

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 407 of 2010**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**and**

**HONOURABLE MR.JUSTICE A.G.URAIZEE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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L M MAKWANA

Versus

HIGH COURT OF GUJARAT & ANOTHER

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Appearance:

Mr Radhesh Y Vyas for the Petitioner

Mr Shalin Mehta, Senior Advocate, assisted by Mr Hemang M Shah, for Respondent No.1

Mr Utkarsh Sharma, Asst. Government Pleader for Respondent No. 2

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**CORAM: HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**  
and

**HONOURABLE MR.JUSTICE A.G.URAIZEE****Date : 10/05/2013****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE A.G.URAIZEE)**

The petitioner – a judicial officer in the subordinate judiciary of Gujarat is before us under Articles 14, 16 and 226 of the Constitution of India to challenge the final decision dated 4th/14<sup>th</sup> September 2009 of the High Court and the Notification dated 1<sup>st</sup> December 2009 of the State of Gujarat in Legal Department whereby he came to be dismissed from the service upon recommendation of the High Court. The petitioner has made the following prayers in the petition:

- “(A) Quashing and setting aside the final decision dated 4/14.9.2009 of the High Court and the notification dt. 1.12.2009 of the State Government and to reinstate the petitioner in service with all the consequential benefits including full back wages with 10% interest.
- (B) During the pendency and final disposal, the Respondent No.2 may be directed to reinstate the petitioner in service.
- (C) To grant such and further relief as may be deemed fit and proper.”

2 The petitioner was working as Civil Judge (Junior Division) and Judicial Magistrate First Class, at Una for the period from 14.6.1993 to 11.6.1995. He came to be transferred to Vadodara and after his transfer to Vadodara, a complaint dated 19<sup>th</sup> October 1996 by one Rasiklal Acharya and 11 others was made to the High Court *inter alia* alleging that the petitioner has misused his position as a Judge. On the basis of the said complaint a preliminary enquiry, was conducted by the Special Officer, Vigilance of the High Court in which the statement of Shri

Rasikchandra Acharya was recorded and after completion of the preliminary enquiry a report dated 10<sup>th</sup> January 2001 came to be submitted. Upon consideration of the report of the Vigilance Officer it was decided to hold departmental enquiry on four counts against the petitioner and a charge-sheet was served on the petitioner on 5<sup>th</sup> February 2002. The charges read as under:

“I. Criminal Case No.519/92 for the offences punishable under Sections 409, 477(A) and 471 of the I.P. Code for misappropriation of Rs.2,000/- was pending in your court against Mr. Abdul Razak Banubhai Maniyar, Chief Officer of Una Nagar Palika and R.C.S.No.60/89 for declaration and injunction, challenging appointment of the said Mr. Maniyar as Chief Officer, Nagar Palika, Una was pending in the Joint Court. However, being a Judicial Officer instead of keeping an aloofness, you maintained homely relations with the said Mr. Maniyar, who in his capacity as a Chief Officer, illegally provided an electric motor and pipe line to Mr Makwana at his residence and Mr. Maniyar was also used to provide tiffin of non-vegetarian food frequently to Mr. Makwana and due to such homely relations with Mr Maniyar, Mr Makwana only with a view to favour Mr Maniyar, intentionally prolonged the prolonged the aforesaid Criminal Case No.519/92 and even did not frame the charge against Mr. Maniyar during his entire period of service at Una i.e. from June 1993 to June 1995.

II. One Radheshyam Shavarlal Joshi, who was doing a business of a battery charging etc. in the name of Shavarlal Ramratan Joshi, by correcting the date of presentation of plaint, could manage to file R.C.S.No.47/94 in the Court of Mr. Makwana, through advocate Mr. N.R. Baxi against Nagar Palika, Una for permanent injunction alleging that, he is doing his business in the

premises of the defendant Nagar Palika, since long as a tenant and the Nagar Palika without following procedure and without giving opportunity of hearing, suddenly issued notice on 26.2.94 and thereby directed to vacate the premises immediately. As the defendant Nagar Palika had already filed Caveat Application No.13/94, Mr Makwana in the first instance ordered to issue notice to the Nagar Palika. In response thereto, the defendant Nagar Palika appeared through advocate Mr G.B. Nakvi and filed written statement as well as reply to the application (Exh.5) on 11.4.94 at Exh. 13 contending that, the plaintiff has illegally encroached upon the land of the Nagar Palika and the disputed land has been declared as reserved land for Town Center, under the Town Planning Scheme No.2, and the Nagar Palika has legally issued notice to the plaintiff to vacate the land. Though the defendant Nagar Palika had produced documents regarding finalisation of Town Planning Scheme and specifically contended that, the defendant being a statutory body has every right to take possession of the land, Mr Makwana, with an oblique motive, ignoring the settled position of law, granted interim injunction by an order dtd. 22.7.94 directing the defendant Nagar Palika not to interfere the plaintiff in any manner in doing his business in the disputed premises till the final disposal of the suit.

III. One Gordhandas Vitthaldas Bhuptani and Gunvantrai Mathurdas Ruparel had filed R.C.S.No.155/94 on 22.8.94 against Mr.Karsanbhai Kalabhai Koli for permanent injunction alleging that the defendant is the owner and occupant of the land bearing Survey No.537/1 and 537/2 situated at Una and he agreed to sell  $\frac{1}{2}$  of the said land to the plaintiffs and has also executed an agreement of sale on 30.6.91, but the sale deed could not be executed as the defendant is not in a position to execute the same

and Una Nagar Palika and some other persons are trying to snatch away the possession of the said land from the defendant. As R.C.S.No.39/94 filed by the said Kalabhai Karsanbhai Koli against the Nagar Palika, Una was pending in the Court in respect of the same subject matter, Mr Makwana was fully aware of the ownership of land, however, only with an intention to favour the plaintiffs, though not a single document was produced by the plaintiff alongwith plaint in R.C.S.No.155/94, under the list Exh.4, recorded compromise (Exh.10) on 26.8.94 and thereby decreed a false suit within 4 days from the date of injunction.

IV. One Mr. Karsanbhai Kalabhai Koli had filed R.C.S.No.39/94 on 24.2.94 through advocate Mr N.R.Baxi against the Nagar Palika, Una for permanent injunction alleging that, he is residing with his family on land bearing Survey No.537/1 and 537/2 situated on Una Girgadhda Road, Una since last more than 40 years and his son is doing a business of Pan Tea etc in the cabin situated thereon, that earlier the said land was the ownership of the family of Sheth Shri Chhotalal Harakhlal and he was paying rent at the rate of Rs.200/- per annum to them, however the defendant Nagar Palika without following due procedure and giving opportunity of hearing, is trying to snatch away the possession of the land, under the guise of a so called Town Planning Scheme. Alongwith suit, the plaintiff also gave an application for interim injunction (Exh.5) and Mr.Makwana, without assigning any reasons, granted exparte interim injunction, directing the defendant to maintain Status Quo. Thereafter, the defendant Nagar Palika appeared through advocate Mr.G.B.Nakvi and filed written statement as well as reply to the interim application (Exh.5) on 18.4.94 at Exh.28, interalia contending that, under Town Planning Scheme No.2, which was finally

sanctioned a long back on 11.10.77, the plot Nos.121 and 123 have been given to the family of Sheth Shri Chhotalal Harakhlal in exchange of Survey Nos.537/1 and 537/2 and thereafter, the disputed land bearing Survey Nos.537/1 and 537/2 has been amalgamated with the Survey Nos.537/3 and 537/4 and renumbered as Final Plot No.185 and also declared as reserved land for a Public purpose namely 'Town Centre' and the defendant Nagar Palika being statutory body, with a bona fide intention, to implement the said scheme, has issued a legal notice to the plaintiff to vacate the premises, therefore, the plaintiff is not entitled to get injunction as prayed for. Mr.Makwana, being an experienced Judge was fully aware of the provisions of Order 39 of the C.P. Code and the settled legal position thereof, however, with an oblique motive, in collusion with Mr.Abdula Razak Maniyar Chief Officer of Nagar Palika and M/s Gordhandas Vitthaldas Bhuptani and Gunvantrai Mathurdas Ruparel granted interim injunction against the Nagar Palika, Una by an order dtd.22.7.94. ..”

3 The petitioner submitted his written statement of defence dated 29<sup>th</sup> April 2002 and denied all the charges levelled against him. Thereafter, the Enquiry Officer came to be appointed, who, after conducting the departmental enquiry, submitted a report, dated 13<sup>th</sup> May 2005. In the said departmental enquiry, two points, namely, whether the department has proved the petitioner-delinquent as indulging into corrupt practices by illegal gratification and whether the conduct of the petitioner was unbecoming of a Judicial Officer were raised. The learned Enquiry Officer found these two points against the petitioner and opined that these charges stand proved against the petitioner. The report, dated 13<sup>th</sup> May 2005, of the Enquiry Officer was considered by the High Court and vide its tentative decision dated 13<sup>th</sup>

January 2009 it was decided to issue notice along with copy of the Enquiry Report calling upon him as to why major penalty of dismissal should not be imposed and ultimately, vide final decision dated 4<sup>th</sup> September 2009 it was decided to dismiss the petitioner from the service. Accordingly, on recommendation of the High Court, the Government of Gujarat in Legal Department, vide its Notification dated 1<sup>st</sup> December 2009 dismissed the petitioner from service with immediate effect. And that is how the petitioner is before this Court.

4 For the sake of convenience, it would be appropriate to consider the case of the petitioner on the following aspects:

Delay in initiation of enquiry:

5 It is an undisputed fact that the misconduct alleged against the petitioner is in respect of his tenure as Civil Judge (Junior Division) and Judicial Magistrate First Class, Una between 14.06.1993 to 15.06.1995, thereafter he came to be transferred to Vadodara. It is not in dispute that after his transfer, one Rasiklal Acharya, who happened to be a practising advocate and other 11 persons, who included some advocates, made a complaint on 19<sup>th</sup> October 1996 i.e. nearly about more than one year after transfer of the petitioner from Una to Vadodara. It is very surprising that no action seems to have been taken on the basis of the said complaint of said Shri Rasiklal Acharya and others. The complaint remained in hibernation in the High Court and all of a sudden, on 17<sup>th</sup> October 2000, Mr Rasiklal D Acharya, out of the blue, appeared and requested the Vigilance Officer of the High Court to record his statement and that is how, on the said date, his statement came to be recorded. Said Rasiklal Acharya once again appeared before the Vigilance Office of the Court on 18<sup>th</sup> October 2000 with his further written statement on a specious ground that on the previous day he had not come with his file

and certain further details were required to be given. His further written statement was taken on record by the Vigilance Officer. It is also very peculiar to note that the statements of other witnesses were recorded prior to the date on which Mr Acharya appeared and gave his statement. But, after recording of the statements of the concerned witnesses, the Vigilance Department of the High Court had gone into deep slumber and did not take any actions on the basis of the statements recorded pursuant to the complaint of Shri Rasiklal Acharya. Thereafter, a preliminary enquiry report dated 10<sup>th</sup> January 2001 came to be submitted and it was decided by the High Court to conduct a departmental enquiry against the petitioner. Even after such a decision of holding an enquiry against the petitioner, after lapse of more than one year, on 29.1.2002 the imputation of charges came to be served upon the petitioner and departmental enquiry, as aforesaid, was proceeded against the petitioner.

6 Learned advocate for the petitioner has strenuously submitted that though the petitioner has taken specific ground in his written statement and which was also very seriously urged before the Enquiry Officer, the same is not considered in its right perspective and the same is brushed aside by the learned Enquiry Officer saying that in a grave cases of misconduct like the one on hand the delay should not be a stumbling bloc for taking action against an errant judicial officer.

7 On the other hand, Shri Shalin Mehta, learned Senior Advocate, assisted by Shri Hemang Shah has made an attempt to support the opinion expressed by the learned Enquiry Officer. We have also given our anxious consideration to the ocular and documentary evidence made available before the Enquiry Officer during the enquiry. We have also given our thoughtful consideration to the opinion of the learned Enquiry Officer as to the delay that has occurred in initiating the departmental



enquiry against the petitioner and we are unable to make ourselves agree to the opinion expressed by the learned Enquiry Officer on the delay point, raised by the petitioner. It is very surprising that the bone of contention which is in respect of prime land situated in the heart of Una town, which became part of the Town Planning Scheme was made subject matter of civil litigation before the Court presided over by the petitioner. Mr R.D. Acharya and others did not take any steps to file a complaint, which, they did on 19.10.1996 after the petitioner was transferred from Una. Not only that, the Una Nagarpalika, which was directly affected by and concerned with the orders passed by the petitioner did not choose to challenge the orders passed by the petitioner before the higher forum. It is true that one of the orders was challenged before the District Court by filing an appeal, but, as there was huge delay which was caused in preferring the appeal, the learned District Judge found that the delay was not sufficiently explained and therefore dismissed the delay condonation application preferred in the appeal.

8 In the backdrop of this factual scenario, the findings of the learned Enquiry Officer that the delay should not come in the way for taking action against an errant Judicial Officer cannot be sustained. It is very probable from the belated complaint of Mr Rasiklal D Acharya and others that they had made the complaint with some ulterior and oblique motive, which was required to be deeply investigated firstly by the Vigilance Department of the High Court and during the course of the departmental enquiry the learned Enquiry Officer ought to have given thoughtful consideration to this aspect and therefore we believe that the delay in lodging the complaint by Mr Rasiklal D Acharya and others and thereafter the delay on the part of the High Court in initiating the enquiry goes to the root of the case and on this ground it is difficult to sustain the impugned order of dismissal of the petitioner.

Proximity of the petitioner with Mr Abdul Razaq Bhanubhai Maniar:

10 Charge No.1 against the petitioner is the offshoot of the alleged proximity i.e. homely relations of the petitioner with Mr Abdul Razaq Maniar, who was, at the relevant point of time, was the Chief Officer of Una Nagarpalika. The petitioner has not disputed the fact that one criminal case being Criminal Case No.419 of 1992 under various sections of the Indian Penal Code for misappropriation of Rs.2,000 against said Mr Maniar was pending in his Court. However, according to the charge, since the petitioner was taking favours such as non-vegetarian food and illegal motor and pipeline connection at the residence of the petitioner, the petitioner did not frame the charge during his tenure against said Mr Abdul Maniar. Admittedly, criminal case against said Mr Abdul Maniar was of the year 1992. The petitioner came to be transferred to Una in the middle of 1992 and remained posted there till the middle of 1995. It is an undisputed fact that he did not frame charge against said Mr Abdul Maniar during this period. It is the say of the petitioner that he could not frame the charge against said Mr Abdul Maniar because of heavy pendency of the cases and on many dates said Mr Abdul Maniar used to remain absent. It is his further say, which is not disputed by the respondent that even after his transfer from Una in the year 1995, charge against Mr Abdul Maniar was not framed. It came to be framed only in the year 2002. It is the further defence of the petitioner in his written statement that it is not disputed by the respondent that the residential unit which the petitioner was occupying at Una was a government quarter and Roads and Buildings Department was responsible for its maintenance. Moreover, the motor and the pipeline remained at the residential quarter occupied by the petitioner even after his transfer from Una. Therefore, according to the petitioner, it cannot be said that any undue favour was shown to him by installing an electric motor and water pipeline. The learned Enquiry Officer has not properly

adverted to this aspect and after considering the statements of the witnesses examined on behalf of the Department as also on behalf of the petitioner it is cursorily stated that the petitioner was having homely relations with said Shri Abdul Razaq Maniar and the petitioner used to get non-vegetarian tiffin sent by said Shri Abdul Razaq Maniar and because of this unholy proximity the petitioner did not frame the charges against Mr Maniar and got the electric motor and pipeline installed at his quarter. In this connection, a reference needs to be made to the statement of one Mohanbhai Haribhai Bhambhanian who states in his statement before the Enquiry Officer that son of Mr Abdul Razaq Maniar was known to him because Una town is a small place and son of Mr Maniar used to meet and used to tell that he was going to the residence of the petitioner. It is very difficult to infer from such a scanty information that son of Mr Abdul Razaq Maniar was going to the place of the petitioner with non-veg food and that Mr Abdul Maniar was having homely relations with the petitioner. It is also very important to note that the accommodation occupied by the petitioner at Una was a government accommodation and the respondent cannot dispute the fact that the government accommodations are being maintained by the Roads and Buildings Department. The core issue is that as per the charge the petitioner got electric motor and water pipeline installed at the official residence through said Mr Abdul Maniar. It was incumbent on the part of the Department to lead cogent and reliable evidence that instead of getting these facilities through R & B Department, the petitioner sought the indulgence of said Mr Abdul Maniar because of his homely relations and got the motor and pipeline installed by Una Nagarpalika. There is no semblance of evidence on the record to suggest that in fact the electric motor and water pipeline were installed by Una Nagarpalika. Moreover, it is also an undisputed fact that both these articles remained at the quarter even after the transfer of the petitioner from Una. Under these circumstances, it would be difficult to

come to the conclusion that the petitioner accepted favours from said Mr Abdul Maniar because of his thick relations with him. Therefore, this part of the charge also fails and it cannot sustain.

#### CIVIL LITIGATION IN RESPECT OF LAND FALLING UNDER TP SCHEME:

12 There were two civil suits viz., Regular Civil Suit No.155 of 1994 and Regular Civil Suit No.39 of 1994, which were brought in the court presided over by the petitioner herein at Una. These two suits were in respect of parcel of land, which was part of Town Planning Scheme. Regular Civil Suit No.155 of 1994 was filed by one Gordhanbhai and another, with whom also it is alleged that the petitioner was having family relations. When the said suit was filed by said Gordhanbhai against Kalabhai Karsanbhai Koli for permanent injunction on the ground that defendant had agreed to sell certain parts of the land in favour of the plaintiff vide written agreement, but, thereafter, due to certain reasons he was not in a position to execute the final sale deeds and was trying to sell the land to someone else. The petitioner, though was within the know of the fact that another suit i.e. Regular Civil Suit No.39 of 1994, filed by said Shri Kala Karsanbhai Koli against the Municipality, was pending in his Court, he recorded a compromise and decreed the suit within four days of its institution. According to the respondents, the petitioner showed an unholy haste in recording the compromise and passing a compromise decree though another suit being Regular Civil Suit No.39 of 1994 was pending in his Court. The learned Enquiry Officer, after analyzing the ocular and documentary evidence produced during the course of the enquiry proceedings, has observed that the onus rests on the Presiding Officer to be extremely careful in allowing such compromise decree. He further observed that the same needs to be approached with utmost care and scrutiny, which appeared

to be lacking in the instant case and this is not merely the case of anyone being oblivious of the settled legal principles as mentioned hereinbefore and, it is certainly expected to be aware of the matters going on before it, especially when the same advocate appears in all the suits and these litigations pertain to a specific plot. The observations of the learned Enquiry Officer would suggest that the Presiding Officer of a Court is expected to know the minute details of each and every suit or criminal case pending in his Court and before recording any compromise and passing a decree thereof, and for that matter, before passing any order in any proceedings, the Presiding Officer should keep in mind any litigations pending in his Court which may have any connection with the litigation in which he is passing an order. It is a matter of common knowledge of which a judicial notice can be taken that the Courts across the State are reeling under heavy backlog of cases and therefore it is too much to expect a Judicial Officer to know not only the details of the suits or criminal cases pending in his Court and before passing any order he should verify whether such case has any connection with any other pending litigation, which has a direct bearing on the case he was dealing with. It would not be possible for a Judicial Officer to keep track of all the litigations pending before his Court. Therefore, merely because a connecting civil suit i.e. Regular Civil Suit No.39 of 1994 was pending in the court of the petitioner at the relevant point of time without anticipating the consequences of the compromise decree, on the connected suit, pending in his court, the petitioner has committed a mistake, which is unbecoming of a Judicial Officer.

13 Likewise, in Regular Civil Suit No.39 of 1994, filed by one Kala Karsanbhai Koli, the prayer made therein was for permanent injunction for restraining Una Nagarpalika from snatching away his possession of the land bearing Survey No.537/1 and 537/2 on the ground that he was in occupation of the said land since last more than 40 years and was

paying the rent at the rate of Rs.2,000 to its owner, Chhotalal. The petitioner was aware of the fact that said parcel of the land was forming part of T.P. Scheme and as per the settled position of law, once a Town Planning Scheme is sanctioned, it becomes part of the Statute and no litigation can be entertained by the court and despite the same, the petitioner has, in collusion with said Mr Abdul Maniar granted the interim injunction against Una Nagarpalika. There cannot be two opinions about the settled principle of law that once the Town Planning Scheme is finalised, it becomes part of the statute and the litigation in respect of the land forming part of the Town Planning Scheme cannot be entertained, but, at the same time, the order passed by the petitioner was a judicial order and anyone who felt aggrieved by such an order had the option of challenging it before the higher forum. The Nagarpalika did challenge the order passed by the petitioner before the District Court, Junagadh. As there was delay in preferring the Miscellaneous Appeal, Civil Application No.6 of 1996 was preferred for condonation of delay. The learned Appellate Judge was not convinced as to the reasons for the delay and therefore delay was not condoned. The matter rests there and as the order passed by the District Court in dismissing Civil Application No.6 of 1996 was not carried forward before the appellate forum, the order passed by the petitioner below application Exhibit 5 in Regular Civil Suit No.39 of 1994 had attained finality. Again, the thrust of the allegations is that the petitioner had granted injunction in this suit because of his homely relations with Mr Abdul Maniar, who was the Chief Officer of the Nagarpalika. We have already noted in the foregoing paragraphs that the respondent does not produce any cogent and reliable evidence to bring home the charge that the petitioner was maintaining intimate, homely relations with Mr Abdul Maniar by adducing cogent and reliable evidence. Merely because an order passed by a Judicial Officer is alleged to be contrary to the express provisions of law, that by itself, is not sufficient to infer that the order is passed with

an oblique and ulterior motive. It is the duty of the contesting learned advocates for the contesting parties to bring it to his notice and even after the legal position is brought to his notice he passes an order in violation of the express provisions of law the remedy is to challenge the same in higher forum. But, unless there is convincing material, it cannot be inferred that the order is actuated by ulterior and oblique motive. However, in the case on hand, the facts are not in conformity with what we have said in this regard. Therefore, the act of the petitioner in granting injunction in respect of a parcel of land forming part of the Town Planning Scheme is not sufficient to hold that the order was an outcome of his intimate relations with said Mr Abdul Maniar and a product of ulterior and oblique motive.

14 In this regard, it is very relevant to refer to the observations made by the learned Enquiry Officer who was conscious of the fact that the departmental enquiry does not empower the Enquiry Officer to sit in appeal. The documentary and oral evidence and original papers were placed before the Enquiry Officer and the Enquiry Officer after going through the original papers, came to the conclusion that there was a collusion between the parties. But, then the Enquiry Officer cannot sit in appeal over the orders passed by the Judicial Officer, which are the subject matter of the appeal. It has to be kept in mind that from whatever evidence which is brought-in during the departmental enquiry the Enquiry Officer has to independently arrive at the conclusion whether the charges levelled against the delinquent are brought home or not. It is true that it cannot be laid down as a general rule that if the judicial orders are not challenged before the higher authority, no departmental proceedings can be initiated against a Judicial Officer. Laying down such a proposition would be hazardous and would give a licence to unscrupulous judicial officers to indulge in corrupt practice. If the orders passed by the Judicial Officer, which are not carried in appeal

are palpable or of such a nature that mere reading of such orders would make even a common man to feel that the same is an outcome of extraneous considerations the departmental proceedings can be initiated against judicial officers. But, in the present case the evidence produced during the course of the departmental enquiry is so shaky that it is very difficult to agree with the findings of the enquiry officer that the orders passed by the petitioner were result of his thick and homely relations with said Mr Abdul Maniar and that the orders were actuated out of ulterior motive. Therefore, we find it very difficult to agree with the findings arrived at by the learned Enquiry Officer and the ultimate decision of the High Court on its administrative side to dismiss the petitioner from service.

15 Learned advocate for the petitioner has relied upon a judgment of the Honourable Supreme Court in the case of Nirmalaben J Jhala v. State of Gujarat And Another, reported in (2013) 4 SCC 301 in paragraph 6 has discussed the aspect of standard of proof required in a domestic enquiry and quoted with approval from a previous judgment in the case of M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475, which reads as under:

“.. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He



cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.”

16 Moreover, on the question of integrity of a Judicial Officer, the Honourable Supreme Court in this judgment has relied upon its earlier judgment in the case of M.S. Bindra v. Union of India & Ors., AIR 1998 SC 3058 and has reproduced the relevant passage, which runs as under:-

“While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label ‘doubtful integrity’.”

17 Moreover, the Honourable Supreme Court has in this judgment very succinctly explained the method and manner of evaluating the evidence in a domestic enquiry in the following words:

“In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahlad Saran Gupta (supra) does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee.”

18 The Honourable Supreme Court was concerned with the protection which the High Court is expected to extend to the Judicial Officers in appropriate cases and has held as under:

“Duty of Higher Judiciary to protect subordinate judicial officers:

(a) In *Ishwar Chand Jain v. High Court of Punjab and Haryana & Anr*, AIR 1988 SC 1395, it was held:

“14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a, constitutional obligation to guide and protect, judicial officers. An honest strict judicial officer is likely to

have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders ..... no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law..... It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.”

(b) In *Yoginath D. Bagde v. State of Maharashtra & Anr*, AIR 1999 SC 3734, it was held:

“The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs.”

(c) A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure - contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. “Judge bashing” has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and

favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Vide : L.D. Jaikwal v. State of U.P, AIR 1984 SC 1374; K.P. Tiwari v. State of Madhya Pradesh, AIR 1994 SC 1031; Haridas Das v. Smt. Usha Rani Banik & Ors., etc. AIR 2007 SC 2688; and In Re : Ajay Kumar Pandey, AIR 1998 SC 3299)

(d) The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them “Judge bashing” becomes a favourable pastime. In case the High Court does not protect the honest judicial officers, the survivor of the judicial system would itself be in danger.”

19 The ratio and principle expounded by the Honourable Supreme Court in the above judgment and the concern expressed as to the protection to be extended by the High Court are applicable to the present case.

20 In the result, the petition succeeds and the same is hereby allowed. The final decision dated 4/14<sup>th</sup> September 2009 of the High Court and the Notification dated 1<sup>st</sup> December 2009 of the State Government in Legal Department are hereby quashed and set aside.

21 Coming to the question of reinstatement, it is stated by the learned advocate for the petitioner that the petitioner has already reached the age of superannuation and therefore the relief of reinstatement cannot be granted. It is, therefore, directed that the petitioner to be treated to have continued in service and retired on the day of his superannuation and he be paid all the benefits including full

back-wages with interest at the rate of 9%. Rule is made absolute with no order as to costs.

**(RAVI R.TRIPATHI, J.)**

**(A.G.URAIZEE,J)**

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