
(2000) 12 GUJ CK 0009
In the Gujarat High Court

Case No : Special Civil Application No 8465 of 1998, Special Civil Application No 6356 of 2000, Civil Application No 9767 of 2000 in Special Civil Application No 8465 of 1998, Civil Application No 3436 of 1999 in Special Civil Application No 8465 of 1998, Civil App

Kiritsinh Mohobatsinh Brahmbhatt

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Bombay Police Act, 1951 — Section 110, 117
Bombay Prohibition Act, 1949 — Section 110, 117, 66(1), 66(1)(b), 85(1)(3)
Constitution of India, 1950 — Article 226
Essential Supplies (Temporary Powers) Amendment Act, 1950 — Section 7
Penal Code, 1860 (IPC) — Section 186
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2000) 12 GUJ CK 0009

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Yatin Oza, for R.J. Oza, in Special Civil application No. 8465 of 1998 and Special Civil application No. 6356 of 2000 and Yatin Oza and Tushar Mehta, in SCA 6356/2000, for the Appellant; Manisha Lavkumar Asstt Govt Pleader, for the Respondent

Judgement

H.K. Rathod, J.

"Nor can the tests and the principles that have been laid down be applied mechanically or by way of syllogism. A mechanical or syllogistic approach may appear to furnish the easiest way of solving a complicated problem, but the allurements of the easy way has to be resisted. For while such ways are beset with risks of error in all branches of law, they are even more unsafe and inexpedient in industrial law, where sensitive problems of human relations have to be solved in the midst of all the complexities of modern industrial organisation. That is why in applying the well-settled tests and principles on these problems we have to bear in mind that all tests that are possible of

application should be applied, the value and importance to be attached to individual tests will vary according to the nature of the industrial activities and according to the nature of the disputes in which the problem has arisen viz, whether it is in respect of lay-off, retrenchment, production bonus, profit bonus or something else."

"The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of Judicial Review is vested in the superior Courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society."

1. MR.Y.N.Oza, learned Senior Advocate appearing in both these petitions on behalf of the petitioner with Mr.R.J.Oza and Mr.Tushar Mehta, learned advocates and Ms.Manisha Lavkumar, learned AGP appearing on behalf of the respondents in both these main petitions.

2. The brief facts of the present petitions are as under :-

The petitioner is serving as Police Inspector [Detection Crime Branch], Baroda with effect from 29th January, 1997. Thereafter, the petitioner who was holding the post of Police Inspector was transferred by order dated 25th April, 1998 from Baroda to Junagadh Armed SRP Chawki. The said order of transfer has been challenged by the petitioner before the learned Civil Judge (S.D.), Baroda in Regular Civil Suit No. 317 of 1998, wherein the learned Civil Judge has granted interim stay against the transfer by order dated 22-6-1998. The said order of learned Civil Judge (S.D.), Baroda has been challenged by the respondent - State of Gujarat in Regular Civil Appeal No. 277 of 1998 before the learned District Judge, Baroda which was heard and decided by the Asstt. Judge, Baroda on 15th September, 1998 and dismissed the said appeal filed by the State of Gujarat. Against the said order passed in aforesaid Regular Civil Appeal, a Civil Revision Application No. 1615 of 1998 has been filed by the State of Gujarat which is pending before this Court. The aforesaid Civil Revision Application is also heard by this Court along with other two Special Civil Application Nos.8465 of 1998 and 6356 of 2000.

3. According to the case of the petitioner, one complaint was filed by one Gopalbhai Karshanbhai Patel on 19th September, 1998. On the basis of the said complaint which was received by the respondent and consequently, the petitioner was suspended during the pendency of the departmental inquiry by order dated 2nd October, 1998. Thereafter, on the basis of very same complaint, chargesheet dated 18th September, 1999 has been served to the petitioner and it was

decided to hold departmental inquiry against the petitioner in respect of the complaint which was filed by one Gopalbhai Karshanbhai Patel. Simultaneously, a criminal complaint was also lodged against the petitioner on the basis of very same complaint of said Gopalbhai Karshanbhai Patel and on that basis, Special Criminal Case No. 9 of 1999 has been filed before the learned Special Judge, Baroda. The petitioner has challenged the suspension order dated 2nd October, 1998 in Special Civil Application No.8465 of 1998. During the pendency of the aforesaid Special Civil Application, the learned Special Judge, Baroda has decided the said Criminal Case No. 9/1999 on 11th April, 2000, wherein the petitioner has been acquitted honourably in respect of the charges levelled against him pursuant to the chargesheet filed by the department in Criminal Case. After acquittal in respect of the very same charge, the petitioner has approached to the Police Commissioner, Baroda City by application dated 21st April, 2000 with a request that in respect to the very complaint, two proceedings were initiated against the petitioner and the same were based upon the same facts, one incident and common witnesses in the said two proceedings and during the pendency of the departmental inquiry in respect of the same complaint, the petitioner has been declared honourable acquittal by the learned Special Judge, Baroda in Criminal Case No. 9 of 1999 dated 11th April, 2000 and therefore, the request was made by the petitioner that now in such circumstances, the departmental inquiry may be quashed and set aside and the chargesheet is also required to be set aside. This application of the petitioner has been considered by the Police Commissioner, Baroda city and by letter dated 29th June, 2000, has gave reply to the petitioner that after considering the decision rendered in Criminal Case, the request which was made by the petitioner cannot be acceded to and the inquiry as well as the chargesheet are not required to set aside or not required to be dropped as requested by the petitioner. Consequently, departmental inquiry was ordered to be held against the petitioner which is still progressing and remain continue inspite of the fact that in Criminal Case No. 9/99, the petitioner has been declared acquitted. Against this, the petitioner has filed Special Civil Application No.6365 of 2000 wherein, a prayer has been made to the effect that because of the acquittal in criminal Case No.9 /99, honourably, therefore, a departmental inquiry which was initiated in pursuance of the chargesheet dated 18th September, 1999 stands concluded and further prayed that the chargesheet dated 18th September, 1999 may be quashed and set aside and the respondents may be restrained from initiating and conducting any departmental proceedings in pursuance of the said chargesheet. Civil Application No.10976 of 1998 has been filed by the petitioner for amendment in the main Special Civil Application No. 8465 / 98, wherein amendment has been granted by this Court by order dated 8th December, 1998. Similarly, Civil Application No. 3436 / 1999 has also been filed by the petitioner with a prayer to amend main Special Civil Application No.8465 of 1998, wherein also prayer of amendment in main Special Civil Application has been granted by this Court on 20th September, 1999. One another Civil Application No. 9767 of 2000 in Special Civil Application No. 8465 of 1998 has been filed by said original complainant viz. Gopalbhai

Karshanbhai Patel with prayer to be jointed as the party respondent in main Special Civil Application No.8465 of 1998, wherein, no order has been passed by this Court so far.

4. In the present case, the main controversy is surrounded in respect of complaint filed by said Gopalbhai Karshanbhai Patel against the petitioner on 19th September, 1998. Departmental charged dated 18th September, 1999 has been served to the petitioner and during the pendency of said departmental inquiry, the petitioner has been suspended by order dated 2nd October, 1998. On the basis of the said complaint dated 19th September, 1998, a criminal case No.9/99 has been instituted against the petitioner before the learned Special Judge, Baroda, wherein the petitioner has been declared honourable acquittal by order dated 11th April, 2000. In light of these undisputed facts, the question pose before this Court for consideration is that whether departmental inquiry in such circumstances can be permitted and conducted by the respondents against the petitioner when on the basis of the same complaint and same set of facts in criminal case No.9/99, the petitioner has been declared acquitted honourably. The petitioner has also challenged the suspension order in Special Civil Application No. 8465 of 1998. In both these petitions, allegations of malafide are levelled by the petitioner against the Commissioner of Police viz. Shri Kuldeep Sharma, the Hon''ble Minister of State of Gujarat Shri Jaspal Singh and one Jayaben Thakker and other officers. However, the respondents have denied all such allegations of malafide in their reply. In both these petition, a detailed reply has been filed by the respondents. A copy of the suspension order, departmental chargesheet, chargesheet in criminal case, judgement in criminal case and other relevant papers are produced on record by both the parties.

5. Mr.Y.N.Oza, learned senior advocate has submitted that when one complaint became the part of the departmental chargesheet as well as in criminal case on the basis of very same incident, there are common witnesses in both these cases i.e. in said criminal case as well as in departmental chargesheet. According to Mr.Oza, there is no iota of evidence of slightly difference between the chargesheet on which the criminal case was based and on which, the departmental inquiry proceedings initiated, therefore, in such situation, once the petitioner has been exonerated with honourable acquittal after examining all the witnesses then, in such circumstances, on the basis very same complaint, same set of facts, same incident, same witnesses, a departmental inquiry cannot be permitted. Mr.Oza, learned senior advocate has relied upon some of the decisions of this Court as well as the Apex Court. Mr.Oza, has also relied upon the decision of this Court in case of Abdul Hakim v. District Supdt. of police reported in 19 GLR 210 and has also further relied upon the decision of this court in Special Civil Application No.2294 of 1988 decided on 2nd December, 1989 [Coram : R.C.Mankad, J]. Mr.Yatin Oza, learned senior advocate has also relied upon the decision of this Court in Special Civil Application No.7823 of 1989 decided on 19th March, 1991 [Coram : A.N.Divecha, J.]. Mr.Oza, has also relied upon the decision of the Division Bench of this Court in case of STATE OF GUJARAT vs.

B.C.DWIVEDI reported in 1983 (2) GLR page 1315 and reliance has also placed on decision of the Apex Court in case of M.PAUL ANTHONY VS. BHARAT GOLD MINES LTD reported in AIR 1999 Supreme Court 1416. Mr.Yatin Oza has also submitted that clear conclusion in Criminal Case No.9/1999 wherein it has been held by the learned Special Judge, Baroda that (i) the petitioner was held to be present at the police station and is held to be not present at the scene of alleged incident of delivering threat (ii) the complainant was not in Baroda on the date on which threat alleged to have been administered by the petitioner herein (iii) the Special Court has specifically held in para-24 of the judgment that the case of the complainant is not believable and has specifically held that it appears that the complainant is used by some one as an instrument (iv) The Special Court has further held on evidence in Para-25 of the judgement that the petitioner and the then Police Commissioner namely Shri Kuldeep Sharma has some difference of opinion. It is also pointed out that the Special Court has in para-33 of its judgment held that the petitioner had developed some disputes with the then Police Commissioner Shri Kuldeep Sharma and the Court has further held that the complainant Shri Gopalbhai Karshanbhai Patel has good relationship with the then Police Commissioner Shri Kuldeep Sharma and therefore, the Court has concluded that it is believable that complainant is used by the then Police Commissioner and the complaint is motivated complaint. According to Mr.Yatin Oza, learned senior advocate, these are clear conclusions of the Special Court after appreciating oral and documentary evidence which were led before the Special Court and the Court had come to such conclusion and granted honourable acquittal to the petitioner then in such circumstances, departmental inquiry on the basis of the same set of facts, same complaint and same witnesses cannot be permitted against the petitioner, otherwise, verdict on appreciation of all the testimony and evidence rendered in Criminal Case become redundant and meaningless. Mr.Yatin Oza has also submitted that in departmental inquiry also, very same witnesses which were named and examined in the criminal case, have been named and further submitted that the very chargesheet on the criminal case was based, the very chargesheet giving the colour of the department chargesheet has been served on the petitioner and the department inquiry is based on such departmental chargesheet, which in fact, does not differ in any manner from the chargesheet which was made basis in the criminal prosecution. Mr.Oza has also read over both these chargesheets namely departmental chargesheet as well as the chargesheet which was basis in the criminal prosecution and pointed out that except the date of incident, there is no change of single word or any material aspect which differs between the departmental chargesheet and chargesheet in criminal case. Therefore, according to the learned Senior Advocate Mr.Oza, that when one incident is alleged against the petitioner, pursuant to the complaint filed against the petitioner and on the basis of same chargesheet and witnesses, the departmental chargesheet was served and simultaneously criminal case has also been lodged against the petitioner on the basis of same complaint, same witnesses and alleging same incident and same set of facts. According to his submission, after acquittal, no

departmental inquiry can be permitted and same is required to be set aside and the chargesheet must be quashed and set aside. Mr.Oza, has also submitted that under the aforesaid facts and circumstances, if the departmental inquiry is set aside and chargesheet is set aside, then naturally result thereof would be setting aside of the suspension order dated 2nd October, 1998 because the suspension order is passed during the pendency of departmental inquiry and not during the pendency of the criminal prosecution. Therefore, according to Mr.Oza, once the chargesheet and department inquiry is set aside, then suspension order is required to be quashed and set aside.

6. Ms.Manisha Lavkumar, learned AGP appearing on behalf of the respondents has submitted that against the acquittal in Special Criminal Case No.9/99, the State of Gujarat has filed appeal before this Court and the said appeal has been admitted by this Court, therefore, according to her submission, unless and until the appeal is not decided by this Court, departmental inquiry cannot be set aside by this Court. In short her submission is that acquittal is under challenge before this Court and since the matter is admitted by this Court, such acquittal granted by the trial court in favour of the petitioner cannot be taken into account by this Court. She also submitted that suspension is not during the pendency of criminal prosecution, therefore, suspension cannot be set aside. She relied upon some of the observations made by the Division Bench in Letters Patent Appeal No.1254 of 1998, wherein the Division Bench has come to the prima facie opinion that in such circumstances, suspension cannot be interfered by this Court. She also relied upon some of the pronouncements of the Apex Court as well as of this Court. She relied upon following decisions reported in different law journals:

- (1) V.P. Gidroniya Vs. The State of Madhya Pradesh and Another,
- (2) Nelson Motis Vs. Union of India reported in AIR 1992 Supreme Court 1981
- (3) 1997 (4) SCC 385
- (4) Jakhatsinh Motisinh Parmar Vs. D.S.P. Baroda reported in 1989 (2) GLR 935
- (5) R.G.Jadeja Vs. P.K.Bansal, Commissioner of Police Surat City reported in 1993 (2) GLR 1077
- (6) Solanki Laxmansinh Kesarisinh Vs. State of Gujarat and another reported in 1994 (6) SLR 789
- (7) Chief Regional Manager of SBI Vs. S.Eswara Rao reported in 1995 (2) LLJ 874
- (8) g. prahalad vs. state of karnataka and other reported in 1980 (2) SLR 461
- (9) State of Rajashthan Vs. B.K.Meena reported in AIR 1997 Supreme Court 13
- (10) Regional Manager Central Bank of India vs. Muppidi Prabhakar reported in 1996 I. LLJ 929

7. After relying upon the above pronouncements of the various courts including the pronouncement of the Apex Court, submission has been made by the learned

AGP Mr. Manisha Lavkumar to the effect that law is well settled and established on this point and on mere acquittal cannot be considered to be a bar for holding departmental inquiry against the delinquent by the department. She also submitted that standard of proof in both the trial are different and it is within the powers of the department to hold departmental inquiry even if the delinquent has been declared acquitted on the basis of the same charges. She further submitted that it is also settled proposition of law that if any employee has been terminated on the basis of conviction then if that conviction is also ultimately set aside and delinquent is declared acquitted which does not result into automatic reinstatement of such delinquent and even such circumstances also, department is free to hold departmental inquiry against such delinquent inspite of the fact that he declared acquitted in criminal case. Therefore, mere acquittal has no bearing and / or any impact on the departmental chargesheet because in both proceedings, standard of proof are different and decision of the criminal case is not binding to the department as the same is under challenge before this Court in Criminal Appeal. However, she read over the affidavit of Shri Bhargav, Mr.C.P.Singh and Mr.Desai. She also read before this Court two orders passed by this Court [Coram : R.R.Tripathi, J.] in same proceedings and she relied upon the order passed by this Court [Coram : R.R. Tripathi, J.] dated 4th May, 2000 and relied upon certain observations made by this Court. She also submitted that Special Civil Application No. 2697 of 2000 has been filed by the petitioner before this Court with a prayer to stay further implementation of the suspension order as well as with prayer to reinstate the petitioner in light of the facts that the petitioner has been declared acquitted in criminal Case. However, said special civil application has been examined by this Court [Coram : R.R.Tripathi, J.] wherein observations which have been made by the Division Bench of this Court in Appeal No.1254 of 1998 dated 13th October, 1998 were relied. She also submitted that in Special Civil Application No.8465 / 98, very suspension is under challenge. The learned Single Judge of this Court has passed order on 7th October, 1998 making RULE returnable on 8th December, 1998 and granted stay against the suspension order and the said order was also challenged by the respondent before the Division Bench in Letter Patent Appeal No. 1254 of 1998 wherein, the Division Bench of this Court by order dated 13th October, 1998 has observed that while allowing the appeal and setting aside the order passed by the learned Single Judge. She also submitted that facts of the acquittal of the petitioner has been brought before this Court by way of Civil Application No. 2697 / 2000 and this Court has considered the decision of the Division Bench of this Court reported in 1983 (2)GLR 1315 delivered in case of State of Gujarat vs. B. C. Dwivedi and the observations made by the Division Bench of this Court in Letters Patent Appeal No.1254 of 1998 wherein, it is observed that from the impugned order of suspension, it is clear that a serious compliant has been filed against the first respondent in view of grave nature of allegations. Third appellant conducted preliminary inquiry and came to the conclusion that departmental proceedings are to be initiated against the first respondent and on that basis, he was placed under suspension. Suspension order is passed as there

is pending departmental proceedings. Serious allegations have been made against the first respondent and third appellant has rightly initiated departmental proceedings. Ultimately, Civil Application rejected by this Court on the ground that main Special Civil Application has been fixed for final hearing and this Court does not find any reason for granting any relief in favour of the petitioner even after acquittal of the petitioner in Special Criminal Case No. 9 of 1999. The order of suspension is not based on the criminal proceedings but the same is based as there is pending departmental proceedings. Relying upon the observations made this Court in order dated 4th May, 2000 passed in Civil Application No.2697 of 2000. Ms. Manisha Lavkumar, learned AGP has also submitted that departmental inquiry cannot be quashed and set aside on the ground of petitioner having been acquitted in criminal case No. 9 of 1999. She also denied allegations of malafide alleged against the Hon'ble Minister Shri Jaspal Singh, Ms.Jayaben Thakker and the then Police Commissioner Shri Kuldeep Sharma.

8. Against the aforesaid submission of the learned AGP, Mr.Yatin Oza, learned Senior Advocate has also submitted that observations made by the Division Bench of this Court in Letter Patent Appeal No. 1254 of 1998 is prior in point of time before the acquittal of the petitioner. Therefore, the same now cannot be considered to have been made against the petitioner. Mr. Oza has also submitted that the then Police Commissioner Shri Kuldeep Sharma has not filed affidavit and according to Mr.Oza, the allegations of malafide have not been properly replied and the same amounts to admission of the other side. Mr.Yatin Oza has further submitted that in such type of cases, no doubt, it has been clearly established by the Apex Court that there may not be any formula that in each and every criminal case of acquittal, departmental proceedings cannot be initiated. Mr.Oza also submitted that looking to the facts which are undisputed between the parties that one complaint become the base of departmental chargesheet as well as chargesheet of criminal case. Common witnesses in both these proceedings and same set of facts and the judgment in criminal case on merits after examination of oral and documentary evidence are required to be considered at the time of considering the controversy involved in the matter on hand. Therefore, in light of these facts which are not in controversy between the parties, departmental inquiry can be permitted to be proceeded any further against the petitioner or not, is the main question which requires to be examined by this Court. Mr.Yatin Oza has also submitted that in criminal case, some more witnesses have been examined in comparison to the witnesses named in the departmental chargesheet. The names of the witnesses in criminal case have been mentioned by the petitioner in Para-4 [4.4 (b)]. According to the learned senior advocate Mr.Oza, in criminal case some more witnesses were examined and therefore now departmental inquiry cannot be permitted to be held by the department on the very chargesheet against the petitioner. Mr.Oza has also submitted that no doubt criminal appeal has been filed by the State Government against the clear acquittal but the acquittal remains acquittal till it is reversed by the appellate court. Mr.Oza has also pointed out that converse case of conviction

on the basis of service of delinquent has been terminated and if against the conviction, criminal appeal has been admitted by the higher court and even stay has been granted against the sentence even though this Court has taken view that merely admission of the appeal and granting of stay of sentence will not make any difference and conviction remains conviction unless and until the same is set aside by the higher Court. Therefore, Mr.Oza, has submitted that similar analogy is required to be considered in case of acquittal and therefore acquittal remains acquittal though criminal appeal is admitted by the appellate court, it makes no difference till the said acquittal judgment is reversed and set aside by the appellate court. Therefore, according to the submission of Mr.Oza, the petitioner is entitled to the benefit of clear acquittal during the period of acquittal remains in force and the respondent authority is not entitled to hold departmental inquiry on the basis of same charges and same set of facts against the petitioner.

9. I have heard both the learned advocates for the respective parties at length. This court is also prima facie agreement that question involved in the present petition has been discussed in various decisions of the Apex Court. Some of the decisions in which the controversy involved in the present petition has been discussed, which are as under :-

(1) DELHI CLOTH AND GENERAL MILLS LTD VS. KUSHAL BHANA reported in AIR 1960 Supreme Court page 806

(2) In case of TATA OIL MILLS COMPANY LTD VS. WORKMEN reported in AIR 1965 Supreme Court Pg.155

(3) In case of JANGBAHADUR SINGH VS. BAIJNATH reported in AIR 1969 Supreme Court pg.30

(4) In case of KUSHAISHWAR DUBE VS. M/S BHARAT COAL LIMITED reported in AIR 1988 Supreme Court 2118.

(5) In case of NICOLSON VS. UNION OF INDIA reported in AIR 1992 Supreme Court page 1981

The entire case law was review once again by the Apex Court in STATE OF RAJASTHAN vs. B.K. MEENA reported in AIR 1997 Supreme Court page 13, wherein it was laid down as under :-

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is

"that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, and *Tata Oil Mills* (AIR 1965 SC 155) is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interest of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above."

10. This decision of the Apex Court has gone two steps further to the earlier decision providing advisability, desirability or propriety of staying departmental proceedings go into scales while judging advisability or desirability of departmental proceedings as one of the factors which cannot be considered in

isolation of other circumstances of case. But the charges in the criminal case must in any case be of grave or serious nature involving complicated question of fact and law. In the said decision, one another aspect has been considered is that the disciplinary inquiry cannot and should not be delayed unduly. If criminal case is unduly delayed that may itself be a good ground for going ahead with the departmental inquiry even though the disciplinary proceedings were held over at an earlier stage. It would not be in the interest of administration that person accused of serious misconduct should be continued in office indefinitely awaiting the result of the criminal proceedings. In other case of DEPUTY MANAGER, ANDRA PRADESH STATE ROAD TRANSPORT CORPORATION VS. MAHOMAD UNSUF MIYAN reported in 1997 Supreme Court 2232 again, it was held that there is no bar to proceed simultaneously with the departmental inquiry and trial of criminal case unless the charges in criminal case is of grave nature involving complicated question of fact.

11. The Apex Court has considered recently same question after examining the earlier decisions of the Apex Court in respect of relevant question. In case of M. PAUL ANTHONY VS. BHARAT GOLD MINES LTD reported in AIR 1999 1416, wherein after examining the earlier decisions of the Apex Court, conclusion which has been arrived at by the Apex Court which is reproduced as under :-

"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 charges 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, administrative may get rid of him at the earliest."

12. In case of Corporation of City of Nagpur Vs. Ramchandra G. Modak reported in 1984 Lab.I.C 179 wherein, the Apex Court has observed as under :-

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal case is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered."

The question whether or not the departmental inquiry pending against the employee involved in the criminal case, should be continued even after the acquittal in criminal case is matter which is to be decided by the department after considering the nature of findings given by criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges, it is not expedient to continue the departmental inquiry on the very same charges or ground or on same evidence. However, merely because the accused is acquitted, the power of authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered. The observation made by this Court in case of ABDUL HAKIM Vs. DIS. SUPDT OF POLICE reported (19) GLR 210, the following observations were made which runs as under :-

"Of course this proposition that acquittal in a criminal court does not operate as an absolute bar to a departmental proceeding is now firmly entrenched and needs no reiteration. The heart of the problem, however, lies elsewhere. It needs to be emphasised that none of the aforesaid cases, not one of them supports the much wider proposition canvassed on behalf of the State that on the same material and on re-appreciation of the same oral evidence, without anything more, it is open to a disciplinary authority to take just the contrary view to the judicial view taken by the Court of law and notwithstanding the order of acquittal, to record a finding of guilt against the delinquent and to dismiss him from service. The proposition is an astounding proposition for if it were to be upheld, even the finding of acquittal rendered by the Supreme Court may be disregarded and a disciplinary authority, say, a Deputy Superintendent of Police, may take the view that it is open to him to believe the evidence of witnesses not believed by the competent Court and to act on the same evidence and to hold a person guilty notwithstanding that the Criminal Court came to the conclusion that on the very same evidence the accused was entitled to acquittal and the decision was confirmed by even the High Court and the Supreme Court. If this were accepted as a true position of law, it would wholly undermine respect for the judicial administration. Nay it would even promote disrespect for the

institution of law and justice. What then is the true position of law if an acquittal does not operate as an absolute bar to the initiation of a disciplinary proceeding and at the same time the disciplinary authority cannot hold the Government servant concerned guilty on the same evidence and the same material ? The true position would appear to lie within the hinterland between the two extremes. A Departmental proceeding cannot be initiated as a matter of course or without anything more when the court of law has acquitted the delinquent. It can be undertaken only if special circumstances are shown to exist. It would not be desirable to exhaustively adumbrate these circumstances. But the illustrative or typical situations can be by and large conceived. For instance (1) the Court might have acquitted the accused on the ground of failure to obtain the requisite sanction or (2) the acquittal may be grounded on the circumstance that there was no sufficient evidence by reason of the fact that the prosecution witnesses had not remained present and the request made for adjournment to enable the prosecution to examine witnesses was not granted. (3) The charge was defective and trial was vitiated on account of prejudice occasioned to the accused. (4) When the case is that of circumstantial evidence and acquittal is rendered by extending benefit of doubt on the ground that the prosecution has failed to establish its case beyond reasonable doubt (5) When some of the witnesses who implicate the accused are believed but others are not believed and in view of conflict of evidence acquittal is ordered on the doctrine of benefit of doubt. Reliance is, however, placed on the observation made in Motising's case [7 G.L.R. 409] to the effect that degree of proof in a departmental proceeding is difference from the degree of proof required in a criminal case. This observation, however, does not pertain to the realm of appreciation of oral evidence at all. It may have relevance in the context of circumstantial evidence or the totality of evidence. The question of standard of proof or degree of proof is altogether irrelevant in the context of appreciation of oral evidence. There cannot be a different standard or criteria for assessing the credibility of a witness depending on the nature of forum of enquiry. Surely it is not suggested that uninspiring evidence which is considered unworthy of credence by a court in a criminal case can be acted upon in a departmental proceeding ? Veracity and credibility of a witness cannot depend on the nature or forum of a proceeding. [It may be stated in parenthesis that the departmental proceeding is quasi criminal by its very nature]. It is, therefore, wrong to read by implication such an over-bold proposition into Motishing's case (supra). It is not the ratio of the said case that on re-appreciation of the same oral testimony incredible evidence can be branded as credible and reliable by the disciplinary authority in a disciplinary proceeding. No such question was directly raised, discussed, or answered as suggested and such is not the ratio of the decision."

13. Relying on the said observations in Special Civil Application No. 2294 / 1988, this Court [Coram : R.C.Mankand, J.] in para-5 has observed as under :-

"5. In the instant case though the charge in the departmental proceedings is not that the petitioner had committed offences punishable u/s 66(1)(b) and 85(1)(3)

of the Bombay Prohibition Act and Ss. 110 and 117 of the Bombay Police Act, the charge is founded on the same facts. In the case before the learned Magistrate the allegation was that the petitioner had consumed liquor and he had misbehaved with co-passenger under the influence of liquor. There is no charge regarding consumption of liquor or misbehavior under influence of liquor in the departmental proceedings but the charge is confined to misbehaving with co-passenger. In other words, both in the prosecution and the departmental proceedings the common charge is regarding misbehaving with the co-passenger. The witnesses who were examined in the trial and the departmental proceedings were the same and except the evidence with regard to consumption of liquor the evidence on which the charge in the departmental proceedings is founded is also the same. There very same evidence which was appreciated by the learned Magistrate and which was found unreliable by him is tendered in the departmental proceedings to prove the charge of misbehavior against the petitioner. Having regard to the above facts and circumstances of the case, in my opinion, the charge against the petitioner is held to be proved on re-appreciation of the same evidence and material which was before the learned Magistrate. Therefore, the case of the petitioner would squarely fall within the ratio of the decision of this Court in Abdul Hakim's case (Supra). It is not open to the disciplinary authority or the appellate authority to take the view contrary to the judicial view taken by the Court of law on the basis of re-appreciation of the same oral evidence. In fact, after his acquittal by the learned Magistrate disciplinary proceedings, even if initiated, could not have been continued against the petitioner. In any case the disciplinary authority and the appellate authority could not have found the petitioner guilty of the charge levelled against him on the basis of the same evidence. The court of law having examined the evidence and found it to be unreliable on the same evidence, the petitioner can not be held guilty of the charge of misbehavior, which was part of the charge on which the petitioner was prosecuted before the learned Magistrate. In my opinion, therefore, following the decision of this Court in Abdul Hakim's case (Supra) this petition must succeed."

14. In case of *SAHKARI GANA VIKAS SAMITI LTD. VS. STATE OF UTTAR PRADESH* reported in 1999 (1) CLR 1225, The Allahabad High Court has taken a view that acquittal in criminal case on same charges as in disciplinary proceedings, in such circumstances, disciplinary inquiry is not maintainable and there is no reason for continuing disciplinary proceedings on the same charges. Recently, the Apex Court in case of *M. Paul Anthony V. Bharat Gold Mines Ltd.* reported in AIR 1999 Supreme Court 1416 has observed as under :-

"Criminal case as also the departmental proceedings were based on identical set of facts namely the raid conducted at the appellants' residence and recovery of incriminating articles therefrom". The finding recorded by the inquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery.

They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

15. The view taken by the Division Bench of the Mysore High Court in case of P.Channappa vs. Mysore Revenue Appellate Tribunal, Bangalore and others reported in AIR 1966 Mysore 68, wherein it has been observed that :

When a particular charge had been enquired into and found against by a competent criminal court, Tribunals constituted under other enactments, cannot again enquire into the same charges, so long as the acquittal before the Criminal Court is not on any technical ground, but on merits. *Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another*, and AIR 1962 Mys 84 and AIR 1961 305, Rel on.

Consequently, where a person has been acquitted of the charge of overloading by a competent Criminal Court, the tribunals constituted under the Motor Vehicles Act cannot go over again into the question of truth or otherwise of that charge and arrive at a conclusion contrary to the one reached by the court."

In case of *Batna Singh Vs. National Coal Development Corporation* and another reported in 1969(1) LLJ page 664, it is observed as under :-

"It is true that the findings of the criminal court will not be binding in a Civil trial, but here the question is different; whether that finding will be binding on the department for the purpose of instituting a departmental inquiry after the decision in the criminal case is the point for consideration. Sometimes both the criminal trial and departmental enquiry go on. There is no bar against that. But, if a departmental inquiry is withheld till the decision of the criminal trial, then that decision should be taken into account and cannot be overridden by continuing the departmental enquiry thereafter on the identical charges. Furthermore, if a departmental enquiry is not at all launched but a criminal case is instituted and that ends in acquittal of the accused, it will not be proper for the department again to proceed on the same charges. The judgment in the criminal

trial in the present case was certainly admissible in the civil court under the Evidence Act for the purpose that there was a criminal case of identical charge and it ended in acquittal of the accused. The other findings or the evidence led in the criminal trial are irrelevant, but the conclusion of the trial is admissible in evidence. In that view and following the principle laid down in the case mentioned above of the Madras High Court. I am inclined to accept the contention of the learned counsel for the appellant that the departmental enquiry on the charges of the identical nature in the criminal trial, was not justified."

In case of Kundan Lal Vs. Delhi Administration reported in 1976 Lab.I.C. page 811 has observed after considering various decision in respect of the question involved in the present petition as under :-

"The question has to be viewed as one of substance, not form, whether the delinquent officer had been substantially acquitted on identical charges (s) ? This aspect would become clearer when reference is made to what I may call the middle view of this subject.

16. Such a middle position appears to have been taken by the Madras High Court in a series of decisions, to which detailed reference will be made presently, A Division Bench of the Madras High Court consisting of Rajamanner C.J. and Venkatarama Iyer J. was concerned in Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another, with the action of the Regional Transport Authority cancelling a licence for breach of conditions on the same allegations as were the basis of a prosecution against the lorry owner in question u/s 186 of the Indian Penal Code and Section 7 of the Essential Supplies Act, 1950 for smuggling rice, which ended in acquittal. The anomaly of the person concerned being punished by one Tribunal on the footing that he was guilty of the offence and being honourably acquitted by another of the same offence was pointed out. The Division Bench of the Bombay High Court, however, considered that the Division Bench of Madras had enunciated the law in wider terms than permissible. A later decision of a Division Bench of Madras High Court in S.Krishnamurth V. Chief Engineer, Southern Railway (ILR (1965) 2 Mad 373 = (AIR 1967 Mad 815) was referred to by Deshpande J. who spoke for the Division Bench of the Bombay High Court. It was an opinion written by Anantanarayanan J. for the Division Bench dismissing the appeal by Krishnamurthy, the delinquent officer, in that case against the decision of a single Judge who had held that he (the appellant) was not acquitted on the ground of not having received illegal gratification but on a technical ground, namely, a defect in the charge amounting to a material irregularity vitiating the conviction. The observations of the earlier Division Bench decision in Jerome D. Silva, were not held to be relevant. But a fuller discussion of the case law and the principles involved are to be found in a decision given singly by M.Anantanarayanan, Offg. C.J. in Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another, which has not been noticed by the Division Bench of Bombay High Court. After reviewing the previous decisions of the High Courts, the Supreme Court and of the English

Courts, Anantanarayanan J. stated that the following principles emerged :-

(1) An administrative authority, in initiating disciplinary proceedings, is not bound to wait for the verdict of a criminal court but where the criminal court has tried the concerned person and acquitted him it would be improper and such a proceeding is liable to be quashed as not in consonance with the principles of natural justice if the administrative authority later initiates disciplinary proceedings on the identical facts, evidence and charges if the acquittal had been substantially on the merits;

(2) There is no rigid or inflexible rule that a finding of a criminal court is conclusive in every sense upon the administrative authority. For instance, it may punish on the same facts for some lesser charge, which may not amount to a criminal offence but may well amount to a grave dereliction of duty entitling disciplinary action. This was illustrated by referring to a School Master being acquitted for a charge of rape of girl student, but still departmental action being possible against the schoolmaster for grave impropriety in his relationship with a girl student, which would disentitle him to that offence;

(3) Where the acquittal is substantially on the merits, it will not be proper for a disciplinary Tribunal to record a finding of guilt on identical facts and charges and also to punish; this being a basic principle of jurisprudence the court exercising jurisdiction under Article 226 of the Constitution would be justified in striking down the action based on such findings as not in consonance with principles of natural justice.

17. The following observations were made by Wanchoo C.J. speaking for the Supreme Court in R.P. Kapur Vs. Union of India (UOI) and Another, :

If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow where the acquittal is other than honourable".

These observations were followed by G.C. Mathur J. of Allahabad High Court in Bhagwati Charan Vs. State of Uttar Pradesh, (1973) 2 Serv L R 238 = (1973 Lab I C 1421 (All)) when he observed that departmental proceedings on the basis of the same charge are not competent if a person has been honourably acquitted by the criminal court.

18. Bhagwati J. speaking for the Supreme Court in Pritam Singh v. State of Punjab (AIR 1958 SC 415) quoted the following observations of Lord Mac Dermot in Sambasivam V. Public Prosecutor, Malaya 1950A C 458 :-

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim `res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings."

19. The above survey of judicial opinion seems to point to a preponderating preference for the middle view which is that when there is a substantial acquittal of the accused on a criminal charge there should not be a departmental proceedings against him in respect of the same charge on the same facts unless there are present conditions like the acquittal being on a technical ground or establishing conduct which would make it unworthy of the said officer continuing in office etc. Some of these ideas find concrete expression in P.P.R. 16.3."

In case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Rupsingh Veghji Rathod reported in 1985 LAB.I.C.1095, this Court has observed as under :-

"5. The answer is furnished by the judgment of this court in Abdul Hakim Ahmed Vs. Dist Supdt. of Police, reported in 19 GLR 210 (M.P.Thakkar, J. as he then was) L.P.A. No.43 / 78 against the said judgment was summarily dismissed by the Division Bench on 20th Feb, 1978. Thus, the High Court has laid down that a departmental proceedings can not be initiated as a matter of course or without anything more when a court of law has acquitted the delinquent of the same charge and such disciplinary proceeding can be undertaken only if special circumstances are shown to exist. Some illustrative situations have also been indicated where the acquittal is based on want of requisite sanction; or the prosecution witness not remaining present; or charge being defective or when the benefit of doubt is given; when the case is of circumstantial evidence; where some of the witnesses have been believed and others are not believed and because of conflict of evidence benefit of doubt is given. But when the criminal court has appreciated and disbelieved the evidence same evidence cannot be believed by the disciplinary authority and it is not open to the disciplinary authority to take a contrary view.

6. In the present case there is a clear acquittal on merits after appreciating the evidence and examining eye witnesses and therefore the disciplinary proceedings could not have continued at all and, therefore, the lower courts were justified in holding against the appellant Corporation."

In case of Sulekh Chand and Salek Chand v. Commission of police and other reported in JT 1995 (1) S.C. 23, following observations have been made by the Court which is as under:-

"2. These appeals arise from the order of the Central Administrative Tribunal in O.A.No. 1218/88 dated December 12, 1993. The appellant was promoted from the post of A.S.I. to S.I. but he was confirmed w.e.f. January 4, 1989 though it was stated that his case for promotion had to be considered with effect from October 1, 1982. This claim was resisted by the respondents on the ground that in 1983, he was charged for an offence u/s 5(2) of the Prevention of Corruption Act and he was kept under suspension and he was also communicated of adverse

remarks for the period from June 7, 1980 to March 31, 1981 and that he became eligible to be considered for promotion as S.I. w.e.f. December 16, 1985. Therefore, his case was considered for promotion as S.I. with effect from December 16, 1985. Therefore, his case was considered and he was promoted in 1989. Counsel for the respondent was directed to produce the record relating to the D.P.C. proceedings. We have perused the proceedings of D.P.C. which would clearly show that the reasons which prevailed with the D.P.C. were the prosecution u/s 5(2) of Prevention of Corruption Act and the departmental enquiry, against the appellant. It is not in dispute that the proposed departmental enquiry also is related to the self same offence u/s 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge u/s 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequences would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental inquiry on the self same allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution u/s 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the D.P.C. had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date immediate junior was promoted with all consequential benefits. The appeals are allowed."

20. In the present petition, for the question involved which has been involved, conflict view of various High Court as well as of the Apex Court. There are two expressed views on this point. One view is that after acquittal, no inquiry can be held and one other contrary view is that acquittal is immaterial and it does not restrict the power of disciplinary authority to hold inquiry. The middle view is that after acquittal, it will depend upon the facts and circumstances whether to hold inquiry or not. There is conflict opinion whether after acquittal, departmental inquiry can be held on the basis of the same facts. I have considered relevant decisions on this point and the same can be summarized as under :-

"(i) Criminal prosecution and departmental proceedings on identical charges can continue simultaneously.

(ii) The decision rendered in the criminal case is not binding on the Enquiry Office who conducts disciplinary proceedings. Similarly, findings recorded in the departmental proceedings are not binding on the court as neither is the appellate authority of the other.

(iii) Normally on an honorable acquittal of the employee by the criminal court, the departmental proceedings, in difference to the findings recorded by the court,

are not initiated but if the acquittal is based on a technical ground or the employee concerned is given benefit of doubt, the departmental proceedings on the same charges can still be initiated and if already pending can be concluded uninfluenced by the order of discharge or acquittal recorded in the criminal case on the said grounds.

(iv) The departmental and the criminal proceedings can be initiated simultaneously against the delinquent employee and he can also be put under suspension pending enquiry or contemplated disciplinary proceedings as per rules; and that the disciplinary proceedings can also be continued and concluded without waiting for the conclusion of the criminal case against the employee on the same charges provided the case does not involve complicated questions of fact and law, or that the ultimate decision in the departmental proceedings would necessarily not be based entirely on the result in the criminal cases itself.

(v) If the case involves complicated questions of fact and law and the matter is pending in the criminal court, where the employee is to face his trial, the departmental proceedings, as the Supreme Court says, should be stayed.

(vi) In order to find out what is "complicated question" help can be taken from the meaning given to the phrase "substantial question of law" which means the question not settled by the Supreme Court in regard to which there is difference of opinion and so the question is debatable. The position with regard to complicated question of law cannot be different and it will depend upon the facts of each case.

(vii) When the charge is of embezzlement and it is contended that the determination of this charge involves consideration of the procedure for operating bank account, accounting system and individual responsibility of each person including the cashier, the peon, the Superintendent and the drawing and disbursing officer then when only a charge sheet is given but explanation has not been received it cannot be said that the case involved complicated question of law and fact. They may become involved at any subsequent stage but till then departmental proceedings cannot be stayed."

21. I have considered the observations made by the Apex Court as well as this Court and other Court. Considering the law laid down in respect to the question involved in the present petition, the facts of the present case are required to be considered along with principle which has been laid down by the Apex Court. In the present case, the complaint filed by one Gopalbhai Karshanbhai Patel dated 19th September, 1998 become a base or foundation for departmental chargesheet dated 18th September, 1999 and criminal case lodged against the petitioner in criminal case No. 9/1999. I have perused both the chargesheet viz. departmental charge sheet and the charge sheet on which the criminal case was prosecuted and on perusal of these chargesheet, there is no slightest change between the two chargesheets and in both chargesheet, same set of facts, same incident and same language has been used against the petitioner. Not only that

in departmental chargesheet, the competent authority has not pointed out slightest difference from the chargesheet of criminal prosecution. In department chargesheet, what is intended to be considered is misconduct under the relevant rules and even no such clause has been mentioned. It is also noted that such conduct of the petitioner amounts to misconduct under the relevant rules has also not been pointed out and even as to why the chargesheet is required to be issued and that aspect has also not found in the departmental chargesheet. It is the duty of the departmental authority which must have to point out to the employee that his conduct in respect of such incident in question, becomes a misconduct under the relevant disciplinary rules of the department. This important fact has remained absence in departmental chargesheet. Therefore, according to my opinion, there is no slightest difference between two chargesheets and therefore, the main complaint dated 19th September, 1998 become the sole base for both these chargesheets. The name of witnesses mentioned in the department chargesheet and in the criminal chargesheet are common and even there also, no difference either in number or name has been pointed. In criminal case, all the witnesses were examined not only that some more witnesses were examined by the Special Court and the Special Court has come to the conclusion that the petitioner is not at all liable and committed any offence as alleged against the petitioner. I have also perused the entire judgment rendered in criminal case and there is clear finding of fact after examination of the witnesses as well as on consideration of oral evidence which were placed on record before the Special Court. It is a clear acquittal on merits and there was no iota of difference between two chargesheet and between two proceedings held against the petitioner. Therefore, in such circumstances, whether department can be permitted to hold inquiry ignoring the judgment of the criminal case which was delivered on merits, would certainly amounts to giving permission to the department to give go by to judicial pronouncement by the competent criminal court, which has thoroughly examined the charges levelled against the petitioner on appreciation of documentary and oral evidence and testimony. But in my opinion, such permission cannot be granted in light of the facts of the present case. It is also pertinent to note that when facts and evidence in both proceedings namely the departmental proceedings and criminal case were the same without there being any iota of difference then distinction which is usually drawn between the departmental proceedings and the criminal case on the basis of object and burden of proof would not be applicable to the present case of the petitioner.

22. Now looking to these decisions and observations made by the various High Courts as well as Apex Court, the decision of the Apex Court in case of Corporation of City Of Nagpur Vs. Ramchandra reported in 1981 (2) SCC page 714, wherein it was held that if the accused is completely exonerated of the charges then departmental inquiry is not justified. Merely acquittal and the matter has to be decided by the appointing authority keeping in mind the circumstances of the case. Normally where the accused is acquitted honourably

and completed exonerated of the charges, it would not be expedient to continue departmental inquiry on the same charges or ground and the same evidence but the fact remains that merely because the accused is not guilty, the power of authority to conduct and continue departmental inquiry is not taken away nor its discretion is in any way fettered. If the authority feels that there is some sufficient evidence and good ground to proceed with the inquiry, it can certainly do so but in that case, after acquittal the authority has to justify the circumstances, grounds and material before the Court to exercise discretionary powers after acquittal to hold departmental enquiry in respect of the same charge based upon the same set of facts. Now considering the observations of the Apex Court, if this considers the facts and circumstances of the present case, then in the present petition, the petitioner has challenged continuation of departmental inquiry after his acquittal on merits. Before approaching to this Court after acquittal, the petitioner has approached the respondent authority and considering the finding recorded by the learned Special Judge, Baroda in criminal case, wherein the petitioner has been declared acquitted on merits. Therefore, on the basis of the same charges, same set of facts, same incident, having common witnesses, departmental inquiry may not be continued and requested to drop the said proceedings initiated against the petitioner and revoke the suspension order which has been passed by the authority during the pendency of the departmental inquiry. In response to the said request made by the petitioner to the respondent authority, a written reply has been given and the same has been produced by the petitioner on record. I have perused the said reply. The respondent authority has rejected the said request of the petitioner without giving any sufficient reasons only on the ground that after acquittal, it is a right of the employer to hold departmental inquiry and there cannot be any bar for initiating departmental inquiry against the petitioner. This answer cannot be considered to be sufficient. It is the duty of the respondent authority to justify their action of holding departmental inquiry or continuation of departmental inquiry after acquittal on merits. It is the duty of the respondent authority to consider the finding given in criminal case by the Court on merits and to consider the fact in light of such findings on merits whether it is in the interest of the department to continue the departmental inquiry against the petitioner or not ? It is also further duty of the respondent authority that after acquittal on merits if they want to exercise the discretion to continue the departmental inquiry against the petitioner, in that case, they have to justify by giving cogent reasons, material evidence and ground before the Court that on such reasons, the departmental authority is entitled to hold departmental inquiry even after the acquittal on merits. The respondent authority has filed reply against the present petition wherein, action of continuation of departmental inquiry is under challenge. After perusal of the entire reply filed by the respondent authority, this Court is of the clear opinion that not a single whisper has been made out by the respondent authority that on this ground or on tis material or circumstances, which can be considered to be justified to hold departmental inquiry against the petitioner even after acquittal on merits. The respondent authority has not

produced any material along with reply and not disclosed any circumstances, material, grounds and relevant circumstances in their reply for exercising their discretionary powers to continue said departmental inquiry even after clear acquittal on merits. Therefore, even considering the observations made by the Apex Court in case of Corporation of City of Nagpur, such discretion no doubt held by the respondent authority but such discretion must have to be justified before the Court of law where, challenge has been made by the petitioner. Right to hold inquiry cannot be considered to be justified ground but the same is required to be justified by supporting material, some concrete evidence and such grounds as well as circumstances to show that even after acquittal on merits, Department is justified in holding or continuing the departmental inquiry against the delinquent. If the respondent authority fails to justify before the Court then it amounts to merely harassment to the delinquent for exercising their powers to hold departmental inquiry without any justification by the respondent authority. Therefore, in such circumstances, looking to the facts of the present case and considering the reply filed by the respondent authority and further considering the fact that even at the time of arguments, counsel for the respondent has not been able to point out that these are the circumstances and material evidence which can be considered to be justified to continue departmental inquiry against the petitioner even after his honourable acquittal on merits. I have perused the charge sheet issued to the petitioner by the department and I have also perused the chargesheet issued against the petitioner in Criminal Case. I have also referred the findings of facts arrived in criminal case so also considered both the proceedings and this Court is of opinion that common witnesses, one incident, same set of facts and positive finding on merits after appreciating the evidence led in criminal proceedings which resulted to the conclusion that the petitioner is not held to be liable for any offence as alleged according to the incident against the petitioner. Therefore, considering all these aspects of the matter and facts of the present case with the law laid down in the aforesaid decision of the Apex Court and various High Courts of the country, according to my opinion, discretion having been exercised by the respondent to continue the departmental inquiry against the petitioner even after honourable acquittal in criminal case, cannot be justified and substantiated and the same cannot be permitted to the respondent without any justification under the circumstances, especially when the respondent authority has failed to prove such circumstances, evidence, material and grounds which can be justified to continue departmental inquiry against the petitioner. Thus, it is clear that the respondent has failed to prove any justification for continuing the departmental inquiry against the petitioner after his honourable acquittal on merits in respect of the same charges, same set of facts, one incident, common witnesses and therefore, according to my opinion, after honourable acquittal on merits, looking to the facts and circumstances of the present case, the respondents are not entitled to continue the departmental inquiry against the petitioner and therefore, chargesheet which has been issued by the department and inquiry initiated against the petitioner by the department are required to be quashed and set aside.

23. Therefore, according to my opinion, the departmental chargesheet and departmental inquiry which has been initiated against the petitioner are required to be set aside. Moreover, in the present petition, when the departmental chargesheet and inquiry are set aside then the consequences naturally would be setting aside the order of suspension dated 2nd October, 1998 because the said order of suspension is passed during the pendency of departmental inquiry and when departmental inquiry does not survive and shall not remain in existence along with the departmental chargesheet on which said proceedings have been initiated, then naturally, suspension order dated 2nd October, 1998 is also required to be quashed and set aside. Therefore, both these petition i.e. Special Civil Application No.8465 of 1998 and Special Civil Application No. 6356 of 2000 are allowed accordingly and the chargesheet dated 18th September, 1999 and pending departmental inquiry and suspension order dated 2nd October, 1998 are required to be set aside and the same stands quashed and set aside accordingly. However, while setting aside the entire chargesheet, inquiry and suspension order, it can not be ignored to note that against the clear acquittal of the petitioner, the respondent - State has filed appeal before this Court and the said appeal is admitted by this Court. Therefore, though this Court has set aside the chargesheet, departmental inquiry and the suspension order only in light of the fact of clear acquittal of the petitioner in criminal case No. 9/ 1999 but however, it is open for the respondent, in case, if the clear acquittal of the petitioner in criminal case is set aside by the appellate court in future, in such circumstances, it would be open to the respondent authority, to take appropriate action against the petitioner in accordance with law. In the result, both these petitions stand allowed to the aforesaid extent and the Civil Applications stand disposed of in terms of the order passed in these two main petition. Rule is made absolute to the extent indicated hereinabove.

ORDER

After pronouncement of the judgment in both Special Civil Application as aforesaid, Ms.Manisha Lavkumar, learned AGP requests this Court to grant interim stay against the judgment pronounced by this Court today. I have heard Mr.Yatin Oza, learned Senior Advocate for the petitioner and Ms.Manisha Lavkumar, learned AGP on behalf of the respondents. Considering the fact that the respondents intend to challenge the judgment before the higher forum and therefore, some reasonable time should be granted. In above view of the matter, the judgment pronounced by this Court today in these Special Civil Applications is ordered to be stayed upto 27th December, 2000.