
(1993) 10 GUJ CK 0037
In the Gujarat High Court

Solanki Laxmansing Kesarising	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 19-10-1993

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)(b), 85(1)(iii)
Gujarat Civil Services (Conduct) Rules, 1971 — Rule 3(1)

Citation : (1994) 2 GLR 1294

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—When an acquittal would operate as an absolute bar to the departmental proceedings? Whether departmental inquiry could be barred on further evidence, which did not have before the Criminal Court, though the prosecution had such an opportunity to lead such evidence, at that time? These are some of the important questions which have come up for adjudication in this appeal. A few material relevant facts giving birth to the present appeal, may firstly be, shortly, enumerated to appreciate the main questions in focus.

2. The appellant is the unsuccessful, original plaintiff, who initiated legal proceedings against the respondents-employer, original defendants, by filing Regular Civil Suit No. 153 of 1975.

3. The plaintiff filed a suit for setting aside the order of dismissal and for reinstatement in service with full pay. He came to be dismissed from the service by virtue of an order passed by the District Superintendent of Police, at Mehsana, on 30-4-1973. The plaintiffs contention is that the dismissal order is illegal and against the principles of natural justice and is tainted with mala fides. The circumstances leading to the dismissal of the plaintiff may briefly, be highlighted. The plaintiff was serving as a Police Constable, at Mehsana, and original defendant No. 2 was working as D.S.P., in Mehsana district. On 12-4-1971, a criminal complaint, being No. 1540 of 1971 was filed against the plaintiff for the offences punishable under Sections 66(1)(b) and 85(1)(iii) of the Bombay

Prohibition Act, 1949, in the Court of Judicial Magistrate, First Class, at Vijapur.

4. According to the case of plaintiff, the Criminal Court found him not guilty and acquitted him of the charges with which he was charged in the aforesaid criminal case. The suspension order passed against the plaintiff was also set aside after his acquittal and he was reinstated. The plaintiff was visited with departmental inquiry even after his acquittal, as he contended, on the same charge, and the Inquiry Officer was appointed. Therefore, it is the case of the plaintiff that the departmental inquiry cannot be instituted against him as he has been exonerated from all the charges levelled against him. The report of the Inquiry Officer was not accepted and the Disciplinary Authority, after issuing show cause notice found the plaintiff guilty and impugned dismissal order was passed by the D.S.P.

5. The dismissal order passed in the departmental inquiry was challenged by the plaintiff by filing an appeal before the Deputy Inspector General of Police, which was also dismissed. The Second Appeal was filed before the Inspector General of Police of the State of Gujarat. The plaintiff also lost in the Second Appeal. Later on, he had resorted to a revision application before the Home Department of Gujarat, wherein also he failed. Thus, the dismissal order passed against him by the Disciplinary Authority came to be confirmed in two appeals and one revision in a Departmental hierarchy.

6. The plaintiff, inter alia, had contended that the impugned dismissal order is passed with mala fides, against the provisions of law and is required to be quashed. According to the case of the plaintiff, there is a bar of departmental inquiry after the acquittal order is passed, on the same set of charges. Therefore, the plaintiff served the Department with the notice u/s 80 of the C.P.C. and filed the aforesaid suit.

7. The defendants appeared and resisted the suit by filing composite written statement, Exh. 16, inter alia contending that the dismissal order was passed after observing due process of law and principles of natural justice, and in accordance with law. The allegation of mala fides was seriously challenged. It was also contended that the additional evidence was adduced in the departmental inquiry and the plaintiff was found guilty of the charges of misconduct under the relevant rules and, therefore, he was liable to be dismissed.

8. In view of the facts and circumstances, issues came to be settled, at Exh. 17, and the trial Court, upon appreciation of the evidence on record, reached to a factual finding that the plaintiff has failed to prove that the order of dismissal of the plaintiff from the service, passed by the D.S.P. on 30-4-1973, is illegal and against the principles of natural justice, and improper or is mala fide. Therefore, the Trial Court Judge was pleased to dismiss the suit on 18-4-1978. The plaintiff questioned its legality and validity by filing Regular Civil Appeal No. 102 of 1978, in the District Court at Mehsana, wherein he failed. Therefore, he has, now, come up before this Court by resorting to the provisions of Section 100 of the C.P.C.

9. Firstly, at this stage, one thing is required to be noted that the jurisdictional

sweep of this Court is very much circumscribed under the provisions of Section 100 of the C.P.C. The effect of Section 100 read with Section 101 is that the Second Appeal is competent only on the ground of an error in law or procedure and not merely on the ground of an error on a question of fact. This Court has no jurisdiction to entertain Second Appeal on the ground of an erroneous finding of fact howsoever gross or unexcusable the error may seem to be. If there is no error of law in the finding of the Courts below, the Second Appeal jurisdiction of the High Court is not attracted. It may also be stated that, even if a finding of fact is wrong, it is not open to the High Court interfere with it in Second Appeal. As such, a finding of fact is binding in Second Appeal, on this Court. Where the finding of the Courts below is based on a proper appreciation of the evidence, no interference can be made in the Second Appeal. The merits of this appeal are required to be examined while bearing in mind the aforesaid relevant legal set up.

10. Learned Advocate, Mr. Majmudar, while appearing for the appellant, original plaintiff, has raised the following contentions:

(1) That the appellant, original plaintiff was acquitted from the offences punishable under Sections 66(1)(b) and 85(1)(iii) of the Bombay Prohibition Act and was given clean and honourable acquittal and, therefore, it was incompetent on the part of the Disciplinary Authority to institute departmental inquiry on the same set of facts.

(2) Even if additional evidence is allowed in the departmental proceedings, it cannot be considered, as it would tantamount to fill up the lacuna remained in criminal trial, which resulted into acquittal.

(3) That the quantum of sentence of dismissal imposed on the plaintiff is, extremely, harsh in any case and, therefore, it should be quashed, Learned Assistant Government Pleader, Mr. Mehta, while appearing for the respondents, original defendants, has made the following submissions:

(1) That the acquittal earned by the plaintiff in the criminal trial against him is not honourable, but is on technical grounds and, therefore, it was open to the Disciplinary Authority to institute departmental proceedings against the plaintiff, despite the order of acquittal passed by the Criminal Court.

(2) That even otherwise, the plaintiff, in the departmental inquiry, was charged with misconduct or an act of unbecoming of a Government servant under the relevant rules and, therefore also, the departmental inquiry was competent.

(3) That the dismissal order passed against the plaintiff in the departmental inquiry could not be said to be harsh or extreme in the nature and in the circumstances of the case, as the plaintiff was a member of the law enforcing agency, who violated the provisions of the Prohibition Act and misbehaved.

11. The judgment of Criminal Case No. 1540 of 1971 goes to show that the plaintiff was prosecuted for the charges and offences punishable under Sections 66(1)(b) and 85(1)(iii) of the Bombay Prohibition Act. This incident occurred on

12-4-1971. In a public street, near the residential premises and just near the residential house of one Babulal Ishwarbhai Patel, at Vijapur, the plaintiff. Police Constable, was found drunk having consumed prohibited liquor, without pass or permit. The prosecution examined following three Prosecution Witnesses:

(1) P.W. No. 1, Complainant, Babulal Ishwarbhai Patel.

(2) P.W. No. 2, Dr. Jyoti Dixit.

(3) P.W. No. 3, Investigation Officer, Mr. Parmar.

12. It becomes explicit from the plain perusal of the judgment of the Criminal Court that:

(1) the complainant himself was not fully prepared to support the prosecution;

(2) the evidence of the complainant was not found reliable in absence of independent corroboration;

(3) in the evidence of Prosecution Witness No. 2, Dr. Dixit, the Criminal Court found that there was want of material to show that required anticoagulant was added in the blood sample taken from the accused;

(4) there was no requisite material in the evidence of Dr. Dixit to show that the blood sample was properly collected as per the Bombay Prohibition (Medical Examination and Blood Test) Rules;

(5) in view of the want of material to show that blood sample was taken as per the rules and was sent to the Chemical Analyser, as per the rules, the Criminal Court refused to draw the presumption in the light of the report of the Chemical Analyser. In fact, report of the Chemical Analyser was found inadmissible; and

(6) the trial Court also hold that the prosecution failed to show that the accused consumed prohibited liquor within the territorial jurisdiction of that Court.

Considering all these facts and circumstances, the trial Court found the accused not guilty and gave benefit of acquittal.

13. It becomes apparent and transparent from the plain perusal of the judgment of the Criminal Court that the plaintiff, who was accused therein, was not given clean or honourable acquittal, as contended before this Court. It may be mentioned that, it will not be necessary for the Criminal Court to, in clear terms, mention that the accused is given benefit of doubt. It may happen in some cases that, though such expression or nomenclature is mentioned, the acquittal may riot be based on benefit of doubt and vice-versa. Therefore, it is necessary to ascertain from the terms and the tenor of the judgment of the Criminal Court, as to whether the acquittal in such cases, which was accorded, was clean and honourable or on merits. In the opinion of this Court, the acquittal earned by the accused in that case, who is the plaintiff, herein, was not clean and honourable. Therefore, it was competent for the department to institute departmental proceedings against the plaintiff.

14. Assuming that the acquittal of the plaintiff in the Criminal trial was not technical or was on merits only, then in that case also, the charges against the plaintiff in the departmental inquiry proceeded on a different footing. Incident may be the same, but the charges are not the same. In the departmental inquiry, the substance of the charge-sheet filed against the plaintiff is that, on the day of incident, like that on 12-4-1971, at about 9-30 p.m., plaintiff, who was a Police Constable, was found drunk in a public street known as Kasipura, near the house of complainant Babulal Ishwarbhai, in Vijapur town and he was found with his gait unsteady, and he was abusing with a smell of alcohol in his mouth; and upon examination, the standard of alcohol was, more than prescribed. Thus, it was charged that his conduct was serious and unbecoming of a Government servant. Thus, as such, the misconduct charge was in the focus in the departmental inquiry. It is also obvious that, apart from the charge of violating provisions of the Bombay Prohibition Act, rest of the charges were also independent, upon which the Criminal Court, obviously, had no occasion to adjudicate. It is not in dispute that the trial Court, in the said criminal case, was not at all called upon to examine and adjudicate upon the misconduct of the plaintiff, who was a Police Constable, at the relevant time. It is, specifically, alleged in the charge-sheet filed in the departmental inquiry that the plaintiff committed serious misconduct as he was not only found in a drunken condition in a public street, but he was found misbehaving and abusing in a populated public street. Thus, instead of being a protector of the law, he became the perpetrator, and that was the main charge in focus in the departmental inquiry. The conduct exhibited by the plaintiff at the time of incident in a public place was nothing but a grave misconduct and unbefitting of a member of the Police Force. Could it be contended even for a moment that, for such a grave misconduct manifested by a Police Constable, the Disciplinary Authority was not entitled to examine and punish the member of the Police Force? The positive answer would be in the negative.

15. Departmental inquiry is aimed at to inquire into the question as to whether delinquent is guilty of a misconduct or a delinquency and, therefore, a situation created in a case like one on hand, the departmental proceedings under the relevant rules should not be thwarted under the guise of a bar. It is, therefore, clear that the Disciplinary Authority cannot be denied to look in to such type of serious misconduct shown by the delinquent-plaintiff. The scope, nature, test, degree of proof, evidentiary rules, etc., are different in both the proceedings. Therefore, unless and until the departmental inquiry is instituted or continued on the same set of facts, on the same evidence, and on the identical charge as that of criminal trial, the decision of the Criminal Court acquitting the delinquent employee would not and should not deter or fetter the Disciplinary Authority in pursuing departmental proceedings under the relevant rules.

16. Reliance is placed by learned Advocate, Mr. P.B. Majmudar, on the decision of this Court, in the case of Abdul Hakim Ahmad Vs. Dist. Supdt. of Police and Others, . The said decision of this Court is not helpful to substantiate his plea

that the departmental inquiry was barred in the present case. In that decision, it is held that, on the very same charge, departmental proceedings were sought to be started against the delinquent and such a course is not permissible and open to the department, as it would tantamount to sitting in appeal over the decision of the Criminal Court arrived at on evidence on the very same charge.

17. In Abdul Hakim's case, this Court highlighted the true proposition of law in case of an acquittal when it would operate as an absolute bar to the disciplinary proceedings. It was held in that case that the departmental inquiry can be undertaken if special circumstances are shown to exist. It was further observed that, it would not be desirable to exhaustively enumerate such circumstances. However, by and large, some illustrative or typical situations were highlighted. For example, (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.

18. Learned Advocate for the plaintiff has seriously submitted that the case of the plaintiff-delinquent does not fall in any one of the aforesaid categories and, therefore, departmental inquiry was a bar. This submission is straightway required to be rejected as the circumstances narrated, hereinbefore, are illustrative and not exhaustive. If the case does not fall in any of the circumstances or situations narrated hereinbefore, it cannot be contended that the acquittal will invariably operate as an absolute bar to the departmental inquiry. Such a contention is meritless. The question as to where and when an acquittal should operate as an absolute bar to the departmental inquiry has to be adjudicated upon in the light of the factual scenario of a given case. No strait-jacket formula can be enunciated or adopted and it can never be contended that departmental proceedings are incompetent merely because the case does not fall under one strait-jacket formula or the another. This proposition is very well explained by this Court after examining the ratio of Abdul Hakim's case (supra), in a Division Bench decision rendered in Champaklal Budarlal v. J.B. Jhala (1980) 21 GLR 749 . Thereafter, this Court, in the case of Thakore Chandrasingh Taktsingh Vs. State of Gujarat and Another, (Coram: S.B. Majmudar, J. as he then was) has considered and explained the ratio of Abdul Hakim's case (supra). Therefore, the aforesaid contention raised by learned Advocate, Mr. P.B. Majmudar is, totally, meritless and it is rejected.

19. The next contention of Mr. Majmudar is that, the relevant circular issued by the Government, in this behalf, is not followed. In this connection, reliance is placed on a circular of the Government, dated 1st August, 1966, as, subsequently, reviewed by a circular dated 26th July, 1968. It is not disputed that the said circular is operative and is in force, by the learned Assistant Government Pleader, Mr. Mehta. The relevant portion of the aforesaid circular, is extracted hereinbelow:

It is also permissible to hold a departmental inquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge on the criminal cases, and is not based on any allegations which have been negated by the Criminal Court. Furthermore, if the allegations had not been examined by a Court of law, but considered good and sufficient for departmental/disciplinary action, there is no bar to taking such action and punishing the Government servant with any of the punishment mentioned in the Bombay Civil Services (Conduct, Discipline and Appeal) Rules, However, if the facts or allegations had given a finding that the allegations are not true, then the consequent acquittal by the Court should generally be respected, even though it is open to the competent authority to proceed against the Government servant departmentally on the same charge and taking therein a different view from that taken by the Court.

20. It may be noted that, with regard to the aforesaid circular, this Court even in Abdul Hakim's case (supra), had made the following observations, which were examined and considered by this Court in Chandrasinh 's case (supra):

The mandate contained in the circulars cannot be disregarded with impunity. Before deciding to launch a departmental inquiry in the case of the Government servant who is acquitted by the Criminal Court, the competent authority is under an obligation to apply his mind to the requirements prescribed by the guidelines embodied in the circular and to decide whether it is a fit case for making a departure from the rule of respecting the verdict of the Court of law. It is only when the competent authority is impelled to the conclusion that it is a case for launching of a departmental inquiry notwithstanding the verdict of acquittal on the basis of the guidelines prescribed by the circular that it is open to him to do so. Not otherwise.

21. Needless to mention that, in Abdul Hakim's case, the departmental inquiry was initiated on the same and identical launching pad and, therefore, this Court had made the observations in that case. It must be borne in mind that, in that case, a Constable of the Constabulary was prosecuted for the alleged offence punishable u/s 66(1)(b) of the Bombay Prohibition Act, and on the very same charge and identical allegation, the delinquent was charge-sheeted, in the inquiry and, therefore, this Court said that there was a bar of departmental inquiry as it would tantamount to sitting in an appeal over the decision of the Criminal Court. Therefore, the proposition was laid down that, on the same material and on the re-appreciation of the same oral evidence, without anything more, it would not be permissible or open to the Disciplinary Authority to hold departmental inquiry.

So is not the factual scenario in the present case. So far as the facts of the present case are concerned, the said decision of this Court in Abdul Hakim's case will not be applicable. The facts are different. The charge is not identical. The material is not the same. Appreciation of the oral evidence is also not identical.

22. It may be further stated that, in the Criminal trial, only three witnesses were examined by the prosecution and one of the witnesses, namely, the complainant, P.W. No. 1 in the Criminal trial, did not support the prosecution case. The evidence of the doctor, P.W. No. 2, was not accepted as the Criminal Court found that there was infraction of mandatory rules for collecting the blood and sending the blood sample, by the Medical Officer. Therefore, the statutory presumption was not drawn relying on the report of the Chemical Analyser, who was not examined before the Criminal Court. Unlike that, in the departmental proceedings, the concerned department led the evidence of as many as fourteen witnesses, including the Chemical Analyser, in whose evidence, the identity of the blood sample received was sought to be proved and the department has held it to be proved. Therefore, it is apparent and transparent that the materials and the appreciation of oral evidence before the Criminal Court and the departmental authorities were not identical and same. Therefore also, the aforesaid circular relied on by the learned Advocate, Mr. Majmudar will not apply to the facts of the present case for launching the departmental inquiry.

23. Moreover, the charges are also not the same and identical. The conduct of a Police personnel, who was in charge of maintenance of law and order, found drunk in a public street with his gait unsteady and went on speaking abusive language, was found by the department as a grave misconduct and unbecoming of a responsible Police Constable of the State Constabulary. Admittedly, the charge relating to the misconduct was not there before the Criminal Court. There was also no charge with regard to the use and utterance of abusive language. Thus, there was no identical charge. This aspect has remained unimpeachable from the spectrum of facts emerging from the record of the case on hand. Could in this state of affairs a man who is guilty of grave misconduct, who formed a part and parcel of a force in charge of maintenance of law and order, be permitted to contend on such a specious plea that the departmental inquiry is barred on ground of his acquittal from the charges of offences punishable under Sections 66(1)(b) and 85(1)(iii) of the Bombay Prohibition Act? The spontaneous reaction and the answer would be in the negative. Therefore, even while applying the ratio of the decision of this Court in Abdul Hakim's case (supra) and the relevant paragraph of the circular relied on, the departmental proceedings cannot be held to be barred by the acquittal in the aforesaid Criminal trial.

24. There is one additional factor which requires to be considered for the rejection of the aforesaid contention of learned Advocate, Mr. Majmudar. The evidence of the prosecution, as manifested from the judgment of the Criminal Court, is not relied on for the purpose of conviction, as there was no independent

corroboration. The want of independent corroboration would mean that the accused was given benefit and his acquittal cannot be characterised as honourable one. This Court, in a Division Bench case, in Champaklal Budarlal (supra) has, in clear terms, propounded that, want of independent corroboration when it is made a ground for acquittal, does not lead to an honourable acquittal, and on that ground alone, therefore, it was open to the department to launch a departmental inquiry. Therefore, it cannot be contended that the acquittal of the plaintiff-delinquent in the aforesaid Criminal trial was honourable. Thus, the acquittal does not bar the launching of departmental proceedings on that count also.

25. Having regard to the facts and circumstances, the department was not debarred from holding departmental proceedings against the plaintiff, as it cannot be disputed even for a moment that a Police Constable, who exhibited a grave misconduct by misbehaving in a drunken condition with utterance of abusive language in a public street, is unfit to discharge his function in a force which is in charge of maintenance of law and order. If a man who has to respect the law first and who has to protect the law all the times, ceases to be the protector and becomes the perpetrator of law, by moving in a public street in a drunken condition with utterance of abusive language, then he could not be heard to say that he is immune from departmental action as the Criminal trial under Sections 66(1)(b) and 85(1)(iii) has culminated into acquittal. Such a grave misconduct on the part of a Police Constable is nothing but amounting to unbecoming of a Government servant and, therefore, the department cannot be prevented from initiating or continuing the departmental proceedings under the relevant Rules, even in case of an acquittal in such a situation. Such a misconduct would render him unfit to discharge his duties in the Police Force, as such, in view of the provisions of Section 25(1) of the Bombay Police Act, which read as under:

25. (1) The State Government or any officer authorised by Sub-section (2) in that behalf may suspend, reduce, dismiss or remove an Inspector or any member of the subordinate ranks of the Police Force whom he shall think cruel, perverse, remiss or negligent in the discharge of his duty or unfit for the same, and may fine to an amount not exceeding one month's pay, any member of the subordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal.

26. Apart from the provisions incorporated in the Bombay Police Act, he would be also rendered unfit to continue in the Police Force for the performance of his duties as a Police Constable in view of the provisions of the Gujarat Civil Services (Conduct) Rules, 1971, which are also made applicable to the Police personnel, as provided by the Gujarat Police Manual, 1975, Volume I, Chapter XL which in terms deals with the conduct of the Government servants. Rule 334 of the Gujarat Police Manual provides the following provision:

334. Application of Rules of conduct and discipline to different Services in the Police Department: (1) In regard to the conduct as Government servants, officers of the Indian Police Service are governed by the All India Services (Conduct) Rules, 1968.

(2) All other Police Officers are governed, so far as their conduct is concerned, by the Gujarat Civil Services (Conduct) Rules, 1971, and the special provisions of or the orders issued under the Bombay Police Act, 1951.

(3) Assistant Public Prosecutors, Ministerial staff and other Class II, Class III and Class IV Government servants serving in the Police Department are governed, so far as their conduct is concerned, by the Gujarat Civil Services (Conduct) Rules, 1971.

(4) While in Foreign Service, a Government servant remains subject to the rules of conduct applicable to Government servants of his grade in his State.

(5) The provisions regarding conduct of Government servants contained in the Gujarat Civil Services (Conduct) Rules, 1971, have not been reproduced here. Only those provisions which are based on Government orders or Inspector General's circulars specially meant for this Department have been reproduced hereinafter.

27. It becomes very clear that the provisions of Gujarat Civil Services (Conduct) Rules, 1971 would apply even to the Police Force in the State of Gujarat. There is no any controversy about the fact that the plaintiff-delinquent was Class IV employee, at the relevant time and serving in the Police Department, with the result, the Gujarat Civil Services (Conduct) Rules, 1971, did apply to the case on hand also. Therefore, it would be very material, at this stage, to examine the provisions of Rule 3(1) of the Gujarat Civil Services (Conduct) Rules, 1971. Rule 3(1) prescribes the following provisions:

General: 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.

(Emphasis supplied)

28. Considering the aforesaid discussions, the contention that the relevant circular issued is not considered by the department and further contending that it is not permissible for the department to initiate departmental inquiry after the acquittal is without any substance and is rejected.

29. It cannot be gainsaid that, prosecuting authority and disciplinary authority, both are, practically, different in almost all cases. They are performing in different spheres having no control over the other. For variety of reasons, prosecution may not be able to procure and produce full or required entire

evidence in the criminal trial or it may not lead required evidence or entire evidence at the stage of evidence, though it has such an opportunity. For example, it: (i) believes that some evidence is efficient and sufficient to warrant conviction; or (ii) does not lead necessary evidence due to indifference or heavy pressure of work, etc.; or (iii) fails to lead required or further evidence owing to extraneous or unknown reasons; (iv) does not lead necessary or required evidence in the trial due to change of guards or hands in the prosecution agency, prosecuting authority or prosecutor or due to outside pressures, etc.; or (v) may fail to submit sufficient evidence on account of undue influence exercised by the accused or delinquent. The aforesaid circumstances are illustrative and not exhaustive.

30. Therefore, in view of the aforesaid entire discussion and considering the relevant case law, there can be no hesitation in finding and holding that departmental inquiry could not be barred on further evidence which the prosecution did not have before the Criminal Court, though it had, such an opportunity to lead such evidence at that time, if one or more aforesaid or such other circumstances exist in a given case. Otherwise also there is one more danger to which this Court cannot be oblivious. It may happen that in some cases, a powerful and influential delinquent accused (employee or officer) by taking undue advantage of such a situation may not only escape conviction in a Criminal prosecution but also thereby may avoid departmental proceedings by employing undesirable tactics, manipulations and maneuvering, in a Criminal trial. That brings into sharp focus the question of imposition of penalty of dismissal from the service. The submission in this behalf is that, considering the special facts and circumstances, the imposition of extreme penalty of dismissal from the service by the department is harsh and excessive. This ingenious contention, howsoever, may appear to be subtle but not sound when one gets into the reality of the case and the nature of the misconduct in which the plaintiff was involved. The proportionality of punishment to be awarded in a departmental inquiry is an important aspect which has to be Considered by the concerned disciplinary authority with proper application of mind and must apply it depending upon the various facts and circumstances, and thereafter, the punishment is required to be imposed. The gravity and the nature of misconduct, and the type of employment along with other facts and circumstances ought to be borne in mind by the disciplinary authority while imposing the sentence in a departmental inquiry. Copying work done in an examination may not be taken as serious as it would be taken in case of a law enforcing agency like a Judge. Similarly, infraction of provisions of law like prohibition and then to move in a public place with utterance of abusive language by a person who is a Police Constable and who is in charge of maintenance of law and order, can never be considered as a light misconduct. Such a conduct is a grave misconduct and it is nothing but amounting to unbecoming of a Government servant who is totally rendered unfit to perform public duties or duties as a Constable. The learned Assistant Government Pleader, Mr. Mehta, rightly, placed reliance, in this

connection on a decision of the Apex Court, rendered in *State of Punjab and Others Vs. Ram Singh Ex. Constable*, . This decision of the Apex Court is applicable and, is, rightly, relied on. In this decision, the meaning of the expression "misconduct" is explained. The imposition of penalty of dismissal by the department on the ground of misconduct of a Police Constable, who was found heavily drunk alcohol and becoming uncontrollable while on duty, even once, was found justified for dismissal. The word "misconduct" though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or Cods of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. The ambit of the expression misconduct has to be interpreted with reference to the subject-matter and the context, wherein, the term occurs, regard being had to the scope of the statute and the public purpose it seeks to subserve. The Police service, undoubtedly, is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

31. In the aforesaid Supreme Court decision, a Constable after having heavy drink, was found roaming in the market with service revolver, while he was on duty. When he was sent to the doctor for medical examination, he abused the medical officer on duty. In the circumstances, it was held that the conduct of the Constable would, undoubtedly, constitute gravest misconduct warranting dismissal from service. Thus, a single act of heavy drinking of alcohol by a responsible Police Constable, who is in a Constabulary, which is in charge of maintenance of law and order, constitute gravest act of misconduct, justifying penalty of dismissal from the service.

32. In the circumstances the last contention, which was advanced by the learned Advocate, Mr. Majmudar, in fact, is nothing but like polishing the brass when the whole ship is sinking and, therefore, it must also be rejected.

33. Having regard to the facts and circumstances emerging from the entire spectrum of the record of the present case, while viewed in the light of the proposition of law enunciated, hereinbefore, this Court has no slightest hesitation in holding that the concurrent findings recorded by both the Courts require no interference and this appeal is "sans-substance" and it merits dismissal and only dismissal. Consequently, this appeal is dismissed. Having regard to the peculiar circumstances, there shall be no order as to costs.