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GURPAL SINGH

v.

HIGH COURT OF JUDICATURE FOR RAJASTHAN
(Writ Petition (Civil) No. 200 of 2006)

B

NOVEMBER 27, 2012.

[SURINDER SINGH NIJJAR AND H.L. GOKHALE, JJ.]

Rajasthan Service Rules, 1951:

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r.54 – Salary and allowances for the period under suspension – Judicial Officer faced criminal trial – Placed under suspension pending trial and appeal – Acquittal – Suspension continued during departmental proceedings after dismissal of criminal appeal – Held: Suspension of petitioner cannot be said to have been rendered wholly unjustified upon acquittal by trial court and during pendency of appeal before High Court – However, in view of findings of trial court and High Court, petitioner’s continued suspension after decision in criminal appeal was wholly unjustified – Petitioner entitled to full pay and allowances from the date of decision in criminal appeal – Charges in departmental proceedings having not been proved and petitioner having been exonerated and the period of suspension having been treated as period spent on duty, he is entitled to be considered for promotion notionally from the date when an officer junior to him was promoted and allowed all consequential benefits accordingly, with 6% interest from the date of decision of criminal appeal – Service law – Judicial officer – Suspension - Costs.

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The petitioner, a Judicial Magistrate First Class in Rajasthan, was arrested on 20.12.1985, pursuant to a complaint dated 11.12.1985 made by the wife of an advocate who was found dead on 24.11.1985. She alleged that her husband was asking the petitioner to refund the money which he had taken to get the former

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appointed as a member of Board of Revenue. By an order A
dated 22.12.1985, the petitioner was suspended w.e.f.
20.12.1985. The criminal trial, which had been transferred
to Delhi, culminated in acquittal of the petitioner on
1.5.2002. The appeal filed by CBI was also dismissed by
the Delhi High Court on 27.9.2005. During the pendency B
of the trial and the appeal, the petitioner remained under
suspension for about 20 years. When the petitioner came
to know that instead of revoking the suspension order,
the High Court was proposing to initiate disciplinary
proceedings against him, he filed the instant writ petition C
for revocation of the order of suspension and for
consequential benefits. In the Inquiry Report dated
27.2.2008, the petitioner was exonerated of the charges,
and by order dated 26.3.2008, he was reinstated and was
given posting on 12.5.2008. On 30.6.2008, he retired from D
service on attaining the age of superannuation.

On 24.1.2009, an order was issued by the High Court
to the effect that the period of suspension of the
petitioner would be treated on duty but without salary
except subsistence allowances already paid to him and E
he would not be entitled for any promotion. Consequent
upon the direction of the Supreme Court to pass
appropriate orders under Rule 54 of the Rajasthan
Service Rules, 1951, the High Court passed the order
dated 16.5.2011 stating that the period during which the F
petitioner remained under suspension could not be said
to be wholly unjustified under sub-r. (2) of r.54 and
reiterated its earlier order dated 24.1.2009.

Partly allowing the writ petition, the Court G

HELD: 1.1. In order to determine the issue relating to
the entitlement of the petitioner to the salary and other
allowances upon reinstatement, the matter needs to be
examined at the different stages/point of time. The first H

A stage commenced at the time when the petitioner was initially suspended on 22.12.1985 w.e.f. 20.12.1985. The petitioner cannot legitimately protest against his suspension, at the initial stage, when he had remained in police custody for more than forty eight hours, though
 B unfortunately for circumstances for which he was not responsible. This suspension was naturally continued when he was facing the trial for murder. The next stage is when he was acquitted by the trial court on 1.5.2002. However, it cannot be said that as soon as the trial court
 C had acquitted the petitioner, the Rajasthan High Court was required to forthwith revoke the order of suspension. Undoubtedly, the petitioner could have been given a non-sensitive posting, not involving judicial functions. But, it was not imperative for the High Court
 D to revoke the suspension, at that stage. It is a matter of record, that the prosecution agency decided to file and, in fact, filed an appeal which remained pending till it was decided on 27.9.2005. Therefore, the conclusions recorded by the trial court, were not final. They were liable to be reversed in appeal by the High Court. Thus, during
 E the said period/stage, it cannot be said that the continuance of the suspension of the petitioner was *wholly unjustified*. The Rajasthan High Court was placed in a very piquant situation till the petitioner's acquittal was reiterated in the criminal appeal. The High Court had
 F no option but to place and keep the petitioner under suspension, The petitioner, who was on a very high pedestal in society as a judicial officer, was facing a trial for the offence of murder, a crime of highest moral turpitude. Therefore, the decision of the High Court to
 G continue the suspension of the petitioner can not be said to be *wholly unjustified* till his acquittal in the criminal appeal. [para 32-35] [151-C-F; 153-E-H; 154-A-B-D-E]

H *Daya Shankar Vs. High Court of Allahabad & Ors. Through Registrar & Ors.1987 (3) SCC 1; and C.*

Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors., A
1995 (3) Suppl. SCR 319 = 1995 (5) SCC 457 - referred to

1.2. As regards the stage after the dismissal of the criminal appeal, the acquittal of the petitioner having been affirmed, it was necessary for the High Court of Rajasthan to take a decision: (a) whether to revoke the order of suspension and permit the petitioner to perform judicial functions; (b) whether to hold a departmental enquiry with regard to the alleged receipt of money by him from the deceased; (c) as to how the period of suspension was to be treated; (d) whether the petitioner was entitled to full salary, part salary or no salary at all for the period of suspension. [para 39] [157-C-E] B C

1.3. It is significant to note that the judgment of the trial court clearly indicates that the evidence produced does not reach even the bare minimum standard required for establishing the guilt of the petitioner. It disbelieved the very foundation of the prosecution case. The alleged motive has been found to be without any basis. The trial court categorically observed that in the peculiar circumstances of the case, the delay in registration of the FIR was *fatal* to the case of the prosecution. The trial court was left with a definite impression that the evidence had been "*doctored*". It categorically observed that "*the investigation conducted smack of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused*". These observations would bring the instant case within the realm of those cases which are often described as cases of "*no evidence*". Further, the High Court dismissed the appeal as having absolutely no merit, holding that the prosecution failed to prove, firstly, that there was any murder and, secondly, that the accused was the one who committed it. [para 33 and 38] [152-F-G; 153-A-D; 157-C] D E F G

1.4. In view of the findings recorded by the trial court, H

A and reiterated by the High Court in criminal appeal, the
 decision to continue the petitioner under suspension,
 thereafter, was rather harsh. It is true that the suspension
 of the petitioner was continued as the High Court had
 decided to hold a departmental enquiry against the
 B petitioner on the charges that he had wrongly extracted
 certain money from the deceased. But it is a matter of
 record that both the trial court as well as the High Court
 had found the entire story with regard to the alleged
 receipt of money to be false. The enquiry was founded
 C on the same facts and the same evidence which have
 had been examined by the trial court as well as the High
 Court. In such circumstances, it was necessary for the
 High Court to examine the findings of the trial court as
 well as the High Court in detail before taking a decision
 D to initiate departmental proceedings against the
 petitioner, founded on the same set of facts and the
 evidence. It is apparent from the record that no such
 examination of the judgment was undertaken by the High
 Court. In the case of *Corporation of the City of Nagpur*, it is
 E observed that it may not be expedient to continue a
 departmental inquiry on the very same charges or
 grounds or evidence, where the accused has been
 acquitted honourably and completely exonerated of the
 charges. [para 27 and 40] [149-B; 157-E-H; 158-A-B]

F *Corporation of the City of Nagpur, Civil Lines, Nagpur &*
Anr. Vs. Ramchandra & Ors. 1981 (3) SCR 22 =1981 (2)
 SCC 714; *Commissioner of Police, New Delhi Vs. Narender*
Singh, 2006 (3) SCR 872 = 2006 (4) SCC 265; and *Jasbir*
Singh Vs. Punjab & Sind Bank & Ors. 2006 (8) Suppl.
 G SCR 62 = 2007 (1) SCC 566 – referred to.

1.5. Even after taking a decision to initiate
 departmental proceeding against the petitioner, it was no
 longer imperative to continue the petitioner under
 suspension. The petitioner was no longer charged with
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any criminal offence as both the trial court as well as the High Court had concluded that the charges against the petitioner had been concocted. The petitioner had been subjected to continued suspension since 22.12.1985. During the period of departmental proceedings, even if the petitioner was not to be assigned any judicial work, the High Court could have conveniently given him suitable posting on the administrative side. In *O.P. Gupta's* case, this Court emphasised that long, continued suspension affects the government servant injuriously. Since the order of suspension entitles the government employee only to "subsistence allowance", resulting in penal consequences, it should not be lightly passed. The court also emphasised that the expression "life" does not merely connote animal existence or a continued drudgery through life. [para 30 and 40] [150-E-G; 158-B-D]

O.P. Gupta Vs. Union of India & Ors. 1988 (1) SCR 27 = 1987 (4) SCC 328 – relied on

1.6. Again it is a matter of record, that even in the departmental enquiry the charges against the petitioner were not proved and he was *exonerated* of the same. Thereafter the suspension of the petitioner was revoked on 26.3.2008, but without giving any direction as to how the period of suspension was to be treated. It was only subsequently that the matter with regard to regularization of his period of suspension was considered by the Full Court in the meeting held on 29.11.2008 and a resolution was passed that the period of suspension shall be treated as period spent on duty, but without salary except for the subsistence allowance already paid. On the basis of the said resolution, the High Court passed the order dated 24.1.2009. So even by order dated 24.1.2009, the petitioner was granted only part relief. [para 41] [158-E-F-H; 159-A]

1.7. This Court is of the considered opinion, having regard to the sequence of events, that it would be unjust

A to deny the salary to the petitioner with effect from the
 date the appeal against acquittal was dismissed by the
 High Court of Delhi. Whilst exercising the jurisdiction
 under Rule 54, it was necessary for the High Court to
 pass a detailed and reasoned order as to whether the
 B period of suspension was *wholly unjustified*. Undoubtedly,
 the power under Rule 54 is discretionary but such
 discretion has to be exercised reasonably and by taking
 into consideration the material relevant to the decision.
 Upon acquittal of the petitioner from the criminal charges,
 C it was no longer necessary to keep him under
 suspension during the pendency of the departmental
 enquiry. The High Court failed to exercise its jurisdiction
 properly under Rule 54, as directed by this Court in the
 order dated 5.4.2011. The suspension of the petitioner
 D ought to have been revoked upon acquittal by the High
 Court even during the pendency of the departmental
 enquiry. [para 42] [159-C-G]

1.8. In the circumstances, from the time of dismissal
 of the appeal by the Delhi High Court, the continued
 E suspension of the petitioner was *wholly unjustified*. The
 petitioner is, therefore, entitled to full pay and allowances
 from 27.9.2005, i.e. the date of the judgment rendered by
 the Delhi High Court onwards. [para 40 and 46] [158-D;
 160-H; 161-A]

F 2.1. It is a matter of record that upon exoneration in
 the departmental enquiry, the petitioner was reinstated in
 service. No punishment was inflicted on him at all.
 However, during the pendency of the criminal trial as also
 G the departmental proceedings, he was not considered for
 promotion, when the cases of persons junior to him were
 considered. The High Court erred in directing in the Full
 Court Resolution dated 29.11.2008, and the
 communication dated 24.1.2009 that the petitioner shall
 H not be entitled to any promotion. The petitioner was

entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. The High Court, is, therefore, directed to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the rules) from the date when a person junior to him was considered and promoted to the next higher post. The petitioner would be entitled to all consequential benefits, such as salary and other allowances by treating him on duty with effect from the date the appeal against acquittal was dismissed by the Delhi High Court and after fixing his last pay drawn correctly. The consequential benefits shall be paid to him with 6% interest from the date of dismissal of the appeal by the High Court on 27.9.2005. [para 45-46] [160-D-F; 161-A-D]

Union of India & Ors. Vs. K.V. Jankiraman & Ors. 1991 (3) SCR 790 = 1991 (4) SCC 109 – relied on

Shri Manni Lal Vs. Shri Parmai Lal & Ors. 1971 (1) SCR 798 = 1970 (2) SCC 462, *Muhammad Ayoob Khuhro Vs. Emperor* AIR (33) 1946 SIND 121, *Robert Stuart Wauchope Vs. Emperor* (1933) 61 ILR 168, *Vidya Charan Shukla Vs. Purshottam Lal Kaushik* 1981 (2) SCR 637 = 1981 (2) SCC 84, *R.P. Kapur Vs. Union of India & Anr.* (1964) 5 SCR 431,; *The Divisional Superintendent, Northern Railway & Anr. Vs. R.B. Hanifi* (1976) Lab. I.C. 1403, *Govind Prasad Vs. Union of India*, (1980) RLW 258,; *Union of India & Ors. Vs. Sangram Keshari Nayak* 2007 (5) SCR 896 = 2007 (6) SCC 704; *Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors.* 1994 (4) Suppl. SCR 119 = 1994 (3) Suppl. SCC 674, *State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai* 2007 (5) SCR 251 = 2007 (6) SCC 524, *Union of India & Ors. Vs. Lt. Gen. Rajendra Singh Kadyan & Anr.* 2000 (1) Suppl. SCR 722 = 2000 (6) SCC 698; *Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal* 1993 (3) Suppl. SCR 586 = 1994 (1) SCC 541; *Krishnakant*

- A *Raghunath Bibhavnekar Vs. State of Maharashtra and Ors.* 1997 (2) SCR 591 = 1997 (3) SCC 636; *K. Ponnamma (Smt.) Vs. State of Kerala & Ors.* 1997 (2) SCR 1149 = 1997 (9) SCC 36; *Dhananjay Vs. Chief Executive Officer, Zilla Parishad, Jalna* 2003 (1) SCR 744 = 2003 (2) SCC 386 ,
- B *Union of India & Ors. Vs. Jaipal Singh* 2003 (5) Suppl. SCR 115 = 2004 (1) SCC 121, *Baldev Singh Vs. Union of India & Ors.* 2005 (4) Suppl. SCR 961 = 2005 (8) SCC 747; *N. Selvaraj Vs. Kumbakonam City Union Bank Ltd. & Anr.* 2006 (9) SCC 172, *Banshi Dhar Vs. State of Rajasthan & Anr.* 2006 (8) Suppl. SCR 78 = 2007 (1) SCC 324, *Divisional Controller, Gujarat SRTC Vs. Kadarbhai J. Suthar* 2007 (2) SCR 550 = 2007 (10) SCC 561, *Union of India Vs. B.M. Jha.* 2007 (11) SCR 661 = 2007 (11) SCC 632 – cited

Case Law Reference:

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|---|------------------------|-------------|---------|
| D | 1971 (1) SCR 798 | cited | para 20 |
| | AIR (33) 1946 SIND 121 | cited | para 20 |
| | (1933) 61 ILR 168 | cited | para 20 |
| E | (1976) Lab. I.C. 1403 | cited | para 20 |
| | (1980) RLW 258 | cited | para 20 |
| | 1981 (2) SCR 637 | cited | para 20 |
| F | 1988 (1) SCR 27 | relied on | para 20 |
| | (1964) 5 SCR 431 | cited | para 20 |
| | 2006 (3) SCR 872 | referred to | para 20 |
| G | 1981 (3) SCR 22 | referred to | para 20 |
| | 2006 (8) Suppl. SCR 62 | referred to | para 20 |
| | 1991 (3) SCR 790 | relied on | para 20 |
| | 2007 (5) SCR 896 | cited | para 20 |
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1994 (4) Suppl. SCR 119	cited	para 20	A
2007 (5) SCR 251	cited	para 20	
2000 (1) Suppl. SCR 722	cited	para 20	
1993 (3) Suppl. SCR 586	cited	para 24	B
1997 (2) SCR 591	cited	para 24	
1997 (2) SCR 1149	cited	para 24	
2003 (1) SCR 744	cited	para 24	C
2003 (5) Suppl. SCR 115	cited	para 24	
2005 (4) Suppl. SCR 961	cited	para 24	
2006 (8) Suppl. SCR 78	cited	para 24	
2007 (2) SCR 550	cited	para 24	D
2007 (11) SCR 661	cited	para 24	
1987 (3) SCC 1	cited	para 36	
1995 (3) Suppl. SCR 319	cited	para 36	E

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 200 of 2006.

Under Article 32 of the Constitution of India.

M.R. Calla, Amit Kumar Singh, P.D. Sharma for the Petitioner.

Pallav Shishodia, Anshesh Mittal (for Sunil Kumar Jain) for the Respondent.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. In this petition, under Article 32 of the Constitution of India, the petitioner seeks a writ in the nature of Certiorari for quashing the order of suspension

A dated 20th December, 1985 by declaring the same to be void-
 ab-initio. The petitioner also claims a declaration that the order
 dated 24th January, 2009 is void and that the petitioner is
 entitled to all benefits for the period of suspension from 20th
 December, 1985 till 26th March, 2008, when he was reinstated
 B in service.

2. We may briefly advert to the relevant facts on the basis
 of which the petitioner claims the aforesaid relief.

3. On 28th December, 1979, the petitioner was selected
 C by the Rajasthan Public Service Commission (R.P.S.C.) for the
 post of Assistant Public Prosecutor Grade II. He served on the
 said post till 28th July, 1980. On the very next day, i.e. 29th July,
 1980, he was selected for appointment to the Rajasthan
 Judicial Service and joined as Judicial Magistrate First Class.
 D For sometime, he remained posted at Banswara as Judicial
 Magistrate. During this period, his judgments were graded as
 above average and integrity as "beyond doubt". In the inspection
 report, it was further remarked that "his behaviour with
 members of the Bar, litigants and the persons coming to the
 E Court needs improvement". It appears that he was not on best
 of terms with the local Bar, which led to his transfer.

4. On 24th November, 1985, at about 10.30 p.m., a dead
 body was found near Ajmer Pulia on the railway track in the city
 of Jaipur. The dead body was identified as that of one Mr.
 F Suresh Chand Gupta, Advocate. A 'Marag' (death) case was
 registered on 24th November, 1985, at Serial No. 35/85 at
 Police Station GRP, Jaipur. It appears that the local bar
 association of which the deceased was a member protested
 that proper investigation was not being conducted about the
 G manner in which Mr. Suresh Chand Gupta was found dead on
 the railway track. The members of the Bar Association insisted
 that his death was result of some foul play. On 11th December,
 1985, that is about 20 days after the incident, wife of the
 deceased gave a written complaint, alleging that the Petitioner
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was involved in the murder of her husband. In her written complaint, she alleged that her husband had informed her about three months prior to the incident that the petitioner had demanded a sum of Rs.1 lac for exercising his influence with the high-ups, in securing the appointment of the deceased as a member of Board of Revenue. She claimed that the money which was paid to the petitioner was arranged by her deceased husband by selling a plot of land. He had also borrowed money from her father and other relatives. In spite of having paid the aforesaid money, her husband was not provided any appointment. Consequently, her husband had been insisting that the petitioner return the amount unnecessarily paid to him. She claimed that the petitioner had agreed to return the money and asked her husband to meet at a pre-arranged place. Her husband left home at 5.00 p.m. on 24th November, 1985 and did not return. She, therefore, concluded that the petitioner must have killed her husband on account of the dispute over money.

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5. Upon coming to know about the complaint made by the wife of the deceased, the petitioner himself went to the Police Station on 18th December, 1985 and offered to join the investigation. He requested the police to complete the investigation as soon as possible, as in the meantime, he has been transferred and had to join at Vallabh Nagar. In the meantime, the local bar association continued the agitation against the inaction of the police. The lawyers resorted to strike and the work at the Courts was paralysed for many days to come. The situation was so grave that when the application of the petitioner for anticipatory bail came up for hearing before the High Court on 20th December, 1985, members of the Bar Association did not allow the advocate of the petitioner to argue the case. The petitioner relies on the order passed by M.B. Sharma, J. on 20th December, 1985, which is as under:-

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"20.12.1985

Mr. M.I. Khan, Public Prosecutor for the State.

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A The bail application was fixed for orders at 2.00 p.m. and the Public Prosecutor had sought time to get the case diary from the Investigating Officer. I am in the court for last 15 minutes, but the entry to the Court has been blocked by the advocates and others. It is for the members of the August profession to consider how far it is justified. The advocate for the petitioner could not come to the court because of that blockade. Hence the case cannot be taken up. I have no option but to retire to the Chamber. The case is adjourned to January 2, 1986.

C Sd/- Sharma, M.B.”

D 6. Thereafter, the High Court was closed for winter break on 21st December, 1985. On 20th December, 1985, the petitioner was formally arrested and taken into custody by the police (CBI, Jaipur). He was placed under suspension on 22nd December, 1985 w.e.f. 20th December, 1985. Since the petitioner had already been arrested, the anticipatory bail application was dismissed as having become infructuous on 2nd January, 1986. In view of the volatile atmosphere, the petitioner apprehended that he would not get a fair trial in the Criminal Case No. 3/86 pending before the Sessions Judge, Jaipur against him. He, therefore, approached this Court with a prayer for transfer of the criminal trial. By Order dated 4th August, 1986, this Court transferred the trial in the aforesaid criminal case to a Court of competent jurisdiction in Delhi. Thereafter, the trial was duly conducted at Delhi. By judgment and order dated 1st May, 2002, the petitioner was acquitted by the Additional Session Judge, Delhi.

G 7. Upon acquittal by the trial court, the petitioner submitted a joining report on 6th May, 2002 to the Registrar General, Rajasthan High Court. The request made by the petitioner remained under consideration of the High Court from the said date. The decision was deferred to await the result of the appeal, if any, preferred against the acquittal of the petitioner.

H It appears that an appeal was filed by the CBI, which, however,

came to be dismissed by a Division Bench of the Delhi High Court on 27th September, 2005. A

8. The petitioner submitted his joining report on 3rd October, 2005. However, no action was taken by the High Court. It was only on 17th November, 2005 that he was directed to mark his attendance at the office of the District and Session Judge, Jaipur. By this time, the petitioner had been under suspension for a period of 20 years. He, therefore, submitted another representation on 2nd March, 2006 setting out the grievances and seeking permission to appear in person before the Chief Justice. B
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9. In the meantime, the petitioner came to know that instead of revoking the order of suspension, the High Court may initiate disciplinary proceedings against him. At that stage, the petitioner was only about 2 years short of the age of superannuation. He, therefore, moved the present Writ Petition, seeking immediate revocation of the order of suspension and consequential benefits. On 8th May, 2006, it was brought to the notice of this Court that after filing of the writ petition, the High Court has initiated the departmental proceedings against the petitioner, but no fresh order of suspension has been passed. It was, therefore, submitted that direction be issued to the High Court to reinstate the petitioner forthwith. This Court issued notice on the Writ Petition and also on the application for ex-parte stay. Subsequently, the matter came up for hearing on 25th January, 2007 when this Court directed that the matter be posted for final disposal in the last week of March, 2007. On 4th January, 2008, it was submitted on behalf of the respondent that the enquiry proceedings were in progress against the petitioner. Therefore, this Court directed the High Court to complete the enquiry within a period of eight weeks and submit its report. D
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10. The enquiry was duly completed. In the Enquiry Report dated 27th February, 2008, the petitioner was exonerated of the charges levelled against him. It was only at that stage, that H

A he was reinstated with immediate effect, by order dated 26th
March, 2008. The orders passed by the respondent were
placed on the record of these proceedings with the affidavit
dated 22nd April, 2008 filed by the Registrar (Writs). The
petitioner was, thereafter, given the posting order at Vijai Nagar
B on 12th May, 2008. He retired from service on attaining the age
of superannuation on 30th June, 2008.

11. It appears that the trials and tribulations of the petitioner
did not come to an end, even after retirement. In fact on 24th
January, 2009, an order was issued on the basis of the
C resolution passed by the Full Court in its meeting held on 29th
November, 2008, wherein it was resolved as under:-

“RAJASTHAN HIGH COURT, JODHPUR

ORDER

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No. Estt. (RJS) 15/2009 Date :- 24.01.2009

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WHEREAS SHRI GURPAL SINGH, RJS presently
retired was placed under suspension vide this office Order
No. Estt. (RJS) 199/85 dated 22.12.1985.

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AND WHEREAS it was decided that regular
disciplinary proceedings under rule 16 of the Rajasthan
Civil Service (Classification, Control & Appeal) Rules, 1958
be initiated against Shri Gurpal Singh, RJS presently
retired.

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AND WHEREAS Hon'ble the Chief Justice in
exercise of the powers conferred by Rule 13 of the
Rajasthan Civil Service (Classification, Control & Appeal)
Rules, 1958 read with Full Court Resolution dated October
30, 1971 was pleased to order that on account of initiation
of a regular enquiry under rule 16 of Rajasthan Civil
Service (Classification, Control & Appeal) Rules, 1958 the
suspension of Shri Gurpal Singh shall continue.

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AND WHEREAS Departmental Enquiry under rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 was initiated against said Shri Gurpal Singh vide Memorandum No. Estt. B2(iii) / /2006/ 1544 dated 20.04.2006.

AND WHERAS in the above departmental enquiry said Shri Gurpal Singh has been exonerated vide order No. Estt. (RJS) 25/2008 dated 26.03.2008.

AND WHEREAS, Shri Gurpal Singh has been reinstated with immediate effect as Civil Judge (Jr. Div.) & Judicial Magistrate in the RJS vide order No. Estt. (RJS) 26/2008 dated 26.03.2008.

AND WHEREAS the matter regarding regularization of suspension period of Shri Gurpal Singh was considered by the Hon'ble Full Court in its meeting held on 29.11.2008 and it was resolved as under:-

"Perused office note and relevant record. RESOLVED that period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect (sic) his pensionary benefits but he will not be entitled for any promotion."

NOW THEREFORE, the period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect (sic) his pensionary benefits but he will not be entitled for any promotion.

BY ORDER

Sd/ 24.01.2009
REGISTRAR (ADMN.)"

12. The petitioner, therefore, sought amendment of the writ petition through I.A. No. 6 of 2009. The aforesaid application

A for amendment was allowed by this Court on 27th February, 2009. After the amendment, the counter affidavit was filed by the respondents to the amended writ petition. The matter was heard by this Court on a number of occasions. On 5th April, 2011, this Court passed the following order:-

B “Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the High Court is given an opportunity to pass appropriate orders under Rule 54 of the Rules. Therefore, the matter is remitted to the High Court on its administrative side to pass appropriate orders under Rule 54. The High Court shall issue notice to the petitioner and afford him an opportunity of hearing by calling upon him to file reply to the notice. The High Court shall thereafter consider the reply and pass a reasoned order under Rule 54 of the Rules of 1951. This exercise shall be completed as early as possible and without any avoidable delay but in any case not later than six weeks from today. The High Court to file the order which may be passed by it in the present proceedings.”

E 13. Pursuant to the aforesaid direction, it appears that a Committee was constituted by the Rajasthan High Court (hereinafter referred to as ‘Committee’) to examine the case of the petitioner, in terms of Rule 54 of the Rajasthan Service Rules, 1951 (hereinafter referred to as “1951 Rules”) for determining “whether his suspension was wholly justified or wholly *unjustified* or partly justified and to what extent, he was entitled for salary and/or full salary during period of suspension?”

G 14. In this respect, a notice dated 25th April, 2011 was sent to the petitioner by the Registrar (Admn.), directing him to file a reply, and remain present before the aforesaid Committee on 5th May, 2011. In response to the said notice, the petitioner submitted a detailed reply dated 2nd May, 2011 and appeared before the Committee on 5th May, 2011. Thereafter on 16th H May, 2011, the Committee passed the following order:

“THEREFORE, in the present facts & circumstances (Supra), period during which Shri Gurpal Singh remained under Suspension cannot be said to be wholly unjustified and sub-rule (2) of R. 54 of RSR in negative form where the authority has to examine as to whether suspension was wholly unjustified. However, after going through complete material on record (supra), the Court is of the view that in the given facts & circumstances (supra), suspension of Shri Gurpal Singh cannot be said to be wholly unjustified and what he was entitled for under law has been paid to him in terms of Resolution of Full Court dt.29.11.2008 (supra) conveyed vide order dt. 24.01.2009.”

15. It becomes clear from the perusal of the aforesaid order that the Rajasthan High Court after giving an opportunity of hearing to the petitioner, reiterated the Resolution of the Full Court dated 29th November, 2008, communicated vide order dated 24th January, 2009.

16. We have heard the learned counsel for the parties at length.

17. Very elaborate submissions have been made by the learned counsel for the parties. We may, however, briefly notice the very crux of the submissions.

18. Mr. M.R. Calla, learned senior counsel appearing for the petitioner, submitted that the respondent has to justify the suspension order on the day it was passed, i.e. on 20th December, 1985. Further, since the suspension of the petitioner had continued for 22 years, 3 months and 7 days, the respondent would have to satisfy the court that such a prolong suspension was also justified. Whether or not the order of suspension was justified, partly justified or *wholly unjustified* would have to be seen in the light of result of not only the trial in criminal case but also of the departmental enquiry where the petitioner was proceeded against by the department. According to the learned senior counsel, whilst taking a

A decision under Rule 54 of the 1951 Rules, the disciplinary authority was required to keep in mind the outcome of the criminal trial and the departmental proceeding.

B 19. Relying on some judgments of this Court, Mr. Calla had submitted that an employee who is suspended due to the pendency of the criminal investigation/trial has to be reinstated upon acquittal. Further upon reinstatement, he would be entitled to full salary and allowances for the period he is kept under suspension. According to the learned senior counsel, an acquittal either by trial court or by the appellate court would relate back to the date on which the order of suspension was passed. Mr. Calla then submitted that in the facts of this case, the petitioner was suspended due to the registration of the criminal case against him. At the time when the petitioner was acquitted he was entitled to be reinstated. However, since an appeal was filed against the acquittal by the CBI, the petitioner was neither reinstated nor his suspension was revoked. Even when the aforesaid appeal was dismissed by the High Court, the request of the petitioner for reinstatement was not considered. This, according to Mr. Calla, was a second stage when the appellant was entitled to reinstatement and to the payment of full salary and allowances. Mr. Calla further pointed out that even after acquittal, the appellant was unjustly subjected to a departmental enquiry. The charges in the departmental enquiry were based on the facts, which were alleged to be the motive for the murder. Since the petitioner was acquitted in the criminal trial, the departmental proceedings against him were *wholly unjustified*. Therefore, according to Mr. Calla, the continuation of suspension was also *wholly unjustified*.

G 20. Even at this stage, the respondent did not pass any order under Rule 54 of the 1951 Rules. It was only on the directions issued by this Court on 5th April, 2011 that the respondent examined the case under Rule 54 and passed the necessary order on 16th May, 2011. It was also submitted that the order passed on the directions of this Court on 16th May,

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2011 is contrary to the order passed by the High Court on 24th January, 2009. The latter order was passed after the petitioner was reinstated in service on 26th May, 2008, regarding regularization of the suspension period of the petitioner. In the order passed under Rule 54, the High Court had concluded that the period during which the appellant was kept under suspension shall be treated as a period spent on duty, but without salary except subsistence allowance already paid to him. Even this order was passed during the pendency of the present petition. Mr. Calla then submitted that not only the petitioner has been deprived of full pay and allowances during the period of suspension, but even his case for promotion was not considered with effect from the date a person junior to him was considered for promotion and promoted.

In support of his submission, Mr. Calla had relied on a number of judgments which are as under :

Shri Manni Lal Vs. Shri Parmai Lal & Ors.,¹ *Muhammad Ayoob Khuhro Vs. Emperor*² *Robert Stuart Wauchope Vs. Emperor*³, *Vidya Charan Shukla Vs. Purshottam Lal Kaushik*⁴ *O.P. Gupta Vs. Union of India & Ors.*,⁵ *R.P. Kapur Vs. Union of India & Anr.*⁶, *Commissioner of Police, New Delhi Vs. Narender Singh*⁷, *Corporation of the City of Nagpur, Civil Lines, Nagpur & Anr. Vs. Ramchandra & Ors.*⁸, *Jasbir Singh Vs. Punjab & Sind Bank & Ors.*⁹, *The Divisional Superintendent, Northern Railway & Anr. Vs. R.B. Hanifi*¹⁰,

1. (1970) 2 SCC 462.
2. AIR (33) 1946 SIND 121.
3. (1933) 61 ILR 168.
4. (1981) 2 SCC 84.
5. (1987) 4 SCC 328.
6. (1964) 5 SCR 431.
7. (2006) 4 SCC 265.
8. (1981) 2 SCC 714.
9. (2007) 1 SCC 566.
10. (1976) Lab. I.C. 1403.

- A *Govind Prasad Vs. Union of India*¹¹, *Union of India & Ors. Vs. K.V. Jankiraman & Ors.*¹², *Union of India & Ors. Vs. Sangram Keshari Nayak*¹³, *Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors.*¹⁴, *State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai*¹⁵, *Union of India & Ors. Vs. Lt. Gen. Rajendra Singh Kadyan & Anr*¹⁶.

21. Mr. Pallav Shishodia, learned senior counsel on behalf of Respondent No.1, sought dismissal of the present writ petition, inter-alia, on the ground of delay. It was pointed out that there is a delay of more than 20 years in challenging the order of suspension dated 20th December, 1985. The learned senior counsel, in response to submissions of Mr. Calla, submitted that the initial suspension of the petitioner and further continuation of the same, during the criminal trial; during pendency of the appeal against acquittal; and during the pendency of the departmental enquiry; was not "only justified, but *imperative*," in the view of "sensitive nature of judicial work" which was being undertaken by him. It was also submitted that since it is never possible to anticipate the outcome of a criminal trial or disciplinary proceedings which may eventually lead to acquittal or exoneration, as the case may be, suspension of the petitioner cannot be termed as "*wholly unjustified*". In addition, Mr. Shishodia pointed out that the petitioner was acquitted by the trial court on "benefit of doubt". Further, dismissal of the appeal against acquittal does not in any manner affect the legal position.

22. It had also been pointed out by Mr. Shishodia that since there is no allegation of suspension being "mala-fide, vindictive or otherwise motivated", there remains no reason to interfere

- G 11. (1980) RLW 258
 12. (1991) 4 SCC 109.
 13. (2007) 6 SCC 704.
 14. 1994 Supp (3) SCC 674.
 15. (2007) 6 SCC 524.
 H 16. (2000) 6 SCC 698.

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with the impugned order dated 24th January, 2009, as affirmed A
by the order dated 16th May, 2011. The learned senior counsel
had also submitted that there is no challenge to the order dated
16th May, 2011 in the present writ petition, nor the petitioner
had made a submission that his prosecution by the CBI was
malicious or otherwise vitiated. In the light of aforesaid B
submissions, it was contended that suspension pending
criminal proceedings and/or departmental enquiry was *fully*
justified. Mr. Shishodia has also argued that the order denying
full pay to the petitioner was passed by the High Court, in
bonafide exercise of its powers and on the basis of well settled C
interpretation of Rule 54 of the 1951 Rules.

23. The learned senior counsel, relying upon a number of
judgments of this Court, had further contended that matters
relating to the grant of salary, promotions and other benefits to D
an employee during the period of his suspension are subject
to the discretion of the employer. The employer has to strike a
balance between the rights of the employee and the
imperatives of an institution. He submitted that the High Court,
acting in a fair, objective and reasonable manner, has drawn
the line so as to avoid any disproportionate penalty. It has struck E
a balance between the entitlement of the petitioner and
imperatives of the institution charged with public duty of
administration of justice.

24. The learned counsel had further submitted that F
whatever amount was legally due to the petitioner has already
been paid to him. It had been stated that Rupees Twelve Lac
Seventy Three Thousand Eight Hundred Forty Two Only, i.e.
Rs. 12,73,842/-, have been paid to the petitioner under various
heads, like dearness allowance, subsistence allowance, etc. G
Also, the petitioner gets a monthly pension to the tune of
Rupees Twenty Two Thousand Three Hundred Eighty Five
Only, i.e. Rs. 22,385/-.

The counsel relied upon the following judgments to H
substantiate his contentions:

A *Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal*¹⁷, *Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Ors.*¹⁸, *K. Ponnamma (Smt.) Vs. State of Kerala & Ors.*¹⁹, *Dhananjay Vs. Chief Executive Officer, Zilla Parishad, Jalna*²⁰, *Union of India & Ors. Vs. Jaipal Singh*²¹, *Baldev Singh Vs. Union of India & Ors.*²², *N. Selvaraj Vs. Kumbakonam City Union Bank Ltd. & Anr.*²³, *Banshi Dhar Vs. State of Rajasthan & Anr.*²⁴, *Divisional Controller, Gujarat SRTC Vs. Kadarbhai J. Suthar*²⁵, *Union of India Vs. B.M. Jha*²⁶.

C 25. We have considered the submissions made by the learned senior counsel for the parties.

D 26. The only issue that needs to be resolved at this stage is as to whether the petitioner would be entitled *only* to the subsistence allowance as already paid to him or full salary and allowances, in view of his acquittal in the criminal case and the exoneration in departmental proceedings. Related to the aforesaid issue would be a consequential issue of notional promotion from the date an officer junior to him was promoted in the Rajasthan Judicial Service and the consequential entitlement to the emoluments on the promotional post, which in turn would determine the amount of suspension allowance and the other retiral benefits.

F 27. In our opinion, it is not really necessary to notice the

17. (1994) 1 SCC 541.

18. (1997) 3 SCC 636.

19. (1997) 9 SCC 36.

20. (2003) 2 SCC 386.

G 21. (2004) 1 SCC 121.

22. (2005) 8 SCC 747.

23. (2007) 9 SCC 172.

24. (2007) 1 SCC 324.

25. (2007) 10 SCC 561.

H 26. (2007) 11 SCC. 632.

ratio in each of the judgments cited, as all of them reiterate certain well known principles of law. We may, however, notice some of the principles highlighted in the judgments cited by the learned counsel. In the case of *Corporation of the City of Nagpur* (supra), it is observed that it may not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, where the accused has been acquitted honourably and completely exonerated of the charges. At the same time, it is pointed out that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered.

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28. The same principle is reiterated in the case of *Commissioner of Police, New Delhi Vs. Narender Singh* (supra).

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29. In *Jasbir Singh's* case (supra), the appellant was a confirmed peon in the respondent Bank. On an allegation that he had forged the signature of a depositor R and fraudulently withdrawn a certain sum, a departmental proceeding was initiated against him. A criminal case was also initiated simultaneously under Sections 409/201 IPC. He was acquitted in the criminal case. However, despite acquittal, the departmental proceedings continued and ultimately ended in an ex parte report to the effect that the charges had been proved. The respondent Bank also filed a suit against the appellant for recovery of the said sum. The suit was decreed but the appellate court held that the Bank failed to prove that the appellant had withdrawn or embezzled the said sum. It was held that the Bank was not entitled to recover the said amount. That judgment was not challenged. Thus, the same attained finality. However, the writ petition filed by the appellant, challenging the disciplinary proceedings and the order of punishment was dismissed by the Punjab and Haryana High Court. Without taking note of the decision of civil court and relying on a provision of the Bipartite Settlement, the High Court

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A held that the departmental proceedings could have been initiated even after the judgment of acquittal in the criminal case. The appellant employee then filed an appeal in this Court.

B Allowing the appeal, this Court held that the respondent Bank invited findings of a competent civil court on the issue as to whether the appellant had committed any embezzlement or not. Embezzlement of fund was the principal charge against the appellant in all the proceedings. The respondent Bank failed to prove any of the charges before any court of law. The judgment in civil matter having attained finality, was binding on the respondent Bank.

C It was further observed that in a case of this nature, the High Court should have applied its mind to the facts of the matter with reference to the materials brought on record. It failed to do so and did not take note of the decision of the civil court. It could not have refused to look into the materials on record. Therefore, the impugned judgment was set aside.

D 30. In *O.P. Gupta's* case (*supra*), this Court emphasised the principle that any order which would cause adverse civil consequences, can only be passed upon observance of the rules of Natural Justice. There is, therefore, insistence upon requirement of a "fair hearing". It was also emphasised that long, continued suspension affects the government servant injuriously. Since the order of suspension entitles the government employee only to "subsistence allowance", resulting in penal consequences, it should not be lightly passed. The court also emphasised that the expression "life" does not merely connote animal existence or a continued drudgery through life. These are all well known principles of law. We only make a reference to the same, since the cases have been cited.

E 31. Similarly the judgments cited by Mr. Shishodia reiterate the principle that "*no hard and fast rule*" can be laid down as to whether on reinstatement the employee is entitled to full back wages or no back wages at all. All the cases reiterate the

principle that the facts and circumstances of each case have to be examined by the concerned authority. It has to take an informed decision on the basis of the material on record. These judgments also reiterate that acquittal of an employee would not automatically entitle him to reinstatement or to payment of full back wages. The power is normally vested with the disciplinary authority to hold a departmental enquiry, even upon conclusion of the criminal trial where the employee is acquitted.

32. We have examined the entire issue keeping the aforesaid principles in mind. In order to determine the issue relating to the entitlement of petitioner to the salary and other allowance(s) upon reinstatement, the matter needs to be examined at the different stages/point of time. The first stage commenced at the time when the petitioner was initially suspended on 22nd December, 1985 w.e.f. 20th December, 1985. The petitioner, in our opinion, cannot legitimately protest against his suspension, at the initial stage, when he had remained in police custody for more than forty eight hours, though unfortunately for circumstances for which he was not responsible. This suspension was naturally continued when he was facing the trial for murder.

33. The next stage is when he was acquitted by the trial court on 1st May, 2002. The observations made by the Additional Session Judge, Delhi whilst acquitting the petitioner are as follows:-

"285. The case in hand does not pass the muster. The circumstances that can be safely held as duly proved would include only that there was long-standing friendship between the accused and the deceased, and discovery of dead body of the latter in circumstances indicating unnatural death. The prosecution has failed to prove beyond all reasonable doubts the theory of accused having taken an amount of Rs. one lakh 20 thousand from the deceased on the promise of helping him in securing

- A appointment as Member in Board of Revenue, or upon failure faced by the deceased in getting the said appointment refusing to, or haggling over, return of the said amount of money. The theory of accused having returned Rs. one lakh to PW 1 after the incident is suspect.
- B There is a inordinate delay in the lodging of FIR which, seen against the backdrop of claims by all and sundry that they suspected involvement of the accused from the very beginning, has remained unexplained and is bound to prove fatal to the case (AIR 1996 SC 607).
- C 286. The evidence regarding "last seen" does not inspire confidence and has rather come out as a fabricated one. Efforts to cook up evidence in the course of investigation, for example the recovery of blood stained clothes of the accused at his instance, coupled with unauthorized handling of the material exhibits recovered from the scene where the dead body had been found, have given the impression that the same might have been doctored. This erodes confidence in the prosecution case. The investigation conducted smacks of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused. The benefit of doubts arising as a result must accrue in favour of the accused, since suspicion, however strong, cannot take the place of proof in the final analysis."
- F These observations would indicate that the trial court disbelieved the very foundation of the prosecution case. The alleged motive has been found to be without any basis. The judgment of the trial court clearly indicates that the evidence produced does not reach even the bare minimum standard required for establishing the guilt of the petitioner. The theory of the prosecution that petitioner had demanded or taken money from the deceased was not supported by any independent evidence. The trial court also noticed that there was an inordinate delay in the registration of the FIR, which had
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to be seen against the backdrop of claims, by all and sundry, that they suspected the involvement of the petitioner from the very beginning. The trial court categorically observed that in the peculiar circumstances of the case, the delay in registration of the FIR was *fatal* to the case of the prosecution. The trial court also observed that the evidence with regard to "*last seen*" was fabricated and, therefore, did not inspire confidence. It is also observed that the investigation in the case had not been conducted fairly. The Trial Court was left with a definite impression that the evidence had been "*doctored*". The Court categorically observed that "*the investigation conducted smack of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused*". These observations, in our opinion, would bring the present case within the realm of those cases which are often described as cases of "*no evidence*". Merely because the Court ultimately used the term that prosecution has failed to prove the case "beyond reasonable doubt" would not raise the stature of the evidence, produced by the prosecution, in this case from the level of being thoroughly unreliable.

34. As noticed above, Mr. Calla has submitted that the suspension of the petitioner should have been revoked at this stage. It will not be possible to accept the proposition that as soon as the trial court had acquitted the petitioner, the Rajasthan High Court was required to forthwith revoke the order of suspension. Undoubtedly, the petitioner could have been given a non-sensitive posting, not involving judicial functions. But, it was not imperative for the High Court to revoke the suspension, at that stage. It is a matter of record, that the prosecution agency decided to file an appeal against the judgment and order passed by the trial court, acquitting the petitioner. The appeal filed by the CBI was admitted by the Delhi High Court and remained pending till it was decided on 27th September, 2005. Therefore, the conclusions recorded by the trial court, were not final. They were liable to be reversed in appeal by the High Court. Thus, during the said period/stage,

A it cannot be said that the continuance of the suspension of the petitioner was *wholly unjustified*. Merely because the High Court could have revoked the suspension, would not render the decision to continue the suspension, *wholly unjustified*.

B 35. The Rajasthan High Court was placed in a very piquant situation till the petitioner's acquittal was reiterated by the Delhi High Court. The High Court, literally, had no option but to place and keep the petitioner under suspension. It was not as if the petitioner had unwittingly breached a traffic regulation, which may not invite, even a frown from the general public. It was also
 C not where he may had a minor altercation with someone which may well be overlooked by a reasonable man, as it would not involve any moral turpitude. He was facing a trial for the offence of murder, a crime of highest moral turpitude. Since time
 D immemorial, Judges have been placed on a very high pedestal in every civilized society. Such high status is accompanied by corresponding responsibility of a judge maintaining an unusually high standard of dignity, poise and integrity. There can be no two ways about it! Therefore, the decision of the High Court to continue the suspension of the petitioner can not be said to be
 E *wholly unjustified* till his acquittal by the Delhi High Court.

36. At this stage, we may just mention observations of this Court in two decisions of this Court in relation to the high standards of behaviour expected from a Judge. For instance,
 F in *Daya Shankar Vs. High Court of Allahabad & Ors. Through Registrar & Ors.*²⁷, this court observed as under:

G "Judicial officer cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."

Further, in the case of *C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors.*,²⁸ again while elucidating the nature

27. (1987) 3 SCC 1.

H 28. (1995) 5 SCC 457.

of the position held by a judicial officer, this Court observed as under: A

“21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge.....It is, therefore, a basic requirement that a Judge’s official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.” B
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37. The decision of the High Court to keep the petitioner under suspension has to be judged by keeping the aforesaid standards in mind. Therefore, we are unable to accept the submission of Mr. Calla that the suspension of the petitioner was *wholly unjustified* after he was acquitted of the criminal charges by the trial court. F

38. We now come to the stage after the appeal against the acquittal was dismissed by the High Court. It appears that a Division Bench of the Delhi High Court re-appreciated the entire evidence and dismissed the appeal filed by the CBI. In its judgment, the High Court has clearly held that the prosecution had failed to prove any motive for the alleged murder. It is noticed by the High Court that the entire prosecution case is G
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A based on circumstantial evidence. It is further observed that the injuries suffered by the deceased were not inconsistent with the plea that it was a case of accidental death. The High Court also disbelieved the witnesses of the prosecution with regard to the deceased having been "last seen" alive with the petitioner.

B Having disbelieved the evidence with regard to the motive and with regard to the victim being "last seen" alive with the petitioner, the High Court proceeded to examine the evidence with regard to the disclosure statement under Section 27 and the recoveries of incriminating pieces of evidence. Upon examination of each issue, the High Court observed that the facts brought on the record *"put a question mark on the genuineness of the story of the recoveries made"*. The High Court disbelieved the recovery of the clothes allegedly belonging to the deceased. The story of recovery of blood stains was also disbelieved. Ultimately, the High Court recorded the following conclusions:-

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"43. In the present case, the major links between the alleged offence and the accused are entirely non-existent. The above discourse shows positively that the prosecution has failed at every step to bring home the guilt of the accused. The first step was to prove that it was a case of murder rather than a case of accident. The prosecution has failed to prove beyond reasonable doubt that it was a case of murder and not that of an accident.

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F **44.** The second step was to prove that the accused and the deceased were last seen together soon before the incident. The prosecution has also failed to prove this fact beyond reasonable doubt. Apart from what has already been stated above an important fact in this case is that post-mortem report along with the CFSL report, Ex.PW-34/DA proves existence of alcohol in the stomach of the deceased. This tends to support the accident theory.

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H **45.** The third step was to prove that the prosecution had recovered incriminating articles, either following the

disclosure statement or on its own initiative. The prosecution has failed even at doing the same. In this situation, even if the prosecution is able to prove existence of motive, the same by itself would not be of any value. The trial court has disbelieved the story of motive. However, for us it is not necessary to go into those details.

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46.*The prosecution has failed to prove firstly that there was any murder and secondly that the accused is the one who committed it. There is absolutely no merit in the appeal and the same is accordingly dismissed.*"

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39. The acquittal of the petitioner having been affirmed by the High Court of Delhi, in our opinion, it was necessary for the High Court of Rajasthan to take a decision: (a) whether to revoke the order of suspension and permit the petitioner to perform judicial functions; (b) whether to hold a departmental enquiry with regard to the receipt of money allegedly received by him from the deceased; (c) as to how the period of suspension was to be treated; (d) whether the petitioner was entitled to full salary, part salary or no salary at all for the period of suspension.

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40. It appears to us that given the findings recorded by the trial court, subsequently reiterated by the High Court of Delhi, the decision to continue the petitioner under suspension, thereafter, was rather harsh. It is true that the suspension of the petitioner was continued as the High Court had decided to hold a departmental enquiry against the petitioner on the charges that he had wrongly extracted certain money from the deceased. But it is a matter of record that both the trial court as well as the High Court had found the entire story with regard to the alleged receipt of money to be false. The enquiry was founded on the same facts and the same evidence which have had been examined by the trial court as well as the High Court. In such circumstances, it was necessary for the High Court to examine the findings of the trial court as well as the High Court

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A in detail before taking a decision to initiate departmental proceedings against the petitioner, founded on the same set of facts and the evidence. It is apparent from the record that no such examination of the judgment was undertaken by the High Court. Even after taking a decision to initiate departmental
 B proceeding against the petitioner, it was no longer imperative to continue the petitioner under suspension. The petitioner was no longer charged with any criminal offence as both the trial court as well as the High Court had literally concluded that the charges against the petitioner had been concocted. The
 C petitioner had been subjected to continued suspension since 22nd December, 1985. During the period of departmental proceedings, even if the petitioner was not to be assigned any judicial work, the High Court could have conveniently given him suitable posting on the administrative side. In our opinion, from
 D the time of dismissal of the appeal by the Delhi High Court, the continued suspension of the petitioner was *wholly unjustified*.

41. Again it is a matter of record, that even in the departmental enquiry the charges against the petitioner were not proved and he was *exonerated* of the same. It was only at
 E that stage that the suspension of the petitioner was revoked. The petitioner had already moved the present writ petition immediately after the order of acquittal was upheld by the Delhi High Court. The enquiry proceedings were completed during the pendency of the writ petition. Undoubtedly, the order of
 F suspension was revoked by the High Court on 26th March, 2008 but without giving any direction*as to how the period of suspension was to be treated. It was only subsequently that the matter with regard to regularization of his period of suspension was considered by the Full Court in the meeting held on 29th
 G November, 2008. Even at that stage though the Full Court passed a resolution that period of suspension shall be treated as period spent on duty, but it was to be without payment of any salary except for the subsistence allowance already paid to him. On the basis of the aforesaid resolution, the High Court
 H passed the order dated 24th January, 2009. So even by order

dated 24th January, 2009, the petitioner was granted only partial relief. This necessitated the amendment of the writ petition by the petitioner questioning the legality of the aforesaid order. It was only at that stage that this Court by order dated 5th April, 2011 directed the High Court to pass appropriate orders under Rule 54 of the Rules. It appears even at that stage the High Court did not consider it necessary to grant any further relief to the petitioner.

42. We are of the considered opinion, having regard to the sequence of events narrated above, that it would be unjust to deny the salary to the petitioner with effect from the date the appeal against acquittal was dismissed by the High Court of Delhi. We see no cogent reason as to why it was necessary to continue the suspension of the petitioner during the pendency of the departmental proceedings. There was no distinction between the facts or the evidence relied upon in the criminal trial as well as the department proceedings. This apart, the petitioner had been acquitted of any involvement in the crime of murder. Whilst exercising its jurisdiction under Rule 54, it was necessary for the High Court to pass a detailed and reasoned order as to whether the period of suspension was *wholly unjustified*. Undoubtedly, the power under Rule 54 is discretionary but such discretion has to be exercised reasonably and by taking into consideration the material relevant to the decision. Upon acquittal of the petitioner from the criminal charges, it was no longer necessary to keep him under suspension during the pendency of the departmental enquiry. In our opinion, the High Court failed to exercise its jurisdiction properly under Rule 54, as directed by this Court in the order dated 5th April, 2011. In our opinion, the suspension of the petitioner ought to have been revoked upon acquittal by the High Court even during the pendency of the departmental enquiry.

43. This now leads us to the last submission of Mr. Calla that upon exoneration in the departmental proceedings, the

A petitioner was required to be considered for promotion from the date a person junior to him was promoted.

B 44. In view of the authoritative judgment rendered by this Court in the case of *Jankiraman* (supra), the submissions made by Mr. Calla would have to be accepted. In the aforesaid judgment it was held that:-

C “26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings.”

D 45. In this case, it is a matter of record that upon exoneration in the departmental enquiry, the petitioner was reinstated in service. No punishment was inflicted on him at all. However, during the pendency of the criminal trial as also the departmental proceedings, he was not considered for promotion, when the cases of persons junior to him were considered. In our opinion, the High Court erred in directing in the Full Court Resolution dated 29th November, 2008, and the communication dated 24th January, 2009 that the petitioner shall not be entitled for any promotion.

F 46. We, therefore, partly allow the writ petition. We reject the submissions of Mr. Calla that the suspension of the petitioner was rendered *wholly unjustified* upon acquittal by the trial court. We also reject the submissions of Mr. Calla that the suspension of the petitioner was *wholly unjustified* during the pendency of the appeal before the High Court. We, however, hold that the continued suspension of the petitioner during the pendency of the departmental proceedings was *wholly unjustified*. The petitioner is, therefore, held entitled to full pay and allowances from 27th September, 2005, i.e. the date of the

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judgment rendered by the Delhi High Court onwards. We further hold that the petitioner was entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. We, therefore, direct the High Court to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the rules) from the date when a person junior to him was considered and promoted to the next higher post. Let such a decision be taken by the High Court within a period of three months from the date of receipt of this order. We further direct that the petitioner would be entitled to all consequential benefits, such as salary and other allowances by treating him on duty with effect from the date the appeal against acquittal was dismissed by the Delhi High Court and after fixing his last pay drawn correctly. The consequential benefits shall be paid to him with 6% interest from the date of the dismissal of the appeal by the High Court on 27th September, 2005. The enhanced retiral benefits shall be released to him within three months of the receipt of a copy of this order.

47. Assuming that, the Rajasthan High Court wanted to conduct its own departmental enquiry after the acquittal of the petitioner being confirmed by the Delhi High Court, his suspension during that period was wholly uncalled for because of which he unnecessarily suffered and had to litigate further. We, therefore, award costs of Rs. 25,000/- to the petitioner to be borne by the respondent High Court.

R.P.

Writ Petition Partly allowed.