

(2014) 03 GUJ CK 0116
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1395 of 1998

R.K. Divyeshwar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) LabIC 2209

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Ketty A. Mehta, Advocate for the Appellant; Udit Mehta, A.G.P., Shalin Mehta, Sr. Counsel, Hemang M. Shah and Shivang J. Shukla, Advocate for the Respondent

Judgement

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Kaushal Jayendra Thaker, J.—Letters Patent Appeal No. 1358 of 1998 has been preferred by the appellants - the State of Gujarat as well as the Registrar of High Court of Gujarat challenging the judgment and order dated 11.11.1998 passed by the learned single Judge in Special Civil Application No. 6421 of 1993 whereby the penalty of dismissal of service imposed on the respondent was substituted by penalty of withholding of three increments. Being aggrieved by the very judgment of the learned single Judge substituting punishment by withholding of three increments, the delinquent preferred Letters Patent Appeal No. 1395 of 1998.

2. Before advertng to the facts, one fact is very clear that the writ petition was filed in the year 1993 and the learned single Judge delivered the judgment on 11-11-1998. Learned counsel appearing for the delinquent has fairly submitted before us that by passage of time, the delinquent has reached the age of superannuation.

3. The facts of the case in brief are as under:--

3.1 The delinquent was appointed as Judicial Magistrate, First Class on 15.12.1981. At the relevant time, he was working as Civil Judge (J.D.) and Judicial Magistrate, First Class, Anand. On 14.11.1991, at about 9.30 p.m., the delinquent reached at the house of Ms. S.C. Srivastav, Joint Civil Judge (JD) and Judicial Magistrate, First Class, Petlad. Hence she was surprised to see him at odd hours. She inquired as to why he had come, but he could not give any satisfactory answer. The conduct of the delinquent was seen unnatural and he appeared to be in drunken condition. She was very much embarrassed as her residence was in a lonely place. There was another quarter of Mr. Vasa falling on the way to her quarter. The delinquent did not opt to visit Mr. Vasa's house first. From the behavior of the delinquent, she felt unsafe in his presence. Hence, she sent her servant Mr. Anwar who was also present there to call Mr. Vasa, Civil Judge (J.D.), Petlad. On her request, he came from his house. Her impression was that had she been alone, the delinquent would have misbehaved a lot. She was very much annoyed by this chapter of uncalled visit by the delinquent and she was very much mentally disturbed due to the incident and she went to narrate about the incident to the District Judge, Kheda at Nadiad on 18.11.91, who directed her to give a complaint in writing. Accordingly, she went again on 19.11.91 and reported the matter in writing to the District Judge, Kheda at Nadiad. The District Judge, Kheda at Nadiad recorded the statements of Ms. SC Srivastav, Mr. A.G. Vasa, Civil Judge (J.D.), and JMFC, Petlad and Mr. Ahmedmiya Malek on 25.11.91. The matter was referred to the High Court by a letter dated 16.12.91. The Joint Registrar, High Court of Gujarat under the direction of the then Acting Chief Justice of the High Court of Gujarat informed the delinquent about the decision to hold a departmental inquiry against the delinquent on the following charges:--

That while working as Joint Civil Judge (J.D.) and Judicial Magistrate, First Class, Anand.

(i) On 14.11.91 at about 9.30 p.m., you went to the residence of Ms. S.C. Srivastav, Joint Civil Judge (J.D.) and JMFC, Petlad, you tried to misbehave with her.

(ii) You are furthermore charged that neither you had sought permission to leave the headquarters for going to Khambhat and Petlad on 14.11.91 nor you informed the District Judge, Kheda about your visit to Petlad thereafter; and

(iii) These acts of yours are acts of grave misconduct and tantamount to conduct of unbecoming of a judicial officer, violating the provisions contained in Rule 3 of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971.

3.2 Thereafter, notice was served upon the delinquent accompanied with a statement of imputation, list of witnesses and list of documents. The delinquent by his reply dated 13.1.1992 denied the statement of imputations by terming the same as false, baseless and incorrect. He admitted in his statement that on 14.11.91 at about 9.00 p.m., he had gone to the residential quarter of Ms. S.C.

Srivastav, Joint Civil Judge (QD.) and JMFC, Petlad, but it was not true that he tried to misbehave with her or his conduct was in any manner goes to show an impression of attempting to misbehave with her. It is also admitted by him that he had left his quarter without obtaining previous sanction of the District Judge, Nadiad, but he had telephoned him subsequently to obtain ex post facto sanction which he could not take because of certain reasons. He also denied that he was not known to her and she was not known to him. On the contrary, both the delinquent and lady officer started practice in the High Court together. She was selected as Civil Judge (JD.) in the same batch as he was. Due to several meetings, calls by the District Judge at Nadiad, Cambay, they had more than one occasion to meet each other. Originally being the members of the same Bar, both of them knew each other. He started his practice in Ahmedabad in the year 1979 and from 1978 to 1981, he practised in various Courts and in the year 1980-81, he started his practice in the High Court. From his initial posting at Mahesana to the present station from transfer, that was Anand, he had endeavoured to perform his duties to the best of his abilities judicially and with integrity and there were no adverse remarks during the entire spell of his service. While narrating about the incident, he stated that his maternal sister was residing at Pedit near Shri Ranchhodji temple. The distance from Anand to Petlad is about 20 Kms. while to and fro distance from Anand to Khambhat is more than 120 kms. On the date 14.11.91, at about 7.00 p.m. his brother-in-law Mr. Pravinchandra Trivedi of Petlad, husband of his maternal sister Chandrikaben Trivedi had come to meet him at his residence at Anand and he was to leave for Petlad. Hence, he offered to accompany him on his scooter as he had no vehicle. He had no occasion to go and meet his maternal sister since Diwali. He rang the District Judge, Nadiad before leaving but he came to know from his daughter that the District Judge was not available. That phone was made for obtaining sanction and informing the District Judge that he was to leave for a couple of hours headquarters for Petlad. He also filed a xerox copy of the bill for the phone made from Anand to Nadiad and that phone call was recorded in PWD guest house register on the same date. It was physically impossible to reach Khambhat at a distance of more than 60 kms. from Anand and return to Petlad by round about 9.00 p.m. He had gone to Petlad to leave his brother-in-law on scooter and also to meet his wife (his maternal sister) where he had a dinner. When he was leaving the residence of maternal sister at about 9.00 p.m. on 14.11.91, in the way he started to have some uneasiness feeling and took a chance that as the residence of his colleague Mr. Vasa was on the way, he desired to go there and also wanted to take this opportunity to meet him. But he found that there was no light at Mr. Vasa's quarter and probably other family members might be in an inner room or might be out of house. Since the light was on in the nearby residence of Ms. Srivastav, he first visited her. There was no action or conduct much less any misbehavior on his part which could even by ghost of imagination leading anybody to believe of his attempting to misbehave. Regarding the allegation made at serial No. 2, he stated in writing to the District Judge for obtaining ex post facto sanction would at the most be said to be a technical irregularity which may be graciously

condoned. In view of the fact that prior to leaving Anand for Petlad, he had tried to contact the District Judge on telephone at his residence but he was not available. Hence, his daughter on his behalf received the phone. On the next day on 15.11.91, immediately going to the dais, he was called in the chamber of Civil Judge (S.D.), Anand and was informed that his mother was operated at Ahmedabad. Mr. Pathan, Civil Judge (S.D.), Anand received phone call by him on his behalf. Hence he was called upon at about 11.30 a.m. on 15.11.91. He belongs to a respectable family. His father was a doctor. His cousin brother is an eminent Gynecologist and other cousin is a Director of Commerce Faculty, Gujarat University and his brothers were also well established in the society. He would never think to misbehave with any person much less a judicial officer, more specifically with Ms. Srivastav in the manner as alleged. He is a disciple of Swaminarayan sect. The allegations of Ms. Srivastav were vague in itself and further on the contrary, it is even admitted by Ms. Srivastav that she presumed intoxication and she presumed likelihood of misbehavior. There was no specific allegation made in that regard. There was no clear cut allegation either made in that regard to presumption of intoxication based on incorrect inference. Such statement which no person of common sound or prudent sense would place reliance upon. He also indicated that the charges leveled against him were totally false and baseless and Ms. Srivastav might have been tempted to level charges against him long after the alleged incident with ulterior motive or for the simple reason that he had reached the place at a time when her undisclosable secrets would have been revealed and being allegations of a lady Judge would be credence too. If anything would have taken place those facts must have been disclosed by her to Mr. Vasa who was called there or to Mr. Malek who was present at the time of the incident.

3.3 Shri M.A. Trivedi, Judge, City Civil Court, Ahmedabad was appointed as Inquiry Officer for holding a departmental inquiry against the delinquent as per High Court's letter dated 4.2.1992. Before the Inquiry Officer, the parties have led their evidences and statements of the concerned witnesses were also recorded.

3.4 After considering the evidence available with the Inquiry Officer, the Inquiry Officer submitted his report dated 21-7-1992 on 16-9-1992 and came to the conclusion that the department has proved charge No. 1 and charge No. 2 against the delinquent. Such proved acts would amount to misconduct and acts would be considered as the acts for unbecoming of a Judicial Officer and were violative of the provisions contained in Rule 3 of Gujarat Civil Service (Discipline and Appeal) Rules, 1971 which speak that every Government shall do nothing which would level him of unbecoming of a Government servant.

3.5 After submission of inquiry report, a show-cause notice dated 16.4.1992 was issued to the delinquent for proposed punishment. The petitioner submitted his reply dated 14.12.92. The matter was placed before the Disciplinary Committee consisting Hon"ble N.J. Pandya and Hon"ble S.M. Soni, JJ. That Committee

submitted its report dated 1.3.93 confirming the findings of the Inquiry Officer and recommended that the extreme penalty of dismissal from services be imposed. That report of Disciplinary Committee along with the inquiry report was placed on table for 48 hours for exhibition to Hon"ble Judges of the High Court. Thereafter, it was deemed to have approved by the High Court. The recommendation of the High Court was sent to the State Government, Government of Gujarat accepted the same and by Notification and Resolution dated 5-4-1993 dismissed the services of the delinquent.

3.6 The delinquent challenged the said dismissal order by way of writ petition being Special Civil Application No. 6421 of 1993. The learned single Judge of this Court by the impugned judgment and order dated 11.11.1998 partly allowed the writ petition and penalty of dismissal from service imposed on the delinquent was substituted by penalty of withholding of three increments.

4. We have heard Mr. Shalin Mehta, learned Senior Counsel assisted by Mr. Hemang M. Shah appearing for the High Court, Mr. Udit Mehta, learned Assistant Government Pleader appearing for the State Government and Ms. Ketty A. Mehta and Mr. Shivang J. Shukla, learned counsel appearing for the delinquent.

5. Learned Senior counsel Mr. Shalin Mehta has relied on the grounds urged in the memo of Letters Patent Appeal and submitted that the conduct of the delinquent was highly unbecoming of Judicial Officer. He had no business to visit the house of a lady Judicial Officer. Hence, the punishment awarded by the High Court of dismissal from service was just and proper and hence, the impugned judgment and order passed by the learned single Judge requires interference.

6. Learned counsel appearing for the delinquent, on the other hand, contended that no interference is called for in the judgment and order passed by the learned single Judge. As per their submissions, the punishment of dismissal from service imposed on the delinquent was disproportionate to the act of the delinquent. Hence, they submitted that the appeal preferred by the High Court may be dismissed with costs.

7. Before advertng to the facts and findings of fact recorded by the learned single Judge, it would be necessary for us to advert to the settled legal position settled by the Hon"ble Supreme Court. In the case of Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another Vs. Rajendra Singh, , the Hon"ble Supreme Court in paragraphs 12 & 13 has held as under:--

12. Indubitably, the well ingrained principle of law is that it is the Disciplinary Authority, or the Appellate Authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the Disciplinary Authority. In the matter of Apparel Export Promotion Council Vs. A.K. Chopra, , this principle was explained in the following manner:

22The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct.....The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.....

Yet again, in the case of *State of Meghalaya and Others Vs. Mecken Singh N. Marak*, this Court reiterated the law by stating:

14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the Court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15 & 16 xxxxxxxxxxxxxxxxx

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted.

13. As is clear from the above that the Judicial Review of the quantum of punishment is available with a very limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct

that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/Appellate Authority to take a decision afresh and it is not for the Court to substitute its decision by prescribing the quantum of punishment. In the present case, however, we find that the High Court has, on the one hand directed the appellate authority to take a decision and in the same breath, snatched the discretion by directing the Appellate Authority to pass a particular order of punishment. In normal course, such an order would clearly be unsustainable, having regard to the legal position outlined above.

8. Having discussed all these issues, a further reference requires to be made to the latest decision of the Apex Court in the case of R. Mahalingam Vs. The Chairman, Tamil Nadu Public Service Commission and Another, wherein the Apex Court has reiterated the parameters for exercising the jurisdiction of judicial review in cases of departmental inquiry. Paragraph 12 is extracted below:--

12. We have heard learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The Courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The Court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the Court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the Court.

A reference also requires to be made to the latest decision of the Hon''ble Apex Court in the case of Gujarat High Court v. S.J. Pathak and another, delivered in Civil Appeal Nos. 1838 and 1839 of 2013 wherein the Division Bench of Gujarat High Court held in favour of the delinquent and against the said order, the High Court approached the Hon''ble Supreme Court. The decision of the Division Bench of the High Court was confirmed by the Hon''ble Supreme Court.

In the recent judgment of the Hon''ble Supreme Court arising out of Registrar General High Court of Gujarat and Another Vs. Jayshree Chamanlal Buddhbhatti, in the case of Registrar General, High Court of Gujarat and another v. Jayshree Chamanlal Buddhbhatti, where the charges were even grave than the present delinquent and relying on several decisions, more particularly, decision in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), , have quashed and set aside the termination/dismissal and granted all benefits.

9. The Division Bench of this Court in the case of L.M. Makwana Vs. High Court of Gujarat and Another, has held that merely because order passed by Judicial Officer is contrary to express provisions of law that by itself not sufficient to infer that order is passed with oblique and ulterior motive. There has to be cogent and convincing material to so infer. Further, Enquiry Officer cannot sit in appeal over orders passed by Judicial Officer. Paragraph 12 is extracted below:--

12. In this regard, it is very relevant to refer to the observations made by the learned Enquiry Officer who was conscious of the fact that the departmental enquiry does not empower the Enquiry Officer to sit in appeal. The documentary and oral evidence and original papers were placed before the Enquiry Officer and the Enquiry Officer after going through the original papers, came to the conclusion that there was a collusion between the parties. But, then the Enquiry Officer cannot sit in appeal over the orders passed by the Judicial Officer, which are the subject-matter of the appeal. It has to be kept in mind that from whatever evidence which is brought in during the departmental enquiry, the Enquiry Officer has to independently arrive at the conclusion whether the charges leveled against the delinquent are brought home or not. It is true that it cannot be laid down as a general rule that if the judicial orders are not challenged before the higher authority, no departmental proceedings can be initiated against a Judicial Officer. Laying down such a proposition would be hazardous and would give a licence to unscrupulous judicial officers to indulge in corrupt practice. If the orders passed by the Judicial Officer, which are not carried in appeal are palpable or of such a nature that mere reading of such orders would make even a common man to feel that the same is an outcome of extraneous considerations the departmental proceedings can be initiated against judicial officers. But, in the present case the evidence produced during the course of the departmental enquiry is so shaky that it is very difficult to agree with the findings of the enquiry officer that the orders passed by the petitioner were result of his thick and homely relations with said Mr. Abdul Maniar and that the orders were actuated out of ulterior motive. Therefore, we find it very difficult to agree with the findings arrived at by the learned Enquiry Officer and the ultimate decision of the High Court on its administrative side to dismiss the petitioner from service.

10. With regard to the charges levelled against the delinquent, the findings recorded by the learned single Judge in paragraphs 21, 22, 27 and 28 of the impugned judgment reads as under:--

21. This is a case of feeling v. feeling. On one side Ms. Srivastav felt that Mr. Divyeshwar was drunk and she felt unsafe and insecure in his presence and near the wash basin, when she went to give him a soap, he advanced towards her and spreaded his hands which gave her a feeling that he was to misbehave with her. On the other hand, Mr. Divyeshwar was feeling sensation of vomiting and giddiness and hence he asked for a Limca and wanted to be fresh. He went to the wash basin on her pointing out, she went with a piece of soap to give him

and Divyeshwar spreaded his hands for taking the soap. It is a unique case where both the parties played fair role. As she did not charge him that he touched her body or even a finger. He did not utter any word to show his intention. Even he did not, follow her when she went to her bed room for giving a ring to her servant. Mr. Shelat also admitted that he raised his hand in the guise of taking the soap though the fact of spreading hands was improved in her statement before the inquiry officer.

22. Now, I have to see what was the mental and physical condition and conduct of the petitioner at the relevant time, whether he was in senses or his condition was abnormal. The Inquiry officer recorded the finding in this respect which reads as follows:

Of course there is no much force in the allegation that Divyeshwar was in a drunk condition at that time. Otherwise, he could not have traveled from Petlad to Anand on a scooter at that time. But this type of behavior or nervousness on the part of Mr. Divyeshwar after the incident clearly smells that he was not normal and his mental condition was also not normal as assessed by Ms. Srivastva and Mr. Vasa and by Anwar Malek.

It is a crucial point whether nervousness of the petitioner was intentional or pretending or it was due to sensation of vomiting and giddiness. Heavy duty lies on the authorities to determine and come to correct conclusion where defence case travels with a parallel version. According to the petitioner's explanation, he raised his hands for taking the soap from Ms. Srivastav and that Mr. Srivastav misunderstood that he wanted to misbehave her by raising his hands. The Inquiry Officer thought that the petitioner might have been the victim of his mental weakness at a particular time and he tried to misbehave with her. The Inquiry Officer also presumed that no lady Judge would like to make false allegations but from the allegations, it appears to me that there is nothing on record to infer that Mr. Divyeshwar did any act which amounts to misconduct.

27. There are various cases where acts amount to misconduct in technical or strict legal sense but not deserving substantial penalty. For an example, an officer dealing with huge quantity of money is charged of misappropriation of 10 or 20 rupees, that maybe an inadvertent mistake in counting but it is not a case for extreme penalty of dismissal on such a charge. Another instance of a case is where the charge is proved that the officer abuses his superior or subordinate officer on some fault and such abuse amounts to misconduct, but for such misconduct he should not be dealt with extreme penalty. No law requires the extreme penalty for an act which is a misconduct in technical sense unless only extreme penalty is provided therefore. Where other minor penalties are provided, then minor penalty should be awarded. Another instance of a case where a charge of misconduct against a judicial officer is that he was found traveling in a train without a ticket and he was penalised where the explanation of the judicial officer is that he received an information of death of his close relative and was to reach at the place of that relative at the earliest and he rushed to the railway

station where train was to leave. The officer without taking a risk of leaving train, he caught the train without purchasing the ticket and informing the guard about his traveling for issuance of a ticket later on. In such case, if the charge of misconduct or unbecoming of an officer is proved then also extreme penalty of dismissal is not warranted. In the similar manner, if a judicial officer feeling sensation of vomiting and giddiness in nervousness rushed hurriedly for help to a house of a colleague lady Judge with whom he had no concern, for help by way of some rest or cold drink and went to the wash basin to be fresh where the lady officer reached with a soap, he raised his hand for taking the soap which gave an impression to her that he was raising his hands for misbehaving with her. Admittedly, he did not touch even her finger. He did not intercept her way or followed her when she went to another room for calling her servant. Such nervousness continued for some time. Such conduct may or may not amount to misconduct looking to urgent need of the officer for some help but extreme penalty of dismissal is not only disproportionate but also shocks judicial conscience particularly when the lady Judge did not think it proper to report the matter for four days to anybody. She was not an illiterate lady or ordinary rustic lady from rural area. Her explanation that she remained perturbed for four days has been considered genuine and acceptable. She is an educated and responsible judicial officer knowing pros and cons such delay in making complaint. It is not expected from such a responsible officer that she remained perturbed for four days and did not report to any official due to perturbation for four days, and she could have reported the matter immediately to the appropriate authority. She should have reported the matter to the District Judge or the Registrar of this Court in the same night either telegraphically or on telephone in case she thought it as an attempt of misbehavior or serious matter. The Inquiry Officer could have accepted and has accepted her statement regarding raising of hands as true. If he had accepted the delay of four days as genuine or true due to perturbation, then he should have accepted the explanation of the delinquent officer that he spread his hand for taking the soap and for nothing else. The inquiry Officer proposed for extreme penalty or dismissal only on the basis of feeling of doubt or suspicion with an intention that he was to misbehave with her by spreading his hands. His act may amount to misconduct in a technical sense as according to the Inquiry Officer, he should not have gone to the house of a lady officer under any circumstances whatever urgency was for him. Whereas, on the other hand, the petitioner was nervous, he hurriedly rushed to the house of Ms. Srivastav for help on his feeling sensation of giddiness and vomiting. Thus, in my view extreme penalty of dismissal from service for conduct which is misconduct in technical sense shocks the judicial conscience particularly when such misconduct is not in respect of integrity of the officer. Extreme penalty of dismissal is not warranted at all in the facts and circumstances of the case. Gravity of the misconduct or unbecoming should have been looked into as held in the Supreme Court in the case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, affirmed the view taken in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, which reads as under:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

28. So far as the second charge in respect of leaving headquarters without permission of the District Judge is concerned, Mr. Shelat, Additional Advocate General conceded in this Court that it is an act amounting to a technical misconduct and he did not argue in respect of this technical misconduct at all. In this respect, the petitioner filed a receipt of telephone charge and stated that he tried to contact the District Judge on phone before leaving Anand, but phone was received by the daughter of the District Judge. He was informed that the District Judge was not present at that time. This fact has not been controverted by the presenting officer at all. Moreover, Mr. Vasa admitted in his statement that leaving headquarters for couple of hours three or four hours, permission is not required, but after return, written intimation should be given. According to the petitioner, he received an information next day regarding operation of his mother at Ahmedabad. Hence, after taking leave he had gone to Ahmedabad, Even if it is an act amounting to misconduct, according to Additional Advocate General it was only a technical misconduct.

11. Having perused the entire judgment, entire record and essentially, the findings of fact recorded by the learned Single Judge, it would not be out of place to mention that in the case of Judicial Officers whose initials are as follows:--

- (a) Mr. S.J. Pathak
- (b) Mr. L.M. Makwana
- (c) Mr. N.N. Thakore
- (d) Mr. R.H. Sharma
- (e) Ms. Jayshree Chamanlal Buddhbhatti

These Judicial Officers were facing graver charges than the present delinquent. However, their cases were considered by the Apex Court and/or by this Court.

The charges against the present delinquent were less grave than the persons whose cases are referred herein above and, therefore also, we are unable to persuade ourselves to take a different view than that taken by the learned single Judge. On the touchstone of the Apex Court in the afore referred decisions and, more particularly, the parameters fixed in these two decisions will not permit us to take a different view than that taken by the learned single Judge.

12. Therefore, the exercise of power by the learned single Judge was just and proper. The proportionality of the punishment has also been examined by us and, therefore, the proportionality is also scrutinized to the judicial review as the charge is not, adequately proved and, therefore, the benefit has to be given as given by the learned single Judge. Even as per the principles laid down by the Hon'ble Supreme Court in the case of Munnalal v. Union of India, 2010 (15) SCC

399, as in this case, the order of dismissal was highly disproportionate to the charges levelled against the delinquent and as the first charge was not proved and the second charge could not have been invoked to dismiss him from service.

13. Having gone through the findings of fact recorded by the learned single Judge with regard to the charges leveled against the delinquent and the law propounded by the learned single Judge referred above, we are unable to persuade ourselves to take a different view than taken by the learned single Judge. We are in complete agreement with the findings recorded by the learned single Judge. In our opinion, the penalty of dismissal from service imposed on the delinquent was too severe and harsh which was substituted by penalty of withholding of three increments by the learned single Judge was just and proper and it does not require any interference by this Court.

14. In the result, both the Letters Patent Appeals fail and are accordingly dismissed. Interim relief, if any, shall stand vacated. There shall be no order as to costs. Coming to the question of reinstatement, it is stated by learned counsel appearing for me delinquent that the delinquent has already reached the age of superannuation and, therefore, the relief of reinstatement cannot be granted. In light of the fact that the delinquent has already reached the age of superannuation, we are of the opinion that what relief would the delinquent be entitled to in the facts of the present case as we have held that the doctrine of equality principles enshrined under Article 226 of the Constitution of India is upheld which goes without saying that he will be entitled to all the consequential benefits. It is, therefore, directed that the delinquent to be treated to have continued in service and retired on the day of his superannuation and he be paid all the benefits including full back wages with all the retrial benefits.