Babubhai Ishwarlal Patel vs Pachchim Gujarat Vij Co. Ltd. & 3 on 1 September, 2016

Author: J.B.Pardiwala

Bench: J.B.Pardiwala

C/SCA/2934/2008 ORDE

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2934 of 2008

[On note for speaking to minutes of order dated 03/08/2016 in C/SCA/2934/2008]

With
SPECIAL CIVIL APPLICATION NO. 4098 of 2008
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BABUBHAI ISHWARLAL PATEL....Petitioner(s) Versus PACHCHIM GUJARAT VIJ CO. LTD. & 3 . . . . Respondent(s) ========== Appearance:

MR BJ TRIVEDI, ADVOCATE for the Petitioner(s) No. 1 MR JT TRIVEDI, ADVOCATE for the Petitioner(s) No. 1 MS JIGNASA B TRIVEDI, ADVOCATE for the Petitioner(s) No. 1 MR MD PANDYA, ADVOCATE for the Respondent(s) No. 3 MR KM PATEL SR ADVOCATE WITH MS MAYA S DESAI, ADVOCATE for the NOTICE NOT RECD BACK for the Respondent(s) No. 1 - 2 , 4
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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA Date : 01/09/2016 ORAL COMMON ORDER
This Note for Speaking to Minutes is not pressed since Mr. Trivedi, the learned counsel would like to prefer a Miscellaneous Civil Application for review or necessary clarification. The Note is accordingly is disposed of.

(J.B.PARDIWALA, J.) chandresh HC-NIC Page 1 of 52 Created On Sat Sep 03 03:27:53 IST 2016 1 of 52 IN THE HIGH COURT OF GUJARAT AT AHMEDABAD SPECIAL CIVIL APPLICATION NO. 2934 of 2008 With SPECIAL CIVIL APPLICATION NO. 4098 of 2008 FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES 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 or NO any order made thereunder ?

========== BABUBHAI ISHWARLAL PATEL....Petitioner(s) Versus PACHCHIM GUJARAT VIJ CO. LTD. & 3 . . . . Respondent(s) ========== Appearance:

MR BJ TRIVEDI, ADVOCATE for the Petitioner(s) No. 1 MR JT TRIVEDI, ADVOCATE for the Petitioner(s) No. 1 MS JIGNASA B TRIVEDI, ADVOCATE for the Petitioner(s) No. 1 MR MD PANDYA, ADVOCATE for the Respondent(s) No. 3 MR KANUBHAI PATEL, SENIOR ADVOCATE WITH MS MAYA S DESAI, ADVOCATE for NOTICE NOT RECD BACK for the Respondent(s) No. 1 - 2 , 4

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA Date : 03/08/2016 HC-NIC Page 2 of 52 Created On Sat Sep 03 03:27:53 IST 2016

2 of 52 CAV COMMON JUDGMENT 1 Since the issues raised in both the captioned writ applications are interconnected and also more or less the same, those were heard analogously and are being disposed of by this common judgment and order.

2 In both the writ applications, the writ applicants, retired employees of the Paschim Gujarat Vij Company Limited, have raised issues as regards their retiral benefits. The writ applicant of the Special Civil Application No.2934 of 2008 had joined the services of the erstwhile Gujarat Electricity Board on 23rd February 1973 as the 'Junior Assistant'. Whereas, the writ applicant of the Special Civil Application No.4098 of 2008 had joined the services of the erstwhile Gujarat Electricity Board (for short, 'the G.E.B.') in April 1980 as a 'Junior Engineer'.

3 At the time of the filing of the two writ applications, the writ applicant, namely, Shri R.B. Patel was serving as the 'Deputy Superintendent' in the Accounts Branch of the G.E.B. Whereas the writ applicant Shri Babubhai Ishwarlal Patel was serving as the 'Deputy Engineer' in the G.E.B. 4

A criminal complaint came to be filed by one Mr. Manilal Patel, the proprietor of M/s. Shriram Industries against both the writ applicants herein for the offence punishable under the provisions of the Prevention of Corruption Act, 1988.

5 The prosecution instituted against both the writ applicants culminated in the A.C.B. Case No.2 of 1989. The A.C.B. Case No.2 of HC-NIC Page 3 of 52 Created On Sat Sep 03 03:27:53 IST 2016 3 of 52 1989 was tried by the Special Judge, Mehsana, and by judgment and order dated 9th September 1991, both the writ applicants herein were held guilty of the charge and were convicted for the offence punishable under Section 7 read with Section 12 of the Prevention of Corruption Act, 1988. Both the writ applicants were sentenced to undergo rigorous imprisonment for two years' and fine of Rs.1,000/□each. As both the writ applicants came to be convicted and sentenced to undergo two years' of rigorous imprisonment with fine of Rs.1,000/□each, the show cause notices were issued upon both dated 27th November 1991 calling upon them to show cause as to why they should not be dismissed from service. The two writ applicants filed their respective replies to the said show cause notice, and ultimately, by order dated 23rd January 1992, both the writ applicants came to be dismissed from the service.

6 On being convicted, both the writ applicants preferred the Criminal Appeals Nos.711 of 1991 and 722 of 1991 respectively before this Court. At this stage, it may not be out of place to state that the criminal prosecution was against in all three persons including the two writ applicants herein. The third accused was not a public servant, but he happens to be the brother of the writ applicant Babubhai Ishwarlal Patel. The charge against the original accused No.3 was one of abetting the commission of the offence punishable under Section 12 of the Act 1988.

7 Both the criminal appeals were heard and allowed by this Court. By judgment and order dated 12th December 2006, both the writ applicants herein as well as the third accused were ordered to be acquitted. The operative part of the order passed by this Court in a common judgment allowing both the appeals reads as under:

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> "For the reasons recorded in the judgment, the aforesaid both the appeals are hereby allowed. The judgment and order of conviction and sentence dated 09th September, 1991, passed by the learned Special Judge, Mehsana, in Special ACB Case No.2 of 1989, is hereby quashed and set aside. The accused of both the appeals are ordered to be acquitted from the charges levelled against them in respect of the offence in question. The orig. accused nos.1 and 3 are given benefit of doubt as there is no sufficient evidence to show that the amount accepted by the orig. accused

> no.3 at the instance of orig. accused no.1 was the acceptance of amount of bribe or illegal gratification, and the orig. accused no.2 is given clean acquittal.

All the three accused are also entitled to acquittal on the technical ground as discussed in reference to the authority of investigation by Police Sub□ Inspector Shri Rana, and therefore, they are acquitted accordingly.

Order and finding accordingly. The bail bond executed by each accused person stands discharged. The amount of fine paid, if any, shall be refunded to the respective accused on proper identification."

8 On being acquitted, both the writ applicants were reinstated in service, but with no back wages, increments or any consequential benefits.

9 In such circumstances, both the writ applicants preferred their respective representations in this regard, but those were rejected.

10 The writ applicant Shri R.B. Patel of the Special Civil Application No.4098 of 2008 retired from service on 31st March 2008. Whereas, the writ applicant Shri Babubhai Ishwarlal Patel of the Special Civil Application No.2934 of 2008 retired on 30th June 2011.

11 Again at this stage, it would not be out of place to state that so far the writ applicant Shri Babubhai Ishwarlal Patel of the Special Civil Application No.2934 of 2008, was acquitted by the High Court by giving the benefit of doubt. Whereas the writ applicant Shri R.B. Patel of the HC-NIC Page 5 of 52 Created On Sat Sep 03 03:27:53 IST 2016 5 of 52 Special Civil Application No.4098 of 2008 was given a clean acquittal.

12 Since the reinstatement in service was without back wages and other consequential benefits, the two writ applications have been filed for appropriate reliefs in this regard.

13 It appears from the materials on record that the present writ applications were heard by a learned Single Judge and were ordered to be rejected by the judgment and order dated 7th January 2014. A common question of law was framed by the learned Single Judge, which reads as under:

> "A dismissed employee, (dismissed pursuant to conviction by the competent court with regard to the offenses registered against him and particularly not at the instance of employer), if reinstated on account of an order of acquittal by appellate court, would be automatically entitled for back wages and all other consequential benefits, in absence of any Rules or Circulars framed or issued by the employer and particularly such employer

is a State within the meaning of Article 12 of the Constitution of India?"

14 While rejecting both the writ applications, the learned Single Judge in paras 10 and 11 held as under:

> "10 In view of the above discussions as well as in the backdrop of the present case, the common question of law formed by this Court at the beginning of the present judgment and order is answered as under:
>
> In absence of any specific Rule framed by the Institution or Circular issued by it, an employee who faced criminal prosecution not at the behest of the institution would not be entitled for any back wages or any other consequential benefits, the period for which he was not working with the employer, on his reinstatement in service on account of acquittal by a competent court in a criminal case.
>
> 11 In the result, both the petitions deserve to be rejected and are rejected accordingly. Rule in both the petitions is discharged."

15 It appears that thereafter, two Miscellaneous Civil Applications HC-NIC Page 6 of 52 Created On Sat Sep 03 03:27:53 IST 2016 6 of 52 Nos.491 of 2014 and 913 of 2014 respectively were filed for review of the judgment and order passed by this Court dated 7th January 2004 referred to above. Both the review applications came to be allowed by the learned Single Judge vide judgment and order dated 4th May 2015, and the judgment and order passed in the main matters was recalled.

16 While allowing the two review applications, the learned Single Judge in paras 11, 12, 13 and 14 noted the submissions of the learned counsel for the applicants. Paras 11, 12, 13 and 14 read as under:

> "11 Mr. B.T. Trivedi, learned Advocate, appearing for the applicant, has vehemently submitted that the respondent is a Government company and, therefore, it was expected that while dealing with the rights of its employees, it would act in fair and transparent method. He would submit that when specific contentions was raised by the petitioner with regard to the applicability of Regulation No. 241 to the petitioners in the memo of petition, instead of making its stand clear, an incomplete and vague reply was filed on behalf of the respondents through its Industrial Relations Officer on 19.11.2011. He would submit that it was the specific contention of the petitioner that Regulation No.241 would be applicable to those employees, who have been reinstated subsequent to their acquittal in criminal case,who is dismissed and/or removed and/or suspended employee, he shall be given pay, allowances, etc referred in the said

regulation itself. However, in the another affidavit-in-reply dated 5.3.2012 by the concerned Industrial Officer, it was categorically stated that the said Regulation No. 241 would be applicable only with those cases, in which, the persons have been either dismissed or suspended or removed pursuant to a departmental inquiry and not pursuant to acquittal from a criminal case. He would submit that on this line itself, learned Advocate appearing for the respondents had made submissions which have been recorded by the court and are reproduced in the judgment itself and particularly in Paragraph No.4.3, 4.5 and Paragraph No.6 of the judgment. He would submit that the respondents were aware that Regulation No. 241 is also applicable to the employees, who were subjected to criminal proceedings, which are now amply clear from the information supplied by the respondents under the Right to Information Act. By taking me through the Communication dated 11.2.2014, issued by Information Officer from Uttar Gujarat Vij Company Limited, he would submit that the company is following the provisions of Regulation-241, if, an employee was subjected to criminal case and was acquitted by a competent court. He would submit that, though, the petitioners were HC-NIC Page 7 of 52 Created On Sat Sep 03 03:27:53 IST 2016 7 of 52 initially convicted by the Sessions Judge, they have been acquitted by the High Court and, therefore, by all means, they are treated to be, as if, they have never been found guilty of an offence. Mr. Trivedi would, therefore, submit that the respondents have not come before the court with clean hands and have suppressed material facts from the court so that they can achieve the result as per their wish and desire.

12 Mr. Trivedi, has also relied on a Communication dated 18.3.2014 issued by an Officer under the Right to Information Act of the Gujarat Vij Company Limited, by which it has been made clear that even, if, an employee is acquitted in appeal proceedings, while reinstating him, the procedure is required to be followed under Regulation No.241. He, therefore, would submit that the respondents ought to have disclosed the correct facts before the Trial Court either in the affidavit-in-reply or at the time of hearing of the writ petition when the specific queries were put-forward by the Court.

13 The second contention of Mr. Trivedi is with regard to the stand taken by the respondents when the submissions were made by the petitioner to give equal treatment to him since another employee Mr. R.J. Patel, who had faced criminal case, was given all benefits and whose case was considered as per Regulation No. 241 by the respondents. The respondents have not in clear terms replied this contention in their affidavit nor learned Advocate appearing for the respondent had correctly put forwarded the details of the proceedings with regard to the said R.J.Patel

i.e. whether action was taken pursuant to the departmental proceedings or pursuant to criminal proceedings. He would submit that the said Mr. R.J. Patel was tried for the offenses punishable under the Prevention of Corruption Act, however, was acquitted by the Trial Court itself. He would submit that it was the case of the respondent that said R.J. Patel was subjected to departmental inquiry which is not correct since the applicant received an information from the Gujarat Vij Company Limited by communication dated 26.2.2014 wherein it has been made clear that no departmental inquiry was initiated against said R.J. Patel. He would submit that the said R.J. Patel was suspended pursuant to a criminal complaint lodged against him by Anti Corruption Bureau of Mehsana. By taking me through the letter dated 15.5.1990 issued by the Gujarat Electricity Board, which is now produced, he would submit that it is clear from the above communication that the said RB Patel was suspended pursuant to a criminal complaint. He, therefore, would submit that, if, the respondents would have disclosed the correct facts before the court, the rights of the petitioner would have been dealt with accordingly.

14 Mr. Trivedi, learned Advocate, has vehemently submitted that since the respondent is a government company, the officers, who filed three affidavits □n □reply before the court of law, are expected to disclose all the correct facts. He would further submit that by filing inappropriate and HC-NIC Page 8 of 52 Created On Sat Sep 03 03:27:53 IST 2016 8 of 52 incorrect affidavits, they have tried to mislead the court, which would be a contempt and are of a criminal nature and, therefore, appropriate actions are required to be taken against them. Mr. Trivedi has also submitted that the Advocate, who advanced the case of his client, is an officer of the court at the first instance and is expected to submit before the court the correct facts, after verifying the same from the client and, particularly, where his client is a government, a government company or a corporation, etc. In support of his submission with regard to taking stringent action, he has relied upon a decision of the Apex Court in the case of S.P. CHENGALVARAYA NAIDU (DEAD) BY LRs vs. JAGANNATH (DEAD) BY LRs & ORS., as reported at AIR 1994 SC 853. He would submit that withholding of a vital document, which is relevant to a litigation, is a fraud committed with the court by that person. Such persons are required to be thrown out of the court on the said ground alone. He has also relied upon a decision of this Apex Court in the case of A.V. PAPAYYA SASTRY & ORS. vs. GOVERNMENT OF A.P. & ORS. as reported at AIR 2007 SC 546 and particularly drawn my attention on paragraphs 28 and 31 of the said judgment. He would submit that strict action is required to be taken against the respondents. He has also relied upon a decision of the Honble Apex Court in the case of MARIA MARGARIDA SEQUERIA FERNANDES & ORS. vs. ERASMO JACK DE

SEQUIERIA (Dead) through L.Rs. as reported at AIR 2012 SC 1727 and particularly has relied upon the observations made by the Honble Apex Court in paragraph 31 onwards which deals with the truth as guiding star judicial process."

17 In paras 15, 16, 17 and 18, the learned Single Judge noted the submissions, which were canvassed on behalf of the company. Those are as under:

"15 By relying upon a decision of the Honble Apex Court in the case of DHANANJAJ SHARMA vs. STATE OF HARYANAN & ORS. as reported at AIR 1995 SC 1795. Mr. Trivedi submitted that it has been held by the Honble Apex Court that filing of false affidavit in the court does not only obstructs but perverts course of justice and, therefore, such deponent is guilty of criminal contempt. He would submit that filing of false affidavit in the present case would require strict action against the person who has filed false affidavit in the matter.

16 The applicant of MCA No. 913 of 2014 has not filed any appeal under Clause 15 of the Letters Patent, however, has prayed to review and recall the judgment dated 7.1.2014 on the grounds which have been raised by another applicant. Learned Advocate Mr. Dhaval Vakil appearing for the applicant has adopted the arguments advanced by learned Advocate Mr. Trivedi appearing for another applicant.

HC-NIC Page 9 of 52 Created On Sat Sep 03 03:27:53 IST 2016 9 of 52 17 On the other hand, learned Advocate Mr. Mayur Pandya, who had appeared in the writ petitions as well as in the present applications, has opposed these applications, which have been filed under the provisions of Order 47 of the Code. He would submit that the scope of review is very limited and the documents which have been produced along with the application cannot be taken into consideration while reviewing or recalling a decision. He would submit that sufficient opportunity was given to the petitioner to establish the case before the court which was not availed by any of the applicants. It was submitted that whether Regulation No. 241 is applicable or not, cannot be depend upon the information gathered subsequent to the determination of such question and when the court has already declared a judgment after examining the material available on the record. By taking me through the affidavit filed by the same Industrial Relation Officer dated 9.7.2014 in the present applications, he would submit that there may be inaccurate reproduction of contents of submissions but the same has not affected the decision on the relevant issue, which was framed at the end of the hearing. He would submit that no false statement has been made in the affidavits filed by the respondents in the writ petition.

18. Mr. M.D. Pandya, learned Advocate, appearing for respondents, reply the contention about another employee RJ Patel, would submit that his case is not at par with the present applicant. He would submit that it was never pleaded in the writ petition that RJ Patel was subjected to departmental inquiry and, therefore, there was no reply on that line. Therefore, he would not be in a position how the observations have been made in paragraph 4.5 of the judgment. He would submit that Shri R.J. Patel was never convicted, however, the applicants were at the first instance were convicted."

18 Ultimately, the final conclusion drawn by the learned Single Judge is in paras 28, 29, 30, 31, 32 and 33. The same reads as under:

> "28 It is true that the writ petitions were heard extensively and the documents which are now produced were not on record for consideration of the court. Therefore, while hearing the matter and dealing with the submissions made by either sides and appreciating their contentions raised in the memo of petition and reply thereto, I am of the firm view that Regulation 241 has been dealt with as if the same would be applicable only in the case of an employee, who has been dismissed, removed or suspended pursuant to the departmental proceedings only. If the relevant paragraphs of two affidavits of the respondents filed in the writ petitions are perused, an impression is created in the mind that Regulation 241 would not be applicable to the petitioners since they were HC-NIC Page 10 of 52 Created On Sat Sep 03 03:27:53 IST 2016 10 of 52 acquitted in appeal proceedings. Therefore, the observations in Para 4.3 and 4.5 are made keeping in view the affidavit filed by the respondent as well as the submissions made by the learned Advocate appearing for the respondent and accordingly I have dealt with the case of the petitioner as, if, the same were not applicable and did not consider the case of the petitioner accordingly.
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> 29 The judgments relied upon by the learned Advocates Mr. Trivedi are not dealt with in detail since I have found that there was no intention on the part of the respondents to make a false statement either in the affidavit in reply or additional affidavits. Since I do not want to take any action against the concerned Lawyer, who appears for the respondents, some of the judgments which deal with the conduct of the Lawyer in the court proceedings, the same not have been dealt with in detail.
>
> 30. I am not sure what would have been the findings if all the facts were placed before the court since there may be a scope for either side to plead their case with regard to comparing the case of Mr. R.J. Patel with the present petitioners. The submission made by Mr. Pandya, with regard to producing all the documents along with the present application should

not be looked into, cannot be accepted since the documents are collected under the Right to Information Act, which deals with the procedure adopted by the respondent company while dealing with the case of an employee under Regulation 241. It is not expected from a citizen that each and every detail would be available with regard to his co-employee, who had been dealt with separately in another case. Now, citizens are getting the full detail under the Right to Information Act, and that, in my opinion, they have all rights to produce the same before the court for correct and true adjudication of a matter and to come to the right conclusion in a case.

31. As far as taking stringent action against the respondents are concerned, the affidavits are not a total falsehood which would prompt this court to take action for contempt and that too for criminal contempt.

32. The judgments relied upon by the learned Advocates Mr. Trivei are not dealt with in detail since I have found that there was no intention on the part of the respondents to make a false statement either in the affidavit-in-reply or additional affidavits. Since I do not want to take any action against the concerned Lawyer who appears for the respondents, some of the judgments which deal with the conduct of the Lawyer in the court proceedings, the same have not been dealt with in detail.

33. I appreciate the affidavit filed by the learned Advocate who appears for the respondents and his explanation, however, I do not find any malice or intention on his part in arguing the case of his client. Therefore, I refuse to take any stringent action against the respondents or the HC-NIC Page 11 of 52 Created On Sat Sep 03 03:27:53 IST 2016 11 of 52 learned Advocate appearing for the respondents. However, I would certainly like that the petitions are required to be heard afresh keeping in mind all the relevant documents.

Hence, following order:

Judgment and Order dated 7.1.2014 passed by this court in Spl. C.A. No. 4098 of 2008 with Spl. C.A. No. 2934 of 2008 is hereby recalled.

It would be open for the petitioners to file amendment application with regard to their claims under the provisions of Regulation-241 as well as their claim of equal treatment like other co-employees. It would be open for the petitioner to raise all the contentions and produce relevant documents in the Writ Petition on or before 12th June, 2015."

19 In such circumstances referred to above, both the writ applications have been placed once again for final hearing.

20 Mr. J.T. Trivedi, the learned counsel appearing for the writ applicants invited my attention to the Gujarat Electricity Board Service Regulations. The Regulations were framed by the Board in exercise of powers conferred upon it by Section 79(c) of the Electricity (Supply) Act 1948. Mr. Trivedi has placed strong reliance on the Regulation No.241, which reads as under:

> "241 (1) When an employee of the Board who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order
>
> (a) Regarding pay and allowances to be paid to the employee for the period of his absence from duty.
>
> (b) Whether or not the said period shall be treated as period spent on duty.
>
> (2) Where the authority mentioned in sub□rule (1) is of opinion that the employee has been fully exonerated or in the case suspension that it was wholly unjustified the employee shall be given the full pay and allowance to which he would have been entitled had he not been HC-NIC Page 12 of 52 Created On Sat Sep 03 03:27:53 IST 2016 12 of 52 dismissed, removed or suspended as the case may.
>
> (3) In other case i.e. when the suspension is not wholly unjustified or the employee has been partially exonerated, he shall be given such proportion of pay and allowance as the competent authority prescribe by a specific order.
>
> (4) In case falling under clause (2), the period of absence from duty shall be treated as a period spent on duty for all purpose.
>
> (5) In cases falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specific purpose provided if the employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the employee.
>
> (6) If the employee is found to be guilty or partially guilty he shall be liable to be punished according to the gravity of charge against him."

21 By placing reliance on the Regulation No.241 referred to above, Mr. Trivedi vehemently submitted that when an employee of the Board, who has been dismissed from service, is reinstated, then the Board owes a duty to consider the claim of such employee so far as the back wages

and other benefits are concerned. The principal argument of Mr. Trivedi is that the Regulation No.241 would apply to both i.e. the departmental inquiry as well as criminal prosecution. Therefore, according to Mr. Trivedi, if an employee of the Board is dismissed from service on account of conviction by a Criminal Court, and later, if that employee is acquitted by the higher Court, then he is entitled to claim the full wages and allowances after deducting the amount of subsistence allowance already paid to him for the period of his absence from duty.

22 Mr. Trivedi also invited my attention to a circular issued by the Board in this regard. The G.E.B.'s circular No.ENT/III/DA/10802 dated 18th September 1964 contains instructions in the form of guidance. The relevant part of it reads as under:

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> "The following instructions are therefore, issued for the guidance of the competent officers:
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> (A) Suspension:
> (I) Departmental proceedings:
>
> Under Service Regulation No.163 read with clause 6 of the Board's Employees' Conduct, Discipline and Appeal Procedure an employee charged with an act misconduct is liable to be suspended by the competent authority pending the result of the inquiry. If his continuance on the post held by him or in the office in which he is working is likely.
>
> (a) to vitiate the inquiry.
> (b) to become detrimental to the proceedings or to the interest of the Board.
>
> As expressly laid down into the note below the aforesaid clause 6, recourse to suspension should not normally be taken and should as far as possible avoided. It, however, suspension is found to be inevitable in any particular case, it is necessary that the inquiry should be completed and decision given within eight days from the date of suspension.
>
> (II) Criminal Proceedings:
>
> An employee who is arrested by the police on criminal charge should ordinarily be considered as under suspension for any period during which he is detained in custody during the period when he is not in custody i.e. when released on bail, he is liable to be suspended by the

competent authority if the charge made against him.

(a) is connected with his position as a Board's employee; or

(b) is likely to embarrass him in the discharge of his duties; or

(c) involves moral turpitude (III) General Instructions:

Suspension of a Board's employee should not be resorted to too lightly Suspension should be ordered only when the circumstances are found to justify it. Ordinarily suspension should not be ordered unless the allegations made against him are of a serious nature and on the basis of the evidence available, there is a prima ticle case for dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases it will be sufficient, if steps are taken to transfer the employee concerned to another place in order to ensure that he has no opportunity to interfere with the witnesses or to temper with the evidence against him.

A copy of the order of suspension issued by the competent authority in appropriate cases should invariable be sent immediately to the Head Office at Baroda stating the approximate period during which the order of suspension is likely to remain in force to so as to enable the Head Office to place it before the Board for information.

(B) Reinstatement in service on acquittal The employee under suspension who is acquitted of the offence with which he was charged in a criminal court should be reinstated in service immediately without any avoidable delay and asked to join his duties at once. In such an order of reinstatement the competent authority should make a specific order: □ (I) regarding pay and allowance to be paid to him for the periid of his absence from duty;

(II) whether or not the said period shall be treated as period on duty.

In passing a specific order on the above points the competent authority may go through the judgement of acquittal and find out whether the employee concerned can or cannot be said to have been honourably acquitted. In the former case the period of absence from duty should be treated as a period spent on duty and he should be paid full wages and allowances after deducting the amount of subsistence allowance already and to him for the period of his absence from duty in the latter case the period should not be

treated as a period spent on duty unless the competent authority directs that it shall be so treated for any specific purpose only i.e. increment, etc."

23 According to Mr. Trivedi, since Shri R.B. Patel the writ applicant of the Special Civil Application No.4098 of 2008 was given a clean acquittal by the High Court, he is entitled to all the back wages and other benefits under the Service Regulations. Mr. Trivedi would submit that although Shri Babubhai Ishwarlal Patel, the writ applicant of the Special Civil Application No.2934 of 2008 was acquitted by giving the benefit of doubt, yet it should not make any difference because there is nothing like a clean acquittal and one on the benefit of doubt. According to Mr. Trivedi, there is no concept in the Criminal Procedure Code or the Criminal Jurisprudence like clean acquittal and acquittal on benefit of doubt. Therefore, in such circumstances, according to Mr. Trivedi, the HC-NIC Page 15 of 52 Created On Sat Sep 03 03:27:53 IST 2016 15 of 52 writ applicant of the Special Civil Application No.2934 of 2008 is also entitled to claim the entire back wages with increments, etc. 24 Mr. Trivedi has placed strong reliance on a decision of the Supreme Court in the case of Jaipur Vidyut Vitran Nigam Limited and others vs. Nathu Ram [AIR 2010 SC 19] in support of his submissions.

25 Mr. Trivedi has also placed strong reliance on a Division Bench decision of this Court in the case of Ramsinhji Viraji Rathod v. State of Gujarat [1971 SLR 743]. This decision has been relied upon to fortify the submission that the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure and Criminal Jurisprudence.

26 In such circumstances referred to above, Mr. Trivedi prays that there being merit in both the writ applications, they deserve to be allowed and the reliefs prayed for be granted.

27 On the other hand, both the writ applications have been vehemently opposed by Mr. Kanubhai Patel, the learned senior advocate appearing for the respondents. Mr. Patel submitted that the back wages is not automatic upon reinstatement of an employee in service. According to Mr. Patel, the question of back wages and other benefits has to be considered only if the employer has taken action by way of the disciplinary proceedings and action is found to be unsustainable in law. But, in the case of an employee having involved himself in a crime though later on acquitted could be said to have disabled himself from rendering the service on account of conviction and incarceration in jail. In such circumstances, according to Mr. Patel, the employee is not entitled to the payment of back wages.

HC-NIC Page 16 of 52 Created On Sat Sep 03 03:27:53 IST 2016 16 of 52 28 Mr. Patel submits that the grant of back wages and other benefits is at the discretion of the

employer. According to Mr. Patel, the fact remains that both the writ applicants were convicted by the trial Court of the offence under the Prevention of Corruption Act. Later on, they might have been acquitted by the High Court, but such acquittal does not confer upon them any legal right or any other right to claim the back wages and other benefits.

29 Mr. Patel submitted that no hard and fast rule can be laid down in regard to the grant of back wages. Each case has to be determined on its own facts. In such circumstances referred to above, Mr. Patel, the learned senior advocate prays that there being no merit in both the writ applications, they deserve to be rejected.

30 Mr. Patel, in support of his submissions, has placed strong reliance upon the following decisions of the Supreme Court:

> (1) Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar and another [AIR 1997 Sc 1802] (2) Hukmi Chand v. Jhabua Cooperative Central Bank Limited [(1998) 2 SCC 291] (3) State of U.P and another v. Ved Pal Singh another [1998 III LLJ 615(SC) (4) Union of India v. Jaipal Singh [(2004) 1 SCC 121] (5) Baldev Singh v. Union of India [(2004) 8 SCC 747] HC-NIC Page 17 of 52 Created On Sat Sep 03 03:27:53 IST 2016 17 of 52 (6) Banshi Dhar v. State of Rajasthan [(2007) 1 SCC 324] (7) Virender Kumar, G.M., N. Railway v. Avinash Chandra Chadha [AIR 1991 SC 958] (8) Managing Director, U.P. Warehousing Corporation, v.

Vijay Narayan Vajpayee [AIR 1980 Sc 840] (9) Jaipur Vidyut Vitran Nigam Limited and others v. Nathu Ram [AIR 2010 SC 19] ☐ANALYSIS:

31 Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the writ applicants are entitled to any of the reliefs prayed for in the writ applications.

32 Let me first address myself on the issue whether the Regulation No.241 read in conjunction with the circular referred to above draws any distinction between an order of dismissal in a disciplinary proceeding and an order of dismissal which is recorded as a consequence of the conviction by a Criminal Court.

33 I am of the definite view that a decision has to be taken by the respondents herein even in the case of dismissal on the ground of conviction by the trial Court, which order of dismissal is recalled and the employee is reinstated after he is acquitted of the offence by the appellate Court. Having regard to the language and the object with which the circular came to be issued and also the Regulation

No.241 aforenoted, the same has made no distinction between an order of HC-NIC Page 18 of 52 Created On Sat Sep 03 03:27:53 IST 2016 18 of 52 dismissal in a disciplinary proceeding and an order of dismissal, which is recorded as a consequence of conviction by a Criminal Court.

34 At this stage, let me look into the decision of the Supreme Court in the case of Jaipur Vidyut Vitaran Nigam Limited (supra). In this case, the respondent Nathu Ram was appointed as a casual labour in the erstwhile Rajasthan State Electricity Board and was consequently regularised on the post of Helper, Grade II. One day he was caught accepting bribe by the anti□corruption bureau, as a result of which, he was suspended from the service. The learned Special Judge held Nathu Ram guilty of the offence punishable under Section 161 of the Indian Penal Code and under Section 5(1)(d) read with Section 5(2) of the Anti□corruption Act 1947. An appeal was filed by Nathu Ram before the High Court of Rajasthan at Jaipur challenging the judgment and order of conviction. In view of the conviction recorded by the trial Court, the Corporation terminated his service. The High Court ultimately acquitted the respondent of the charges levelled against him. The Corporation, by virtue of the order of acquittal, reinstated Nathu Ram in service. Nathu Ram was given full pay and allowances for the period of suspension till his joining the duty. There was a break of fifteen years in his service. He retired on 31st May 2003. He thereafter preferred a writ petition in the High Court of Rajasthan at Jaipur in which the following reliefs were claimed by him:

> "1) amendment of the order dated 2nd of June, 1998 reinstating the respondent in service to the effect that the period from 29th of December, 1982 to 14th of December, 1997 may also be treated as period spent on duty for all purposes with full pay and allowances.
>
> 2) consequential benefits of service from the date of his suspension i.e. from 30th of November, 1979 to 2nd of June, 1998, which was the date of his reinstatement, including pay and allowances, annual grade increment, HC-NIC Page 19 of 52 Created On Sat Sep 03 03:27:53 IST 2016 19 of 52 bonus, liveries along with interest @ 12 % per annum from 2nd of June, 1998 to the date of payment, fixation benefits in revised pay scales for the years 1981, 1986, 1989 and 1996, selection scales as per Order dated 25th of January, 1992, arrears of pay and allowance with interest @ 12 % per annum from 2nd of June, 1998 to the date of payment.
>
> 3) Pensionary benefits including pension, gratuity, and leave encashment after fixing his pay in revised pay scales and selection scale along with interest @ 12 % per annum from 1st of June, 2003 to the date of payment."

The learned Single Judge of the High Court directed that Nathu Ram shall be paid the salary and allowances to the extent of what would have been payable to him had he remained under suspension from the date of termination to the date of acquittal. The Nigam, feeling aggrieved by the order of the learned Single Judge, preferred an appeal before the Division Bench of the High Court. The Division Bench of the High Court affirmed the order of the learned Single Judge. Being aggrieved, the Nigam preferred the Special Leave Petition before the Supreme Court. In para - 9 of the judgment, the Supreme Court noted the contentions raised on behalf of the Nigam. Para - 9 reads as under:

> "9. Secondly, it was contended that since the respondent had not worked during the period of dismissal, he was not entitled to any remuneration for the period mentioned herein earlier. In support of this submission, the learned counsel for the Corporation had drawn our attention to two decisions of this Court in the case of Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat and another [1996 (11) SCC 603] and Union of India & Ors. Vs. Jaipal Singh [2004 (1) SCC 121]. Before we deal with the aforesaid two decisions as relied on by the learned counsel for the Corporation, we may consider the Circular dated 3rd of September, 1975, issued by the erstwhile Rajasthan State Electricity Board, on which strong reliance was placed by the courts below, needs to be looked into. It cannot be disputed that the said circular itself was binding on the Corporation. Therefore, at this stage, we may reproduce the said Circular dated 3rd of September, 1975 as well as Regulation 41 of the Regulations which are as follows :
>
> HC-NIC Page 20 of 52 Created On Sat Sep 03 03:27:53 IST 2016 20 of 52 "Sub: Action to be taken in cases where Board's employees are convicted on a criminal charge by a competent court of law.

The following procedure should be adopted in a case of conviction of a Board's employee by a Court of Law on a criminal charge:

> (i)...
>
> (ii)...
>
> (iii) If an appeal/revision against the conviction succeeds and Board's employee is acquitted, the order of dismissal, removal or compulsory retirement based on his conviction which no longer stands, becomes liable to be set aside. A copy of the judgment of the appellate Court should be immediately procured and got examined with a view to decide whether despite the acquittal, the facts and circumstances of the case are such as to call for the departmental

enquiry against the Board's employee on the basis of the allegation on which he was previously convicted.

If it is decided that a departmental enquiry should be held, formal orders should be made:

(1) setting aside the order or dismissal, removal or compulsory retirement, and (2) ordering such a departmental enquiry. Such an order should also state that under Regulation No. 9 of the RSEB (CC & A) Regulations 1962, the Board's employee is deemed to be under suspension with effect from the date of the dismissal/removal/compulsory retirement (A Standard Form□I is enclosed).

In case where neither of the aforesaid course is allowed, a formal order should be made setting aside the previous orders of dismissal, removal and compulsory retirement and reinstating him in service (A Standard Form No. III for such an order is enclosed). The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No. 41 of the Rajasthan State Electricity Board Employees Service Regulations and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purposes and for the period from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had be remained under suspension.

While issuing orders for dismissal, it should be borne in mind that the order is issued by the authority competent to inflict major penalty against that person."

HC-NIC Page 21 of 52 Created On Sat Sep 03 03:27:53 IST 2016 21 of 52 Regulation 41 :□ "Reinstatement after suspension, removal or dismissal:

When an employee who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specified order :

1. (a) Regarding the pay and allowance to be paid to the employee for the period of his absence from duty, and

(b) Whether or not the said period shall be treated as a period spent on duty.

(c) Whether or not the suspension, removal or dismissal was wholly unjustifiable.

2. Where such competent authority holds that the employee has been fully exonerated or in the case of suspension that it was wholly unjustified, the employee shall be given

the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be."

In para - 10, the Supreme Court looked into the various circulars and regulations. Para - 10 reads as under;

10. On a close examination of the Circular dated 3rd of September, 1975 and Regulation 41(2) of the Regulations, as noted hereinabove, it would be clear that the Circular of the Corporation specifically provides that the period between the date of dismissal and the date on which the respondent resumed his duty should be dealt with under Regulation 41(2) of the said Regulations. At the same time, Regulation 41 also clearly says that when an employee who has been dismissed and thereafter reinstated, the authority competent to make the order of reinstatement shall consider the pay and allowances to be paid to the employee for the period of his absence from duty. This Circular along with Regulation 41, therefore, makes it clear that the authority is bound to take into consideration regarding pay and allowances to be paid to the employee for the period of his absence from duty. The Circular also clearly says that in doing so, the employee should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement. From the above discussions, it is clear that the case of the respondent was fully covered by the Circular of the erstwhile Board dated 3rd of September, 1975. The period in question, as noted herein earlier, for payment of allowance is from the date of dismissal i.e. 28.12.1982 to the date of acquittal i.e. 15.12.1997. As noted herein earlier, last paragraph of the Circular dated 3rd of September, 1975 which is important for our HC-NIC Page 22 of 52 Created On Sat Sep 03 03:27:53 IST 2016 22 of 52 purpose may be reproduced as follows :

> "The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No.41 of Rajasthan State Electricity Board Employee Service Regulation and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purpose and for the period from the date of dismissal to the date of acquittal he should not be allowed pay and allowances less than what have been admissible to him had he remained under suspension."

It is not in dispute that the appellant Corporation have themselves given full pay to the respondent from the date of suspension i.e. 30th of November, 1979 to the date of dismissal i.e. 28th of December, 1982 and from the date of acquittal i.e. 15th of December, 1997 to the date of reinstatement i.e. 3rd of June, 1998. Such being the state of affairs, it is

not acceptable that there was any reason for the Corporation not to give the suspension allowances for the period of termination i.e. 28th of December, 1982 to the date of acquittal i.e. 15th of December, 1997 in terms of the circular dated 3rd of September, 1975. This circular also says that the period from the date of dismissal to the date of acquittal, the employee should not be allowed to pay and allowances less than what would have been admissible to him had he remained under suspension. Therefore, from a reading of the Circular, it would be evident that the respondent may be paid the pay and allowances admissible to him had he remained under suspension. This was the view expressed by the learned Single Judge as well as the Division Bench of the High Court. Further, as noted herein earlier, the learned counsel for the Corporation had drawn our attention to two decisions of this Court. So far as the decision in Ranchhodji's case (supra) is concerned, we are of the view that the principle laid down in the said decision is not applicable to the facts and circumstances of the present case. The facts of the present case are quite different from that of the said decision. Apart from that, in that decision, a disciplinary proceeding was initiated and subsequently, it was decided that back wages should be paid if the employer had taken action by way of disciplinary proceeding and the action was found to be unsustainable in law. So far as the present case is concerned, no disciplinary proceeding was initiated. Only the termination order was passed by the Corporation as a result of his conviction in a criminal case. Accordingly, this decision in Ranchhodji's case (supra) is of no help to the Corporation."

Then, in para - 11, the Supreme Court considered the decision in the case of Jaipal Singh (supra) and observed as under:

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Thus, what weighed with the Supreme Court was the circular of the erstwhile Board and relying upon the same, it took the view that the

relief granted by the High Court was justified and proper.

35 In my view, the decision of the Supreme Court in the Jaipur Vidyut (supra) should apply with all force, and more particularly, considering the circular applicable in the present case as well as the Regulation No.241 referred to above.

36 The circular makes it very clear that if an employee is reinstated in service on acquittal, then the competent authority is obliged to go through the judgment of acquittal and find out whether the employee concerned has been or has not been honourably acquitted. If it is ultimately found that the employee has been honourably acquitted, then the period of absence from duty will have to be treated as a period of spent on duty and the employee would be entitled to full wages and allowances after deducting the amount of subsistence allowance already paid to him for the period of his absence from duty.

37 At this stage, let me look into the findings recorded by this Court while giving clean acquittal to the writ applicant:

> HC-NIC Page 24 of 52 Created On Sat Sep 03 03:27:53 IST 2016 24 of 52 "(v) The complainant was habitually violating the conditions of agreement as to use of electricity. Once he was found involved in electricity theft and, therefore, he was compelled to deposit some amount with the Gujarat Electricity Board. Of course, there is no documentary evidence as to on how many occasions he was reprimanded and asked to pay the amount in addition to the regular bill for violating the rules and regulations and/or agreement. But it is admitted by the complainant himself that he has been penalised by the Gujarat Electricity Board for irregularities on more than one occasion. This time the irregularity was noticed by Electrical Inspector who is an independent machinery established by the State, and this statutory authority is sending report of checking made, to the sub□station office of the Gujarat Electricity Board, so that the Gujarat Electricity Board can take appropriate steps to put the things in order and to realise the amount, if the Gujarat Electricity Board is otherwise entitled to. The document at Ex.31 is not disputed by the complainant. This document was seized during the course of drawing of panchnama in the present case and the same has been tendered in evidence by the prosecution. So it is possible to infer that the checking carried out by the accused no.2 is nothing but a confirmation of the wrong found by the Electrical Inspector and in such a situation there was no scope for the Gujarat Electricity Board Officers including the accused nos.1 and 2 to help the complainant in any manner. The accused no.1 has no authority whatsoever to oblige any consumer. He cannot grant concession or offer any special privilege because he has to prepare bills in accordance with the reports

submitted by Technical Section, meaning thereby, from the Engineers, to the Account Section. The Gujarat Electricity Board is arranging for sudden checking, directly through the Divisional Office or the Head Office and for that purpose, such Checking Squads are being sent in different areas consisting team of officers. In the present case, the connection of the complainant was neither checked by the Checking Squad, at the instance of the Divisional Office or Head Office nor the accused no.2 was heading such a squad. The evidence available on record mainly of Shri J.B. Patel, Deputy Engineer, clearly shows that the accused no.2 was sent with the Checking Squad to assist the Checking Squad in the area under the City Sub-Division, Mehsana town on 13 th November, 1987. The Checking Squad was there at Mehsana town and it is in evidence that the accused no.2 had left the Head Quarter on 14th November, 1987 being a non-working Saturday. It is deposed by the said Shri J.B. Patel, Deputy Engineer, that as the accused no.2 had left the Head Quarter on 14th November, 1987, he had performed the duties required to be performed as technical person including the work of distribution of duties to technical staff,etc. The complainant, therefore, only has not given the exact date and time of visit by accused nos.1 and 2, as no such visit of Ram Industry was made by accused nos.1 and 2 jointly. Two documents i.e. test-sheet-Ex.56 dated 13th November, 1987, show that the checking squad visited two HC-NIC Page 25 of 52 Created On Sat Sep 03 03:27:53 IST 2016 25 of 52 different consumers and both these reports clearly show that on that day i.e. on 13th November, 1987, High Tension Consumers were checked. To believe the version of the complainant, firstly the Court shall have to draw inference that on 13th November, 1987, the accused no.2 had separated from the Checking Squad so that he can go to Ram Industry of the complainant with accused no.1 and prepare the checking-sheet Ex.32. For want of any cogent and convincing evidence, such an inference cannot be drawn. On the contrary, the learned trial Judge ought to have said that the document Ex.56 cuts the case of the prosecution as to presence of accused no.2 at Ram Industry. The industry of the complainant was not industry having any High Tension connection and the accused no.2 was not there in the Head Quarter at all. The accused no.1 being a person serving in the Account Section, it was allegedly inferable that he might not have gone to his office. When Shri J.B. Patel, Deputy Engineer (PW-7) has not been controverted by the Public Prosecutor appearing in the trial, his evidence should not be viewed with doubt. So there is no clear cut evidence even to show that the accused nos.1 and 2 both jointly had visited the Ram Industry either on 13th or 14th November, 1987. There is no convincing corroboration even from PW-Rambhai-son of the complainant as to the visit of accused nos.1 and 2 to Ram Industry on 13 th or 14th November, 1987 and it would not be safe for this Court to rely on the evidence of the complainant to believe the case of demand of bribe during the time of

those two days. It is alleged by the complainant that initially an amount of Rs.2500/- was demanded but after negotiations, the amount was settled at Rs.1200/- He has not even named the accused exactly as to who quoted the amount of Rs.2500/- initially and why the place other than the Industry itself was fixed for accepting the amount of bribe, is also not explained by the complainant in a satisfactory manner. Undisputedly, the PW- Harish was not present when the amount of bribe of Rs.2500/- was demanded and the arrival of settlement at Rs.1200/- In the same way, the evidence of Harish is also hazy qua the acceptance of Rs.500/- on 17th November, 1987 because he has not stated anything in paragraph no.2 of his examination-in-chief that after leaving of the person who had accepted the amount from the complainant-father of PW-Harish, whether he had any conversation with his father about the reason of paying the amount or identity of the accused including the name, etc. On the contrary, it emerges from the conversation between the complainant and the person who had accepted the amount of Rs.500/- that the remaining amount shall be paid within a day or two; and between 12-00 hrs. and 13-00 hrs., the father of PW- Harish would be available at their grocery shop and he should come during that hour. At that time, the said person who had accepted the amount had said that any one of them would come. Here it is necessary to mention the words used by this witness in the vernacular Gujarati language because it is possible to infer more than one meaning of those words, which are as under :

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"Temne e vakhte em kahelun ke game te ek bhai leva aavshe".

(Translation : "At that time, it was told that "any one person"/ "any one brother" will come to receive.") According to the learned Additional Public Prosecutor, the Court should interpret the aforesaid words as "either accused no.1 or accused no.2, any of these two would come to collect the amount". On the other hand, the say of Shri Anandjiwala and also of Shri Goswami is, "any of the two brothers either accused no.1 or accused no.3 would come to collect the amount", because the words "ek bhai" carries two different meanings. It conveys (i) "any one person" and, (ii) "one of the brothers". The person who had come to accept an amount of Rs.500/- was accused no.1, was learnt by this PW- Harish subsequently and that too after completion of trap arranged on the strength of the complaint. Before arrival of accused nos.2 and 3 to the shop where the father of PW-Harish was sitting. PW- Haresh had left the shop for having his lunch and before he could return after lunch, the trap was over. Thereafter, he had learnt that the person who had accepted the amount of Rs.500/- was one of those persons who was sitting in the inside room which was there behind the shop and at that time, he also learnt about the name of the person who had accepted the amount of Rs.500/-

as 'Babubhai' i.e. accused no.1."

11."The evidence of panch witness clearly supports the case of the prosecution and the panch witness has said that he was sitting on the opposite side of the complainant at the shop of PW□Harish and was acting as per the instructions given by the trapping officer. He was able to get one thing clear that there was some conversation and settlement about checking carried out earlier. The complainant was insisting for papers prepared by the accused persons and the complainant was interested in seeing that the papers prepared are torn and at that time the accused no.1 was giving assurance to the complainant that he should trust him for the purpose and he should feel assured that the papers would be torn. The hammer is given by the learned Additional Public Prosecutor on this part of evidence and it is submitted that this evidence is sufficient to establish the guilt of the accused. It is not necessary to prove the exact date of demand. The hidden element of demand can be said to have been established. The amount is undisputedly recovered from the accused no.3. The accused no.3 is the real brother of accused no.1. The argument of learned Additional Public Prosecutor is that there was no reason for the accused no.1 to be there at the shop of PW□ Harish during office hours. So the involvement of accused no.1 in the offence can be said to have been established beyond reasonable doubt. These two important circumstances are sufficient to draw inference against the accused no.1 that he had been to the shop of PW□Harish to accept the pre□ decided amount. The another conduct of the accused no.1 which has come on record is that he had asked the complainant to hand 27 of 52 over the amount to accused no.3. If the amount is really the amount of refund of deposit, there was no reason for the accused no.1 to hand over the said amount to accused no.3. The accused nos.1 and 3 are real brothers and now□a□days the Government servants are adopting such practices and the amount of bribe/illegal gratification is being accepted either by close friends or family members. Merely because the accused no.3 is not a public servant, the accused no.1 should not be given a clean chit. The presence of accused no.2 is not required to be established at the spot because there is no convincing evidence of the complainant that he was a party present at the factory when the bribery amount of Rs.2500/□was demanded and ultimate settlement of Rs.1200/□was made. It is true that the panch witness has stated about conversation which had taken place between the complainant and the accused no.1 about tearing off the papers of checking. What weightage should be given to this part of evidence, is the question. The evidence of panch witness in this regard can be said to have been corroborated by panchnama Ex.37. As per the settled legal position, the panch witness is not a trap witness and he is an independent person and it is also settled that merely because he is a Government employee, his deposition should not be viewed with doubts on

the ground that under pressure they are deposing before the Court as per the wish and documents prepared by the Investigating Agency. In the same way, the testimony of a panch witness being a Government employee cannot be rejected merely on the ground that he being a Government employee would not be independent and would support the case of the any how under the fear of departmental action, as relied upon by the learned Additional Public Prosecutor on the strength of the observations by this Court in the case of Gopal Lal Ghisulal Chhipa (supra). Neither there is any submission before this Court nor it is argued seriously before the trial Court on the point that selection of the panch witness in the present case would not be an independent selection and the panch witness examined by the prosecution is not a credit□worthy person. He had no reason to support the complainant on the point of conversation that had taken place after arrival of the accused persons on 19th November, 1987. The time stated by the panch witness also tallies and the amount tendered by the complainant in presence of panch witness whether was refund of deposit or amount of bribe, can be inferred from the evidence of panch witness. The panch witness has negatived the suggestion that he had got an impression that the amount of deposit is being refunded during conversation. So if the version of the panch witness is accepted as trustworthy and reliable piece of evidence, then it can be said that so far as the demand made on 19 th November, 1987, is concerned, and the evidence as to the acceptance of the amount by the accused no.3, the complainant gets corroboration from this witness. It is settled that in a bribery case, even if the complainant does not support the case of the prosecution on the strength of the deposition of the panch, the accused can be held guilty. Here the evidence is such that passing of currency notes was seen by the Police Inspector himself as he was standing away from the shop in the near vicinity. But when the HC-NIC Page 28 of 52 Created On Sat Sep 03 03:27:53 IST 2016 28 of 52 accused nos.1 and 3 have accepted that the muddamal currency notes were received as they were given against the deposit lying with PW□Rambhai, the suggestion or admission made by the accused should not be viewed with prejudice and mere acceptance of amount or recovery of the amount will not be sufficient to raise presumption against the accused. The defence of the accused on preponderance of probability needs appreciation and if the Court finds that the explanation tendered by the accused persons is plausible, then it can be held that the presumption has been successfully rebutted.

12.One probability, which has emerged from close reading of the evidence, is the report of Electrical Inspector made wherein the accused nos.1 and 2 had no voice. They may not be even aware that the Electrical Inspector i.e. State Officer, would inspect the industry and check the load used by the industry of the complainant on 23rd September, 1987 and the Engineer of City Sub Division Office, Gujarat Electricity Board, Mehsana, was supposed to check the load of the

industry of the consumer Pashiben Manilal. So non□ refund of deposit leading to some dispute with the brother of the accountant of the same office i.e. Gujarat Electricity Board, may have tempted the accused no.1 to misuse his office and putting some pressure indirectly and by showing some apprehension of serious consequence, he might have tried to get refund of deposit out of way and against the norms which were maintained by the Ram Industry as said by PW□ Rambhai, son of the complainant and on that count, there might have some conversation in the nature that had taken place at the time of tendering the muddamal currency notes or muddamal thereof. There are two probable views. The accused no.1 being a person conscious that the amount demanded is a bribe amount, instead of accepting the amount personally, he had asked the complainant to hand over the amount to accused no.3 and he might have taken his brother with him only for that purpose; otherwise during office hours there was no reason for the accused no.1 to go to the shop of PW□Harish with his brother. The other parallel and possible view is that as the amount was of accused no.3 and he was entitled to have that refund amount of deposit given by him, the accused no.1 might have asked the complainant to hand over the amount the person who is really entitled to receive the same. So when both these views are possible in light of the admission made by PW□Rambhai and other fact situation that the accused no.1 was not legally in a position to tear off the papers, the accused no.2 independently could have done that. But as per the evidence of the prosecution, prior to raid by ACB on 19th November, 1987, the accused no.2 had informed only his superior i.e. Shri J.B. Patel, Deputy Engineer, about checking done by him of the electricity connection of consumer Pashiben in compliance of the direction given by the Electrical Inspector. So only with a view to get the amount of deposit back, the accused no.1 may have given some false assurance. Legally speaking, this conduct of the accused no.1, for exercising his office as public servant and an attempt to see that his brother gets the amount of deposit back, can be HC-NIC Page 29 of 52 Created On Sat Sep 03 03:27:53 IST 2016 29 of 52 said to be a consideration and an illegal gratification within the meaning of the Act. It is settled that it is not necessary a public servant demanding and/or accepting the bribe must have authority to do something favourable to the accused. It is sufficient to prove that the accused by misusing his office and the status of a public servant indulges in the activity which can be said to be a corrupt practice within the meaning of the Act and other provisions of the Indian Penal Code and the accused no.1 could have been held guilty for the offence punishable under Section 5(A) (1) of the Act and the accused no.3 could have been held responsible as abettor. But for that the prosecution is supposed to place that case against the accused persons. Neither the prosecution can construct totally a fresh new case against the accused persons pending trial gradually during recording of evidence nor the Court can carve out an independent case of different kind or nature. While appreciating the case of the prosecution, it

is settled legal position of our criminal jurisprudence that the prosecution case should stand on its own footing and substantially pleaded before the Court. The crime is to be established beyond doubt as per the charge framed against the accused. The accused cannot be held guilty on any fresh and for different grounds or causes. So it will not be legally possible for this Court to hold that even acceptance f deposit if is believed, then the method adopted by the accused nos.1 and 3 for the purpose with the help of accused no.2 is a corrupt practice. The acceptance of amount of Rs.700/□ on 19th November, 1987 was an illegal gratification and was not a mere refund of deposit."

38 Thus, from the above, it appears that the bribe amount was recovered from the original accused No.3 i.e. the brother of the writ applicant of the Special Civil Application No.2934 of 2008. This Court in appeal noticed that there was absolute nothing against Shri R.B. Patel, and accordingly, gave a clean chit. On the other hand, Shri Babubhai Ishwarlal Patel and his brother were given the benefit of doubt since there was no sufficient, cogent and reliable evidence to indicate that the amount accepted by the original accused No.3 was at the instance of his brother i.e. Shri Babubhai Ishwarlal Patel, the writ applicant of the Special Civil Application No.1934 of 2008.

39 I have no hesitation in coming to the conclusion that so far as the Special Civil Application No.4098 of 2008 is concerned, the same deserves to be allowed outright and in toto. The writ applicant Shri R.B. HC-NIC Page 30 of 52 Created On Sat Sep 03 03:27:53 IST 2016 30 of 52 Patel is entitled to all the reliefs which he has prayed for in his writ application.

40 Let me now consider the case of Shri Babubhai Ishwarlal Patel i.e. the writ applicant of the Special Civil Application No.2934 of 2008. As observed by me the alleged bribe amount was recovered from the original accused No.3 i.e. the brother of Shri Babubhai Ishwarlal Patel. This Court in appeal recorded the finding that there was no cogent and reliable evidence to come to the conclusion that the original accused No.3 had accepted the amount at the instance of his brother i.e. Shri Babubhai Ishwarlal Patel. Having regard to the said doubt, this Court acquitted both the brothers, but by giving them the benefit of doubt. In such circumstances, the moot question would be whether Shri Babubhai Ishwarlal Patel also sails in the same boat with Shri R.B. Patel. The vociferous submission of Mr. Trivedi is that there is nothing like clean acquittal, honourable acquittal and acquittal on benefit of doubt. Once the prosecution fails to prove the case and the accused is acquitted, it is an acquittal for all purpose.

41 In support of his submission, Mr. Trivedi has placed strong reliance on a Division Bench decision of this Court in the case of Ramsinhji Viraji (supra). In the case

before the Division Bench, Ramsinhji Viraji, a Head Clerk to the District Superintendent of Police was arrested for the offence of criminal breach of trust. In his capacity as the Police Accountant, he was placed under suspension. He came to be convictd by the trial Court for the offence punishable under Section 409 of the Indian Penal Code. His appeal before the Sessions Court was also ordered to be dismissed. The High Court exercising revisional power ordered re-trial of Ramsinhji. On re-trial, Ramsinhji was acquitted. Against the judgment and order of acquittal, the State preferred HC-NIC Page 31 of 52 Created On Sat Sep 03 03:27:53 IST 2016 31 of 52 acquittal appeal before this Court. This Court dismissed the acquittal appeal. Ramsinhji was dismissed from service by the Inspector General of Police on the basis of the conviction. On his reinstatement, after he was acquitted, the issue regarding the treatment of the period of suspension as well as the period of absence from duty from the date of dismissal till the date of reinstatement cropped up. The authority took the view that the acquittal of Ramsinhji Viraji from the charges levelled against him was on the basis of benefit of doubt and his acquittal could not be treated as honourable. The Division Bench took notice of Rule 152 of the Bombay Civil Services Rules. It also considered a Supreme Court decision in para - 5 of the judgment and ultimately, took the view that the concept of 'Honourable acquittal' or 'full exoneration' has no place in a criminal trial. The relevant observations are as under:

> "4. Rule 152 of the B.C.S. Rules provides as follows:
>
> "152 (1) when a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order-
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and
>
> (b) whether or not the said period shall be treated as a period spent on duty.
>
> (2) Where the authority mentioned in clause (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed removed, or suspended, as the case may be."

Though the show cause notice, dated February 18, 1967, Annexure J to the petition, uses the words "honourable acquittal" in substance what appears to have been in the mind of the authorities concerned is the concept of full exoneration set out in sub-rule (2) of Rule 152 of the Bombay Civil Services Rules.

5 In Gopalkrishna v. State of M.P. AIR 1968 SC 240 the Supreme HC-NIC Page 32 of 52 Created On Sat Sep 03 03:27:53 IST 2016 32 of 52 Court considered a similar rule, viz., Fundamental Rule 54 applicable to the employees in the Public Works Department of the Madhya Pradesh Government. Shelat, J, delivering the judgment of the Supreme Court pointed out in para 9 at page 243 of the report:□ It is true that the order under F. R. 54 is in a sense a consequential order in that it would be passed after an order of reinstatement is made. But the fact that it is a consequential order does not determine the question whether the Government servant has to be given an opportunity to show cause or not. It is also true that in a case where reinstatement is ordered after a departmental inquiry the Government servant would ordinarily have had an opportunity to show cause. In such a case, the authority no doubt would have before him the entire record including the explanation given by the Government servant from which all the facts and circumstances of the case would be before the authority and from which he can form the opinion as to whether he has been fully exonerated or not and in case of suspension whether such suspension was wholly unjustified or not. In such a case the order passed under a rule such as the present Fundamental Rule might be said to be a consequential order following a departmental inquiry. But there are three classes of cases as laid down by the proviso in Art. 311 where a departmental inquiry would not be held viz., (a) where a person is dismissed removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an inquiry, and

(c) where the President or the Governor as the case may be is satisfied that in the interest of security of the State it is not expedient to hold such inquiry. Since there would be no inquiry in these classes of cases the authority would not have before him any explanation by the government servant. The authority in such cases would have to consider and pass the order merely on such facts which might be placed before him by the department concerned. The order in such a case would be exparte without the authority having the other side of the picture. In such cases the order that such authority would pass would not be a consequential order as where a departmental inquiry has been held. Therefore, an order passed under Fundamental Rule 54 is not always a consequential order nor is such order a continuation of the departmental proceeding taken against the employee.

xx xx xxx In such a case if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in HC-NIC Page 33 of 52 Created On Sat Sep 03 03:27:53 IST 2016 33 of 52

the present case, the order is liable to be struck down as invalid on the ground that it is one breach of the principles of natural justice.

xx xx xx We find that the High Court of Maharashtra has also taken in V R. "Gokhale v. State of Maharashtra. ILR (1963) Bom 537 = (AIR 1963 Bom 137) the same view which we are inclined to take of the nature of function under Rule 152 of the Bombay Civil Service Rules, 1959 a rule in terms identical to those of Fundamental Rule 54 before us."

6 In the instant case, we find that following the correct legal principles, the State of Maharashtra, did issue the show cause notice but the show cause notice and the final order passed under Rule 152 both proceed on the footing that the petitioner was not honourably acquitted; or to use the language of Rule 152(2) "was not fully exonerated".

7 In this context we may point out that a similar problme arose before a Division Bench of the Madras High Court in Union of India v. Jayaram, AIR 1960 Mad. 325; Rajamannar, C. J., delivering the judgment of the Division bench pointed out: □ "There is no conception like "honourable acquittal" in Criminal P. C. The onus of establishing the guilt of accused is on the prosecution, and, if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulation which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended, applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated, he is entitled under the general law, to the full pay during the period of his suspension. To such a case Art. 193(b) does not apply."

Clause (b) of Article 193 of the Civil Service Regulations, which was under

> consideration before the Madra High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated" the words were "honourably acquitted". With respect we are in agreement with the reasoning of Rajamannar C. J. and in our opinion, it is not open to the authorities concerned to bring in the concept of

'honourable acquittal' or 'full exoneration' so far as the judgment of the Criminal Court is concerned. In a criminal trial the accused is only called HC-NIC Page 34 of 52 Created On Sat Sep 03 03:27:53 IST 2016 34 of 52 upon to meet the charge levelled against him and he may meet the charge

- (a) by showing that the prosecution case against him is not true or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused.

The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourabel acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J., in Jayaram's case, AIR 1960 Mad. 325.

8 We find that this decision of the Madras High Court was followed by the Punjab High Court in AIR 1967 Punj. 422 and by the High Court of Jammu and Kashmir in Ghulam Nabi v. State, AIR 1966 J. and K. 27.

9 As against these three decisions and our view regarding the position as it emerges from the Criminal Procedure Code and Criminal Jurisprudence, the learned Assistant Government Pleader, on behalf of the first respondent relied upon certain observations of Narasimham, C.J., in State of Orissa v. Sailabehari, AIR 1963 Orissa 73. The learned Chief Justice of the Orissa High Court has observed at page 78 of the report:□"But the learned Sessions Judge did not acquit the respondent honourably on the ground that the evidence of Gopal Sahu was not false. On the contrary he expressly stated that though there was a strong suspicion against the respondent the prosecution evidence did not completely exclude the possibility of the theory of planting. This only shows that the learned Judge applied the well known rule of criminal jurisprudence that in a criminal case the accused was entitled to the benefit of doubt. Thereafter further departmental enquiry in respect of the same subject matter was not excluded especially as the standard of proof required in such an enquiry against a delinquent public servant is not the same as that required against an accused in a criminal case."

With respect to the learned Chief Justice of the Orissa High Court, we are unable to agree with his reasoning that wherever an accused person has been acquitted in a criminal trial because of the application of the rule of benefit of doubt being given to the accused, there cannot be said to be honourable acquitta. In our opinion, it would be proper on our part to follow the decision of Rajamannar, C. J., cited above rather than the decision of Narashimham, C. J., and we prefer to follow the reasoning of HC-NIC Page 35 of 52 Created On Sat Sep 03 03:27:53 IST 2016 35 of 52 Rajamannar, C. J.

10 In the instant case, it will open to the Government of Maharashtra if it so chose, to start a departmental enquiry in the proper manner for the purpose of establishing whether on the facts and in the circumstances of the case, the petitioner had been fully exonerated or deserved to be fully exonerated or not. In the absence of any such departmental Enquiry, it cannot be said that the State of Maharashtra has applied the correct principles of the facts of the present case.

11 Under these circumstances, the order passed by the State of Maharashtra on April 23, 1968 and communicated to the petitioner by the District Superintendent of Police, Banaskantha District by his letter, dated June 27, 1968, must be set aside and it must be held that the petitioner, who was suspended because there was criminal prosecution against him and was reinstated after he was acquitted is entitled to full pay during the period of his suspension as required under the general provisions of law.

12 We, therefore, quash and set aside the show cause notice, dated February 18, 1968; and we direct the opponents to treat the period from June 6, 1957 to October 28, 1965, as period spent on duty and we further direct the opponent to pay to the petitioner full pay and allowances for the entire period. The opponents will pay the costs of his petition to the petitioner. We further direct that the amount shall be paid to the petitioner within three months of the issuance of the Writ by this High Court. In the result, this Special Civil Application is allowed and the rule is made absolute."

42 I take notice from the materials on record of the fact that Rule 152 of the Bombay Civil Services Rules would be applicable in the present case. This is evident from the information received by Shri R.B. Patel under the Right to Information Act, 2005. In the case of M.V. Chauhan v. State of Gujarat [2000 (1) GLR 090], a learned Single Judge of this Court, while considering Rule 152 of the Bombay Civil Services Rules which is pari materia to Regulation 241 framed by the respondent herein, observed as under:

> "A perusal of the rule discloses the scheme that when a person has been absent from duty either as a result of dismissal, removal or on being suspended is reinstated, the consequence of regularization of period of such HC-NIC

absence from duty and payment of emoluments full or in addition to the subsistence allowance does not follow automatically, but requires order to be made separately in respect of two matters, firstly whether the period under consideration is to be treated as a period spent on duty or not and secondly, regarding the pay and allowance to be paid to the Government servant for the period of his absence from duty. That emanates from sub-rule [1]. Then envisaging distinction between the quality of reinstatement, the rule further provided guidelines for exercising of authority for the purpose of sub-rule [1]. Sub-rule [2] envisages where the Competent Authority is of the opinion that the government servant has been fully exonerated or in the case of suspension, it was wholly unjustified, he would have been entitled to full pay and allowances had he not been dismissed or suspended as the case may be. Sub-rule [3] envisages that in other case not falling in sub rule [2], the government servant shall be given such proportion of pay and allowances as the competent authority may prescribe. Rule also provides that the payment of allowance under clause [2] or [3] to be subject to all other conditions to which such allowances are admissible. Thus, providing for the pay and allowances to be paid for the period in question, namely in the case of full exoneration or a suspension wholly justified, the full pay and allowance in other cases as per the orders made by the competent authority, the provisions in sub-rule [4] and [5] relate the question of period of absence from duty to be treated as a period spent on duty or not. Where a case falls in sub-rule [2], the entire period of absence from duty is to be treated as a period spent on duty for all purposes. That is to say, treatment of entire period of absence from duty as a period spent on duty for all purposes without adjusting against available leave of any kind, is related to grant of full pay and allowances for the period of absence from duty. Sub-rule [5] governs the case of treatment of period of absence from duty in cases not governed by sub-rule [2]. As against treating that period automatically as a period spent on duty, u/s [4] read with rule [2], it envisaged specific order to be made in that regard. A specific order is required to be made to specify for the purpose for which it is to be treated on duty and for the purpose for which it is not to be treated on duty. Sub-rule [4] and sub-rule [5] makes two things amply clear. Where the period of absence is treated as a period spent on duty for all purposes, the payment of full pay and allowance for such period follows, or where sub-rule [2] operates, a specific order for treating the period of absence to be period on duty is not necessary. It follows as a matter of natural consequence. In other words, for the purpose of pay and allowances, scheme of rules intertwines the period of absence treated as period spent on duty for all the purposes which carries full pay and allowances. Sub-rule [3] and sub-rule [5] constitute part of same scheme, where the emoluments are to be paid in proportion as the competent

authority may prescribe. This has obviously reference to the proportion between the period of absence from duty which has been treated as on duty and the period which has not been treated as spent on duty, but is adjusted against leave etc. There may be a case where period HC-NIC Page 37 of 52 Created On Sat Sep 03 03:27:53 IST 2016 37 of 52 though treated as spent on duty for some specified purpose only, but not for the purpose of emoluments. There is no dispute and law is settled by a pronouncement of the Division Bench of this Court in case of Ramsunder Shamlal v/s Y.B.Jhala or his successor reported in 1999[1] GLH 150 that whenever an order is required to be made under sub-rule [3], as it affects the right of civil servant adversely, it is to be made in consonance with the principles of natural justice by affording the incumbent an opportunity of hearing before making such order, curtailing the emoluments or impinging in regularization of the period of absence from duty by not treating it fully or for all purpose to be on duty.

5. In this connection, it will also be apposite to notice that expression `fully exonerated' in the case where a person is being tried on a criminal charges and is acquitted requires consideration of the nature of acquittal. The government in its wisdom for maintaining uniformity has issued guidelines relevant for the present purpose that in what circumstances an acquittal on technical ground can be treated equivalent to acquittal on merit. The resolution of the government dated 2nd April 1983, clause [5] reads that :- "Where the acquittal by court is on technical grounds, and if the government does not propose to go in appeal to a higher court or to take further departmental action, action should be taken in the same manner as if the official has been acquitted by the court on merits."

At least there is no dispute for the purpose of promotion, the acquittal in such event is treated to be a `full exoneration' and acquittal not merely on technical grounds.

6. The facts which requires to be noticed at this stage are that in consequence of acquittal of the petitioner vide judgement of the Supreme Court dated 3rd September 1997, by its order dated 22nd December 1997, respondents have promoted the petitioner to the post in question in consonance with the said resolution. The order of promotion reveals the consideration that the Supreme Court by its order dated 3rd September 1997 has declared the incumbent innocent which the State Government accepts and it has decided not to take any departmental action in respect of those charges as well. With these orders, it also directed that the entire period of absence from duty during suspension upto the date of retirement is to be treated as the period spent on duty uninhibitedly. The purpose for which such period is to be treated on duty was not restricted to any specified purpose. Once an uninhibited order of treating the entire period of absence from duty

as spent on duty is made, the consequence must follow, as envisaged in the scheme of Rule 152, in entitling full pay and allowance to the incumbent as in case of period of absence from duty is deemed to be spent on duty for all purpose."

HC-NIC Page 38 of 52 Created On Sat Sep 03 03:27:53 IST 2016 38 of 52 43 I take notice of the fact that the State Government in the cases in hand did not deem fit to challenge the judgment of acquittal passed by this Court before the Supreme Court. It accepted the judgment.

44 Thus, this Court in M.B. Chauhan (supra) made it clear that no distinction should be drawn between "full exoneration" and "acquittal" on technical ground or benefit of doubt for the purpose of promotion. However, will this proposition hold good so far as the claim for the back wages is concerned. No doubt in this regard, the submission of Mr. Trivedi is fortified to a considerable extent by the Division Bench decision of this Court in the case of Ramsinhji (supra).

45 I take notice of the fact that the decision in the case of Ramsinhji was delivered almost four decades back. Over a period of time, there has been a considerable shift in the concept of 'honourable acquittal' and 'acquittal' on the benefit of doubt. Let me explain in my own way the concept of 'acquittal' on the basis of the benefit of doubt and 'honourable acquittal'. There is nothing like an honourable acquittal, but the appropriate term should be "clean acquittal". In a criminal prosecution, the guilt of the accused has to be proved beyond the reasonable doubt unlike the misconduct to be determined in a departmental proceeding on the preponderance of probability. There is a fine distinction between the two. Abundant caution is always desirable in all spheres of human activities. Any restraint by way of abundant caution need not be entangled with the concept of benefit of doubt. The principle of benefit of doubt belongs exclusively to the Criminal Jurisprudence. The pristine doctrine of the benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, HC-NIC Page 39 of 52 Created On Sat Sep 03 03:27:53 IST 2016 39 of 52 which affords benefit to the accused at the end of the criminal trial. Like in the present case, this Court, while allowing the criminal appeals, took the view so far as Shri Babubhai Ishwarlal Patel is concerned that it was highly doubtful whether the brother of Babubhai Patel had accepted the bribe amount at the instance of Babubhai Patel since the bribe amount was recovered from the brother of Shri Babubhai Ishwarlal Patel. As there was no clear and cogent evidence in this regard, the learned Single Judge of this Court entertained a doubt in his mind and once a

reasonable doubt arises in the mind of the Judge, the benefit ordinarily should go to the accused. It is equally well settled that the benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused. It is nearly impossible in any criminal trial to prove all the elements with scientific precision. A Criminal Court could be convinced of the guilt only beyond the range of a reasonable doubt. In my view, the expression "reasonable doubt" is incapable of a precise definition. The modern thinking is in favour of the view that the proof beyond a reasonable doubt is the same, as the proof which affords moral certainty to the Judge. [See : State of Haryana v. Bhagirath, AIR 1999 SC 2005] 46 Francis Wharton, a celebrated writer on the Criminal Law in the United States has quoted from judicial pronouncements in his book on "Wharton's Criminal Evidence" as follows:

> "It is difficult to define the phrase "reasonable doubt." However, in all criminal cases a careful explanation or the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster Case. He says : It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case HC-NIC Page 40 of 52 Created On Sat Sep 03 03:27:53 IST 2016 40 of 52 which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

47 In the treatise on "The Law of Criminal Evidence" authored by HC Underhill, it is stated:

> "The doubt to be reasonable must be such a one as an honest, sensible and fair□ minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reaosnable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt."

48 In the case of the Deputy Inspector General of Police v. S. Samuthiram [2013 (1) SCC 598], the Supreme Court made the following observations as under:

"The meaning of the expression 'honourable acquittal' came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994) 1 SCC 541 : (AIR 1994 SC 552 : 1993 AIR SCW 4044). In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

"In R.P. Kapoor v. Union of India, AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where HC-NIC Page 41 of 52 Created On Sat Sep 03 03:27:53 IST 2016 41 of 52 the acquittal is other than honourable. In State of Assam and another v. Raghava Rajgopalachari reported in 1972 SLR 44, this Court quoted with approval the views expressed by Lord Williams, J. in (1934) 61 ILR Cal. 168 : (AIR 1933 Cal 800) which is as follows:

"The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra□judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed

to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

> "We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for HC-NIC Page 42 of 52 Created On Sat Sep 03 03:27:53 IST 2016 42 of 52 reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.""

49 A Full Bench of the Madras High Court in the case of Manikandan v. Chairman, Tamil Nadu Uniformed Services Recruitment Board [2008 (4) SLR 213] had the occasion to consider the effect of acquittal or discharge on benefit of doubt. In the said case, the amended Rule 14(b) of the Tamil Nadu Special Police Subordinate Rules was challenged as ultra vires. A learned Single of the Madras High Court sought a reference of the following issues to the Full Bench:

> "i. Whether the acquittal or discharge of a person in a criminal case on benefit of doubt would amount to a stigma on the life of a person so as to make him ineligible as per Rule 14(b), Explanation□1 of the Tamil Nadu Special Police Subordinate Rules?
>
> ii. Whether the non□disclosure of involvement in a criminal case, which has ultimately ended in acquittal, but in some cases disclosed after acquittal, can be a ground for disqualifying the persons concerned from entering into the Government service?"

While answering the reference His Lordship A.P. Shah, J., made the following observations. In the Full Bench His Lordship F.M. Ibrahim Kalifulla (as His Lordship then was) was also a party:

> "20. Having found that the amended Rule 14(b) cannot be assailed as ultra vires, let us now take up the first question referred to the Full Bench, viz., as to whether the acquittal or the discharge of a person on benefit of doubt would make a person ineligible for appointment to public service forever, by virtue of Explanation□1 under Clause (iv) of Rule 14(b) of the aforesaid Rules.
>
> 21. It is contended by the learned Senior Counsel appearing for the petitioners that the Code of Criminal Procedure recognises only one type of acquittal and that the Code does not create a dichotomy between what has come to be accepted in common parlance as "an honourable acquittal"

and "an acquittal on benefit of doubt".

22. The Code of Criminal Procedure, 1973, refers to "acquittal" under HC-NIC Page 43 of 52 Created On Sat Sep 03 03:27:53 IST 2016 43 of 52 Sections 232, 235, 248, 255 and 300. The word "discharge" is used in the Code in Sections 227, 239 and 245. Section 227 enables a Court of Session to discharge an accused if upon consideration of the record of the case and the documents submitted, he considers that there is no sufficient ground for proceeding against the accused. Section 232 enables a Court of Sessions to order the acquittal of a person, if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence to show that the accused committed the offence. Thus, discharge under Section 227 can be ordered before recording the evidence and the acquittal under Section 232 can be ordered after the evidence for the prosecution is recorded.

23. Similarly, Section 239 enables a Magistrate to discharge the accused, if after considering the police report and the documents sent along with it under Section 173, he considers the charge against the accused to be groundless. In cases instituted otherwise than on police report also, the Magistrate is entitled to discharge an accused, if after taking all the evidence as is referred to in Section 244, he considers that no case against the accused has been made out.

24. While the acquittal or discharge referred to in the above provisions, relate to a stage prior to the conclusion of the entire trial, the acquittal contemplated U/s. 248 and 255, by a Magistrate in a warrant case or summons case, is after trial.

25. Thus it is seen that the entire scheme of the Code of Criminal Procedure, 1973, speaks only of acquittal and not of an "honourable acquittal" or "acquittal on benefit of doubt". These concepts appear to have been developed by courts over the years. But there seems to be a reason for this.

26. Section 300 (1) of the Code prescribes that a person tried for an offence by a competent court and convicted or acquitted of such offence, shall not be liable to be tried for the same offence or on the same facts for any other offence which could have been charged against him in the same trial. However, the Explanation to Secion 300 of the Code makes it clear that the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of Section 300. Therefore, the bar under Section 300(1) for a 2nd trial for the same offence or for a 2nd trial on the same facts for any other offence, may not be applicable in certain cases, where an accused is discharged.

27. The reason as to why the Code does not make a distinction between an acquittal on benefit of doubt and an honourable acquittal, is to ensure that no person shall be tried for a second time for the same offence for which he is tried and convicted or acquitted once. What is provided under Section 300(1) of the Code, is only a reassurance of the constitutional right guaranteed under Article 20(2). The principle behind this prescription under Section 300 of the Code is to avoid double jeopardy to a HC-NIC Page 44 of 52 Created On Sat Sep 03 03:27:53 IST 2016 44 of 52 person. If the Code recognises such a distinction, it may make inroads into this concept of double jeopardy.

28. But the concept of double jeopardy, to some extent, is allergic to service law. In as many cases as one can think of, the Supreme Court has made it clear (i) that the imposition of a punishment and the denial of promotion did not amount to double jeopardy and (ii) that the conviction by a criminal Court and the disciplinary proceedings initiated either on the basis of conduct which led to the conviction or on pure questions of misconduct, did not amount to double jeopardy.

29. Since the concept of "acquittal is an acquittal", is an off shoot of the principle of double jeopardy underlying Section 300(1) of the Code, it cannot be imported into service law, where the principle of double jeopardy itself is looked down upon. Therefore, the Explanation 1 to Rule 14(b) of the impugned Rules, treating a person acquitted on benefit of doubt, as a person involved in a criminal case, is only in tune with well settled principles applicable to Service jurisprudence. A person discharged does not even have protection under Section 300 of the Code and hence such a person cannot assail the Explanation 1 to the impugned rule 14(b).

30. Therefore, we hold, in answer to the first issue referred to the Full Bench, that by virtue of Explanation 1 to clause (iv) of Rule 14 (b) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified."

50 In Commissioner of Police v. Mehar Singh [AIR 2013 SCC 2861], the Supreme Court made the following observations:

> "20. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. In R.P. Kapur v. Union of India [AIR 1964 SC 787] this Court has taken a HC-NIC Page 45 of 52 Created On Sat Sep 03 03:27:53 IST 2016 45 of 52 view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.
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> 21. The expression 'honourable acquittal' was considered by this Court in S. Samuthiram (AIR 2013 SC 14 : 2012 AIR SCW 6484). In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal [(1994) 1 SCC 541], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the

accused was honourably acquitted. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

51 Thus, the ratio so far as the Division Bench decision of this Court in Ramsinhji (supra) is concerned, could be said to have stood diluted by passage of time to a considerable extent, and more particularly, in view of the Supreme Court decisions which I have referred to and relied HC-NIC Page 46 of 52 Created On Sat Sep 03 03:27:53 IST 2016 46 of 52 upon. In such circumstances, it is difficult for me to hold that so far as Shri Babubhai Ishwarlal Patel is concerned, he is also entitled to full back wages with all the consequential benefits in that regard.

52 Let me now look into the decisions of the Supreme Court on which strong reliance has been placed on behalf of the respondents. In Ranchhodji Thakore (supra), the appellant was charged for an offence punishable under Section 302 with Section 34 of the Indian Penal Code.

The Sessions Court had convicted the petitioner under Section 302 read with Section 34 of the Indian Penal Code and sentenced him to undergo imprisonment for life. On that basis, the respondent had taken action to dismiss the appellant from service. The appellant challenged the validity of the dismissal order by way of a special civil application under Article 226 of the Constitution of India before the High Court. The High Court directed the respondents to reinstate Ranchhodji in service with continuity, but denied the back wages. The appellant then filed the Letters Patent Appeal No.319 of 1993 which was ordered to be dismissed by a Division Bench. In the Special Leave Petition filed by Ranchhodji, the Supreme Court observed as under:

"3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the

> reason that his service was terminated on the basic of the conviction by operation of proviso to the statutory rules applicable the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant, Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, HC-NIC Page 47 of 52 Created On Sat Sep 03 03:27:53 IST 2016 47 of 52 he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference."

In my view, the aforenoted decision is not helpful to the respondents having regard to the peculiar facts of the case. It needs to be noted that Ranchhodji was charged with the offence of murder. The Supreme Court has drawn a fine distinction between an involvement of an employee in the crime not connected with the service or prosecution instituted at the behest of or by the department itself. In the case of Ranchhodji (supra), as stated above, the case related to the offence punishable under Section 302 of the Indian Penal Code for which the department could not have been saddled with the responsibility of making the payment of full pay and allowances from the date of termination to the date of reinstatement. Besides this, the case of Ranchhodji (supra) has been considered in the case of Jaipur Vidyut Vitran Nigam Limited (supra). Having regard to the regulations and the circulars applicable so far as the case in hand is concerned, the decision of Ranchhodji (supra) would not save the situation for the respondents.

53 In Hukmi Chand (supra), the appellant was employed as a Supervisor with the respondent - Cooperative Central Bank. He was tried under Sections 3 and 7 of the Essential Commodities Act, 1955. He was convicted and sentenced to rigorous imprisonment and fine. Consequently, his services were deemed to have been terminated. His appeal before the Sessions Court was also ordered to be dismissed, but was acquitted by the High Court in revision. The Supreme Court considered Rule 49 framed by the Registrar. The relevant part of it reads as under:

> HC-NIC Page 48 of 52 Created On Sat Sep 03 03:27:53 IST 2016 48 of 52 "(ii) When the sentence awarded by a lower court is set aside by a superior court and the employee is honourably acquitted he may be reinstated in the service of the Bank without any back wages, unless otherwise stated in the order."

The Supreme Court in para - 7 observed as under:

> "It is also contended by the appellant that in his case, not awarding of back wages is unjustified and the order of reinstatement ought to have granted him back wages. The grant of back wages under Sub-rule (ii) is at the discretion of the employer. In the present case looking to the fact that both the trial court as well as the appellate court have convicted the appellant and it was only in revision that he was acquitted on the ground that the prosecution had failed to prove the charges, if the employer, after taking into account all relevant circumstances, decides not to grant back wages to the appellant, such exercise of discretion cannot be considered as totally unreasonable requiring our intervention at this stage, It is to be noted that the appellant was reinstated immediately after the order of acquittal."

Thus, the distinguishing features are two fold. First, the language of Rule 49 referred to above and secondly the observations of the Supreme Court that it was only in revision that the appellant was acquitted. The aforenoted decision also, in my view, does not help the respondents.

54 In State of U.P. (supra), the Supreme Court observed that although the respondent was acquitted by the Criminal Court may be on technical ground or on merits, yet he was not entitled to back wages in the circumstances of the case. The Supreme Court took into consideration the conduct of the respondent and having regard to the same declined to grant the relief of back wages. In the said case, the confidential reports therein indicated doubtful integrity and in such circumstances, the back wages were denied. Such are not the facts so far as the cases in hand are concerned.

HC-NIC Page 49 of 52 Created On Sat Sep 03 03:27:53 IST 2016 49 of 52 55 In Union of India (supra), the Supreme Court considered Ranchhodji Thakore (supra) and denied the back wages on the ground that the department was in no way concerned with the criminal case and therefore, could not have been saddled with the liability for back wages. In the said case also, the respondent Jaipal Singh was charged with the offence of murder under Section 302 of the Indian Penal Code.

56 In Baldev Singh (supra), the Supreme Court, after considering Ranchhodji Thakore (supra) and Jaipal Singh (supra), took the view that merely because the appellant had been acquitted, the same automatically did not entitle him to get the salary for the period concerned. In the said case, the authorities were awaiting the government sanction to grant the consequential relief. In such circumstances, the Supreme Court declined to interfere.

57 In Banshi Dhar (supra), the Supreme Court, after considering Ranchhodji Thakore (supra), observed in paras 9, 10, 11 and 13 as under:

> "9 No hard and fast rule can be laid down in regard to grant to back wages. Each case has to be determined on its own facts. A grave charge of criminal misconduct was alleged against him. He was also found guilty of the charges levelled against him by the Special Judge. The High Court while delivering its judgment dated 16.01.2001 in S.B. Criminal Appeal No. 68 of 1985 inter alia held that the prosecution has not been able to prove that any demand had been made by him.
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> 10 It is now a trite law that judgment of acquittal itself would not have exonerated him of the charges levelled against him. He could have been proceeded against in a departmental proceeding. [See Manager, Reserve Bank of India v. S Maniand others (2005) 5 SCC 100 and Commissioner of Police v. Narendra Singh (2006) 4 SCC 265].
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> 11 Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the HC-NIC Page 50 of 52 Created On Sat Sep 03 03:27:53 IST 2016 50 of 52 decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in Ranchhodji Chaturji Thakore (supra). We do not see any reason to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension."
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> "13 Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the concerned workman was found to be invalid. [U.P. State Brassware Corpon. Ltd and another v. Uday Narain Pandey (2006) 1 SCC 479 and Municipal Council, Sujanpur v. Surinder Kumar, (2006) 5 SCC 173]"

In the aforenoted case, the Supreme Court took the view that the judgment of acquittal itself was not sufficient to exonerate the appellant of the charges levelled against him. He could have been proceeded again in a departmental proceeding, but before the same could be done, the

appellant attained superannuation. In the case in hand, there was no departmental proceedings and not only that, but later on, both the writ applicants were promoted. The Supreme Court observed that the question whether the employee would be entitled to the back wages and other benefits from the date of dismissal to the date of his reinstatement should be left to be decided by the authority concerned, according to law, after the culmination of the proceedings and depending upon the final outcome. Thus, the aforenoted decision on the contrary helps the writ applicants.

58 In my view, none of the decisions referred to and discussed above are helpful to the respondents.

HC-NIC Page 51 of 52 Created On Sat Sep 03 03:27:53 IST 2016 51 of 52 59 The last question I need to answer is as regards the final relief. I have already stated above that so far as Shri R.B. Patel is concerned, the relief prayed for by him deserves to be granted. Thus, the Special Civil Application No.4098 of 2008 is allowed. The impugned orders at Annexures: "E" and "H" are hereby ordered to be quashed. It is declared that the writ applicant is entitled to all the consequential benefits including the full back wages. All the benefits, which are otherwise admissible, shall be calculated and paid to the writ applicants within a period of two months from the date of the receipt of this order. So far as the other reliefs are concerned, it appears that Shri R.B. Patel was also promoted from the due date.

60 So far as the writ application being the Special Application No.2934 of 2008 is concerned, the same is allowed in part. Having regard to the overall facts of the case, I deem fit to order that 50% of the back wages and other consequential benefits be paid to the writ applicant within a period of two months from the date of the receipt of this order. So far as the other relief is concerned, the writ applicant was promoted as the 'Superintendent' on 9th March 2011. He was also given the benefit of the higher grade of the 'Superintendent of Accounts' with effect from 22nd January 2008.

61 Rule is made absolute to the aforesaid extent in both the writ applications.

(J.B.PARDIWALA, J.) chandresh HC-NIC Page 52 of 52 Created On Sat Sep 03 03:27:53 IST 2016 52 of 52