
(2016) 01 GUJ CK 0187
In the Gujarat High Court
Case No : Special Civil Application No. 684 of 2002.

R.S. Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 GCD 919 : (2016) 4 GLR 3220

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Vaibhav A. Vyas, Advocate, for the Appellant; V.S. Pathak, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J. (Oral) - By way of this petition under Article 226 of the Constitution of India, the petitioner has, inter alia, prayed that the impugned order of penalty dated 24.10.2001, passed against the petitioner be quashed and set aside. It is further prayed that the Charge-sheet dated 11.11.1997 and the reasons for disagreement by the Disciplinary Authority, as communicated to the petitioner vide letter dated 09.02.2001, also be quashed and set aside.

2. The petitioner was initially appointed as Mamlatdar, through direct recruitment, on 16.05.1977. He was promoted as Deputy Collector in January, 1983, and was appointed in the cadre of Additional Collector in February, 1994. At the time when the petition was filed, the petitioner was holding the post of Director, District Rural Development Agency at Junagadh. During the pendency of the petition, the petitioner has retired from service upon attaining the age of superannuation on 28.02.2013.

3. During the period from 26.05.1993 to 09.05.1994, the petitioner was posted as Resident Deputy Collector-cum-Prant Officer at Gandhinagar. As the post of Deputy Collector (Land Reforms) (Appeal), Gandhinagar, was vacant, the

petitioner was given the additional charge of the said post for the period from 01.07.1993 to 27.08.1993. A charge-sheet was issued to the petitioner on 11.11.1997, for alleged irregularities in his working, while holding the additional charge of the post of Deputy Collector (Land Reforms) (Appeal) for the period from 01.07.1993 to 27.08.1993. The petitioner submitted his defence statement on 31.08.1998. Vide order dated 24.09.1999, the State Government appointed an Inquiry Officer. The petitioner appeared before the Inquiry Officer and rendered his detailed explanation against the charge levelled against him. The Inquiry Officer prepared a detailed Report dated 01.07.2000, arriving at the conclusion that the charge was not proved. The State Government, being the Disciplinary Authority, did not agree with the findings of the Inquiry Officer and issued reasons for disagreement vide communication dated 09.02.2001, addressed to the petitioner. Pursuant thereto, the petitioner submitted a detailed representation on 12.03.2001. The Disciplinary Authority imposed the penalty of withholding one increment for a period of four years with future effect, vide the impugned order dated 24.10.2001. It is further stated in the said order that during the said period of four years, the petitioner would not earn any increment. Aggrieved by the above-stated order, the petitioner is before this Court.

4. Mr. Vaibhav A. Vyas, learned counsel for the petitioner has submitted that the petitioner has not committed any misconduct in terms of Rule 3(1)(i) and 3(1)(ii) of the Gujarat Civil Services (Conduct) Rules, 1971 ("the Conduct Rules", for short). In the charge-sheet issued to the petitioner, there is no allegation regarding the integrity or devotion to duty of the petitioner. The only allegation is that while passing certain orders in his capacity as Deputy Collector (Land Reforms) (Appeal), the petitioner adopted a pick and choose policy and showed undue haste in certain matters. It is submitted that the petitioner was acting in a quasi-judicial capacity while passing the said orders. The passing of a wrong order cannot be considered as misconduct, especially when there is no material on record to prove that the petitioner acted in a mala fide manner, or was motivated by extraneous considerations. That, there is a remedy of filing an appeal to the Collector against the orders passed by the petitioner under the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Bombay Tenancy Act", for short). There is a further remedy of challenging the order of the Collector before the Gujarat Land Revenue Tribunal and, thereafter, before the High Court. None of the orders passed by the petitioner that are subject matter of the charge-sheet have been carried in appeal by the respondent-State Government. It is further submitted that as the petitioner was discharging quasi-judicial functions, the Disciplinary Authority could not have reviewed the orders passed by him in that capacity on the administrative side and arrived at a conclusion that he has committed misconduct.

4.1 It is contended that the petitioner is protected by Section 87 of the Bombay Tenancy Act. The said section provides that no suit or other legal proceedings shall lie against any person in respect of anything which is done in good faith or intended to be done under this Act. It is submitted that as there is no material on

record to prove any mala fide intention against the petitioner while passing the orders in question, therefore, no proceedings could have been initiated against the petitioner.

4.2 It is further contended that pursuant to receiving the reasons for disagreement, the petitioner made a detailed representation to the State Government, raising several grounds. None of these grounds have been taken into consideration while passing the final order of penalty. The Disciplinary Authority has merely recapitulated the charge against the petitioner, which was divided into several sub-charges in the Statement of Imputation. However, no tentative findings have been recorded by the Disciplinary Authority to dislodge the detailed report of the Inquiry Officer, whereby the petitioner has been exonerated.

4.3 It is submitted that the Inquiry Officer has recorded that certain procedural and technical defects were found in some of the orders passed by the petitioner. However, the said defects, being of a procedural and technical nature, did not amount to misconduct within the meaning of Section 3(1)(i) and 3(1)(ii) of the Conduct Rules. Nothing to the contrary has been proved by the Disciplinary Authority while passing the impugned order of penalty. It is contended that the burden was higher on the respondents as the Inquiry Officer had found the charge to be not proved.

4.4 In support of the above submissions, learned counsel for the petitioner has placed reliance upon the following judgments :

(i) Union of India and others v. J. Ahmed, reported in AIR 1979 SC 1022.

(ii) Zunjarrao Bhikaji Nagarkar v. Union of India and others, reported in AIR 1999 SC 2881.

(iii) P.C. Joshi v. State of U.P. and others, reported in (2001) 6 SCC 491.

4.5 Learned counsel for the petitioner has raised an alternative ground, in the event that the submissions advanced earlier do not find favour with the Court. It is submitted that the representation which the petitioner made after receiving the reasons for disagreement contains several grounds, none of which have been taken into consideration while passing the final order of penalty. As such, the said order is a nonspeaking order and cannot be permitted to stand.

4.6 In support of this submission, learned advocate for the petitioner has placed reliance upon the following judgments :

(i) Sher Bahadur v. Union of India and others, reported in AIR 2002 SC 3030.

(ii) Judgment dated 14.09.2004, passed by this Court in Special Civil Application No. 3834/1998.

4.7 On the above grounds, it is prayed that the prayers made in the petition be granted.

5. The petition has been opposed by Ms. V.S. Pathak, learned Assistant Government Pleader, by submitting that during the period when the petitioner was holding the charge of Deputy Collector (Land Reforms) (Appeal), he has passed several orders that show that he has adopted a pick and choose policy in some cases and acted with undue haste in others. It is submitted that there are several procedural defects in the orders passed by the petitioner, therefore, it is clear that the petitioner has committed misconduct and has been rightly proceeded with.

5.1 That the Disciplinary Authority has differed with the findings of the Inquiry Officer and granted the petitioner ample opportunity of hearing before passing the final order. Considering the gravity of the misconduct committed by the petitioner, the impugned order imposing the penalty of withholding one increment for four years with future effect and the direction that for the said four years the petitioner would not earn any increment, is just and proper.

5.2 On the aspect of misconduct, learned Assistant Government Pleader has relied upon the following judgments :

(i) State Bank of India and others v. Ramesh Dinkar Punde, reported in (2006) 7 SCC 212.

(ii) Prabhatsinh Samatsinh v. District Superintendent of Police and another, reported in 2009(3) GLR 2499.

6. This Court has heard learned counsel for the respective parties at length and considered the rival submissions. This Court has also perused the material on record and taken into consideration the judgments relied upon by both sides.

7. The charge against the petitioner is that, while he was holding the additional charge of Deputy Collector (Land Reforms) (Appeal) for the period from 01.07.1993 to 27.08.1993, he passed certain orders in cases under the Bombay Tenancy Act in his quasi-judicial capacity. The charge-sheet dated 11.11.1997 enumerates only one article of charge against the petitioner, which is to the effect that while deciding cases under Section 84(C) of the Bombay Tenancy Act, the petitioner has adopted a pick and choose policy in taking up certain matters and has shown undue haste in deciding some matters, thereby showing a lack of integrity and devotion to duty, which amounts to misconduct under Rules 3(1)(i) and 3(1)(ii) of the Conduct Rules. This single article of charge has been elaborated upon in detail in the Statement of Imputation by the Disciplinary Authority. In the inquiry that ensued, the petitioner appeared before the Inquiry Officer and submitted his Statement of Defence. Witnesses were examined and evidence placed on record by both the sides. After examining the oral and documentary evidence submitted by the parties, the Inquiry Officer made a detailed Inquiry Report dated 01.07.2000, running into about fifty five pages.

8. In the Inquiry Report, the Inquiry Officer has discussed each and every case decided by the petitioner that is the subject matter of the charge-sheet. After a

detailed discussion, the Inquiry Officer has arrived at a conclusion that, insofar as the case pertaining to village Jamiyatpura is concerned, no irregularity has been found in the order passed by the petitioner, though the allegation against him is that there are ten defects in the said order. In the case pertaining to village Sargasan, the allegation against the petitioner was that there were eight defects, but none have been found by the Inquiry Officer. Further, in four cases pertaining to village Sughad, it is alleged that fourteen defects were found in the orders passed by the petitioner, but the Inquiry Officer has found only two defects. As per the Inquiry Officer, these two defects are of a technical and procedural nature and it cannot be said that they amount to misconduct. It has been found by the Inquiry Officer that there is no evidence on record to prove that the petitioner has adopted a pick and choose policy in deciding cases or that he has resorted to undue haste in passing certain orders. Further, no material is found to prove that the petitioner has not maintained absolute integrity and devotion to his duty.

9. The Disciplinary Authority issued reasons for disagreement with the findings of the Inquiry Officer on 09.02.2001. A perusal of the reasons for disagreement clearly reveals that the findings of the Inquiry Officer have not been dealt with and no tentative findings have been recorded by the Disciplinary Authority. No reasons have been given to show why the Disciplinary Authority has differed with the findings of the Inquiry Officer or arrived at a different conclusion on the same set of facts and evidence.

10. Be that as it may, the main ground urged by the learned advocate for the petitioner is that the petitioner was holding a quasi-judicial post in his capacity as Deputy Collector (Land Reforms) (Appeal) at the relevant point of time and had passed quasi-judicial orders in exercise of power under the Bombay Tenancy Act. This aspect is not denied by the State Government in the affidavit-in-reply.

In fact, this is the main ground raised by the petitioner in the petition. However, there is no reply to this ground by the State Government in the affidavit-in-reply.

During the course of oral submissions, heavy reliance has been placed by learned counsel for the petitioner on this aspect. No submissions have been advanced by the learned Assistant Government Pleader to counter this argument, except to say that the petitioner has committed grave misconduct.

11. It, therefore, falls for adjudication by this Court, whether the petitioner has committed misconduct within the meaning of Rule 3(1)(i) and 3(1)(ii) of the Conduct Rules, by passing orders in his quasi-judicial capacity, which, according to the respondents have been passed by adopting a pick and choose policy and in undue haste.

12. As the petitioner passed the orders in question in exercise of power under the Bombay Tenancy Act, Section 87 of the said Act assumes relevance. This provision provides for indemnity, in the following words :

"87. Indemnity ? No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act."

13. It is clear from the above that the legislature intended that an act done in good faith or intended to be done in good faith under the said Act is protected from legal proceedings. The protection is granted only if the act is performed, or intended to be performed, in good faith. It was, therefore, incumbent upon the respondent-State Government to prove that the act of the petitioner in passing the orders in question was not done, or intended to be done, in good faith; meaning thereby that the petitioner had a mala fide motive or intention or that he was actuated by extraneous considerations while doing so.

14. A deep scrutiny of the entire material on record, which is quite voluminous, reveals that there is no evidence on record to indicate that the orders in question were passed by the petitioner with a mala fide intention or for extraneous considerations. There has been a meticulous scrutiny of evidence on the part of the Inquiry Officer, which emerges from a perusal of the Inquiry Report. The Inquiry Officer found some irregularities, or defects in four orders passed by the petitioner. Those defects are found to be procedural and technical in nature, which do not touch upon the integrity or devotion to duty of the petitioner.

15. The question remains whether the act of passing orders by a quasi-judicial authority can be termed to be misconduct, even when it is not proved that the said act was motivated by mala fide or other oblique considerations?

16. What constitutes misconduct has been elaborated upon by the Supreme Court in *Union of India and others v. J. Ahmed* (supra). The Supreme Court has held that lack of efficiency and failure to attain the highest standards of administrative ability while holding a high post would not, in themselves, constitute misconduct, though it may amount to negligence in performance of duty. The relevant extract of the above judgment is reproduced herein below :

"Disciplinary proceeding can be held against a member of the service for any act or omission which renders him liable to a penalty and such penalty can be imposed for good and sufficient reasons. All India Services (Conduct) Rules, 1954, prescribe a code of conduct for members of service. Discipline and Appeal Rules provide for disciplinary action and imposition of penalties.

Sub-rule (2) of Rule 16 of the Retirement Rules contemplates a situation where a member of service against whom disciplinary proceeding is pending is likely to retire and the proceedings may be thwarted and provides for his retention in service beyond the date of his retirement till the completion of the inquiry, provided the delinquent officer is under suspension on a charge of misconduct. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Lack of efficiency, failure to attain the highest standard of

administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

A look at the charges framed against the respondent affirmatively showed that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. Similarly, failure to visit the scenes of disturbance is another failure to perform the duty in a certain manner. Other charges indicated the shortcomings in the personal capacity or degree of efficiency of the respondent. It was alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision.

Held that these were personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. They might be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality could not constitute misconduct for the purpose of disciplinary proceedings. Therefore, it could not be said that an inquiry on a charge of misconduct was being held against the respondent and sub-rule (2) of R.16 would be attracted and he would be deemed to have been retained in service till the inquiry was concluded. To retain him in service beyond the period of his normal retirement with a view to punishing him was wholly unjustified. The High Court was, therefore, right in coming to the conclusion that the respondent was no longer in service on the date on which an order removing him from service was made and, therefore, the order was illegal and void."

(Paras 5, 9, 11, 12, 13, 16,17)

17. In the present case, there is no allegation that the petitioner lacks efficiency or has failed to attain the highest standards of administrative ability. Even if the respondents allege negligence in the performance of duty or a lapse or error of judgment in the performance of duties, those lapses would constitute the personal qualities of the person concerned and cannot form the basis of an allegation of misconduct. In the present case, the respondents are imputing misconduct against the petitioner, by alleging that there were irregularities in the orders passed by him.

18. It is not disputed that the orders in question passed by the petitioner are quasi-judicial orders, subject to appeal. It is further not disputed that the respondent-State Government has not filed appeals against the said orders passed by the petitioner.

However, on the administrative side, these orders have been subjected to

dissection and certain lapses have been found as a result. This course of action adopted by the State Government does not appear to be a correct one, as can be seen from the pronouncement of the Supreme Court in *Zunjarrao Bhikaji Nagarkar v. Union of India and others* (Supra), as below :

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal.

The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication where-under quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

(emphasis supplied)

19. There is no allegation against the petitioner that he has shown undue favour to any party for a mala fide motive or for extraneous reasons. Further, there is no evidence on record that the irregularities in the orders passed by the petitioner were anything more than procedural ones. As has been stated by the Supreme Court in *Zunjarrao Bhikaji Nagarkar v. Union of India and others* (Supra), mere suspicion cannot form the basis of the initiation of a disciplinary proceeding against an officer. Even an error of law would not constitute misconduct, leave alone procedural error. Had the respondent been dissatisfied with the orders passed by the petitioner, it was open to it to prefer appeal against them. Surprisingly, after having found several irregularities in the said orders, the State Government has not preferred appeals against them.

20. In *P.C. Joshi v. State of U.P. and others* (Supra), the Supreme Court has held as below :

"4. The disciplinary proceedings were initiated, inter alia, on complaints made by two Advocates, namely, V.K. Tiwari and Rajiv Kumar Singh. Nine charges were levelled against the appellant, seven of them pertain to orders of bail granted in 19 cases. During his tenure of two years at Etah, the appellant is stated to have disposed of over 3,000 bail applications. Only 19 bail orders out of these 3000 bail applications were the subject-matter of the charge-sheet.

The enquiry officer, however, found that in 7 cases, orders of bail were properly granted and the charges were not proved to that extent. In four cases the

charges are held to be partly proved. In one case, the appellant himself had recalled the order of bail after about 1 ? months of the grant of bail on an application made by the complainant on the ground that the bail was obtained by fraud and misrepresentation. In two other cases, according to the enquiry officer, bail ought to have been granted on the very first application, but it was granted on the second application. The enquiry officer took note of each one of the cases before him and reexamined whether bail should have been granted in each one of those cases or not. The parties concerned had not made any complaint in any one of the cases. On examination of each one of the charges in relation to grant of bail, the enquiry officer proceeded to consider the cases on merits. He found that there used to be a pattern in rejecting the first bail application and thereafter even in the absence of fresh ground, second bail application was entertained and bail had been granted or in certain other cases even in the first instance itself the bail ought to have been granted. Although we have been taken through the various charges levelled against the appellant in detail and the material placed before the enquiry officer, it is clear that inferences have been drawn only on the basis that either the applications had been rejected at earlier stage for grant of bail or such applications ought to have been granted at the first stage itself. However, no specific material was brought on record to show or prove that there were any mala fide or extraneous reasons on the part of the appellant in passing the orders.

5. The test to be adopted in such case is as stated by this Court in the cases of *Union of India v. A.N. Saxena* and *Union of India v. K.K. Dhawan*).

In *K.K. Dhawan* case this Court indicated the basis upon which a disciplinary action can be initiated in respect of a judicial or a quasi judicial action as follows : (SCC p.67, para 28)

- (i) where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;
- (ii) that there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) that if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (iv) that if he had acted in order to unduly favour a party;
- (v) that if he had been actuated by corrupt motive."

21. In the present case, there is no prima facie material to indicate that the petitioner has shown undue favour to a party. No such tentative reasons have been recorded by the Disciplinary Authority while issuing the reasons for disagreement with the findings of the Inquiry Officer.

22. In *Ramesh Chander Singh v. High Court of Allahabad* and another, reported in (2007) 4 SCC 247, the Supreme Court was dealing with a case of disciplinary

proceedings against a Judicial Officer, initiated on the basis of a judicial order passed by him. The Supreme Court held as below :

"11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or the NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, High Court must take extra care and caution."

(emphasis supplied)

23. Though the above case pertains to a Judicial Officer, however, the principles of law formulated by the Apex Court would apply to the case in hand as the petitioner had exercised quasi judicial powers under the Bombay Tenancy Act, while passing the orders in question.

24. Learned Assistant Government Pleader has relied upon State Bank of India and others v. Ramesh Dinkar Punde (Supra), in support of the submission that the petitioner has committed misconduct. Reliance has been placed on paragraph 19 of the judgment, which is reproduced herein below :

"19. In Regional Manager, U.P. SRTC v. Hoti Lal, it was pointed out as under: (SCC p.614, para 10)

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

25. In the context of the above judgment, it is significant to note that the charge against the petitioner is not that his integrity is doubtful or that he has

committed any financial default in a fiduciary capacity which requires the highest degree of integrity and trustworthiness. The charge is only that he has shown undue haste in passing orders and adopted a pick and choose policy. The reasons for disagreement do not reveal in what manner, and for what reason, the petitioner allegedly showed haste and how he adopted a pick and choose policy while passing the said orders, and to favour which party.

The above quoted judgment would, therefore, not be applicable to the factual scenario of the present case.

26. In *Prabhatsinh Samatsinh v. District Superintendent of Police and another* (Supra), relied upon by the learned Assistant Government Pleader, the Division Bench of this Court, while dealing with Rule 3(1) of the Conduct Rules, interpreted the said rule in the following manner :

"11. We, however, find that Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971 is very wide. Sub-rule (1) thereof reads as under:

"3. General:

(1) Every Government servant shall at all times

(i) maintain absolute integrity,

(ii) maintain devotion to duty, and

(iii) do nothing which is unbecoming of a Government servant.

Explanation:- A Government servant, who habitually fails to perform a task assigned to him within the time set for the purpose and with the quality of performance expected of him, shall be deemed to be lacking in devotion to duty within the meaning of clause (ii)"

The expression, "do nothing which is unbecoming of a Government servant" has wide amplitude and large number of actions of the Government servant would be covered under the said expression. In the present case, it has been held against the petitioner that despite subsisting marriage, out of which wedlock, he had five children, he first had illicit relation with another lady with whom he cohabited for several years giving birth to two children. Thereafter, once again, while investigating into a complaint, he came in contact with one Dhuliben, a married woman. He developed illicit relations with Dhuliben and eloped with her and they started staying together as husband and wife. Such a conduct of a police official who has been employed in a disciplined force carrying out important functions of maintaining law and order and investigating crimes would certainly amount to acts unbecoming of a Government servant and therefore misconduct."

27. As can be deduced from the above extracted portion, the fact situation with which the Division Bench was dealing was a totally different one, as the appellant in that case was proceeded against, as he allegedly cohabited with another lady who had given birth to two children during the subsistence of his marriage. This

judgment would also not come to the aid of the respondent.

28. On a careful consideration of the entirety of the factual and legal aspects of the matter, this Court has no hesitation in concluding that the very initiation of the departmental inquiry against the petitioner on the ground of misconduct in passing certain quasi-judicial orders, is unsustainable in law, apart from being contrary to the principles of law enunciated by the Supreme Court and this Court in the judgments referred to herein above.

29. There is absolutely no evidence to prove that the petitioner had acted with a mala fide motive or intention in passing the orders in question. The detailed Report of the Inquiry Officer contains elaborate reasons. As against this, no reasons have been given by the Disciplinary Authority while disagreeing with the findings of the Inquiry Officer. When no tentative findings have been arrived at by the Disciplinary Authority and no evidence is found on record in this regard, the act of the petitioner in passing orders in exercise of quasi-judicial powers under the concerned statute cannot be termed as misconduct. The impugned order, therefore, cannot be sustained in law.

30. In view of the above conclusion, the alternative submission advanced by Mr. Vaibhav A. Vyas, learned counsel for the petitioner, to the effect that the grounds raised by the petitioner in the representation following the reasons for disagreement have not been dealt with, is not required to be considered.

31. As a result of the aforesaid discussion and for reasons stated herein above, this Court is of the view that the prayers made in the petition deserve to be granted.

32. Accordingly, the impugned order of penalty dated 24.10.2001, is hereby quashed and set aside.

33. As a consequence of the above order, all the consequential benefits that would have been received by the petitioner had the impugned order not been passed, shall be granted to the petitioner within a period of three months from the date of the receipt of a copy of this judgment.

34. The petition is allowed, in the above terms. Rule is made absolute, accordingly.