr. R.N. Arichwal, that the disciplinary proceedings were actually initiated at the instance of R.N. Arichwal, the then Executive Engineer; nothing further needs to be commented upon by this Court in that regard, in view of the fact that, firstly, allegations made against the said R.N. Arichwal are not the subject matter of this petition and, secondly, whether or not R.N. Arichwal was behind initiation of the disciplinary proceedings or not, is not really material for the decision of this case, because if the petitioner indeed mis-conducted himself with regard to any claim made by the Contractor, then whether or not the said XEN was behind, even for malafide reasons, in bringing the same to the notice of the competent authority, would be immaterial qua the conduct of the petitioner himself.

37. Similarly, it also needs to be clarified that simply because this Court has made an observation against respondent No. 3 in the circumstances of this case, it would not necessarily mean that the disciplinary proceedings initiated against

the petitioner were positively for only malafide reasons. Whether or not they were initiated for malafide reasons, yet, additionally, also had some sound basis for the same, is something which respondent No. 1 would be at liberty to look into, and then decide, in terms of what has been held in paragraphs 34 and 35 above, whether such proceedings are to be again initiated, or not, against the petitioner. As has already been said earlier, such consideration by respondent No. 1 would be made by giving cogent and valid reasons, if the petitioner is to be proceeded against, again.

Petition partly allowed as above. No order as to costs.