Reserved On : 02/07/2025
Pronounced On : 09/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8467 of 2011

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-.
and
HONOURABLE MR.JUSTICE R. T. VACHHANI Sd/-.

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Approved for Reporting	Yes	No
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M J INDREKAR
Versus
STATE OF GUJARAT - THROUGH SECRETARY & ANR.

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Appearance:
MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
MS SHRUTI R. DHRUVE, AGP for the Respondent(s) No. 1
LAW OFFICER BRANCH(420) for the Respondent(s) No. 2
MR PR ABICHANDANI(102) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR.JUSTICE R. T. VACHHANI

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present writ petition is filed assailing the Notification dated 06.05.2011 passed by the respondent No.1 on the basis of the recommendation made by the respondent No.2-Gujarat High Court, imposing the punishment of dismissal on the petitioner under the provision of Rule 6(8) of the Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971.

BRIEF FACTS :-

2. The petitioner was appointed as a Civil Judge (Junior Division) and Judicial Magistrate (First Class) in 1996. Thereafter, he was promoted to the post of Civil Judge (Senior Division) in 2005. A

charge-sheet dated 23.10.2008 was issued to the petitioner, while he was serving as an Additional Senior Civil Judge and JMFC, Anjar, Gandhidham, District Kachchh at Bhuj *inter alia* alleging that the petitioner had granted an *ex-parte* mandatory injunction on 27.08.2007 to the plaintiffs (owners of the tankers) of Special Civil Suit No.46 of 2007 despite being fully aware that a criminal complaint filed by one Mr.Rajesh Satyanarayan Chaudhary, Manager of Jay Ambica Oil Carriers, regarding the theft of oil from two tankers involving such tankers, was pending. It was further alleged that the petitioner ignored an application (at Exh.14), filed by Mr.Vivek K. Ramchandani, Partner of M/s. Jay Ambica Oil Carriers, seeking to be joined as a party respondent, and instead, he compelled the defendant of Special Civil Suit No.46 of 2007, i.e., Essar Oil Limited, to hand over possession of the tankers to the plaintiffs, vide order dated 10.09.2007 passed below Exh.19. Thus, it is alleged that the petitioner has committed corrupt practice and dereliction of his duty, which tantamount to grave misconduct unbecoming of a Judicial Officer, in violation of the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971.

3. The charge sheet stems out from a complaint allegedly made by complainant - Mr.Rajesh Satyanarayan Chaudhary, Manager of M/s.Jay Ambica Oil Carriers, who was a contractor engaged by the Essar Company for transporting the oil.

4. A regular Departmental Inquiry (being D.I. No.13 of 2008) was conducted. After holding the Departmental Inquiry, a report dated 31.05.2010 was submitted to the respondent no.1-Gujarat High Court. Interestingly, the Inquiry Officer divided the statement of imputations into four charges, giving his independent findings to each of them.

Charge No.1, as carved out by the Inquiry Officer from the charge-sheet, relates to passing of an *ex-parte* mandatory interim injunction order dated 27.08.2007 in favour of the plaintiffs (truck owners) by adopting corrupt practice is proved.

Charge No.4, is interconnected to the Charge No.1, however, the Inquiry Officer has split the same. It is proved that the petitioner assisted the plaintiffs in obtaining possession of the tankers through an unreasoned and casually passed ex-*parte* ad-interim relief order.

However, Charges No.2 and 3 were not held to be proved. Charge No.2, independently framed by the Inquiry Officer, pertained to the application (Exh.14) filed by Mr.Vivek K. Ramchandani, Partner of Jay Ambica Oil Carriers for impleading him as a party respondent. The Inquiry Officer held that the order dated 19.09.2007 passed below Exh.14 by the present petitioner dismissing the application for joining party was correct because there was no dispute regarding ownership of the vehicles and no damage or compensation was claimed but, the suit was mainly filed for such declaration against the illegal detention of the vehicles.

Charge No.3, was found to be not proved since Mr.Rajesh Satyanarayan Chaudhary, the complainant, denied having signed the complaint levelling the allegations, as mentioned in the charge sheet.

5. The Inquiry Officer’s report was forwarded to the Registrar (Law and Inquiry), High Court of Gujarat. On 09.08.2010, the High Court, on its Administrative Side, disagreed with the Inquiry Officer’s findings in respect of Charges No.2 and 3 and issued a show-cause notice to the petitioner. The petitioner, thereafter, submitted a detailed reply. Nevertheless, by the impugned Notification dated 06.05.2011, issued by the Legal Department on the

recommendation of the High Court, the petitioner was dismissed from service with immediate effect under Rule 6(8) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The said notification is under challenge in this writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

6. Learned advocate Mr.Vaibhav Vyas, appearing for the petitioner, at the outset, has submitted that the petitioner has been victim of the illegal departmental proceedings stemming out of vague allegations. He has submitted that the entire departmental inquiry collapses since the charge sheet originates from a complaint dated 30.11.2007, allegedly filed by Mr.Rajesh Satyanarayan Chaudhary to the Vigilance Officer of Gujarat High Court alleging corrupt practice by the petitioner in passing the orders in the civil suit, however, during the departmental inquiry, Mr.Rajesh S. Chaudhary has categorically denied having written or signed any such complaint. Therefore, it is submitted that the respondent failed to establish the authenticity and authorship of the complaint that formed the basis of the entire inquiry. On this ground alone, it is submitted that the entire proceedings are vitiated.

7. It is contended by the learned advocate Mr.Vyas that the charges primarily relate to order(s) dated 27.08.2007 passed in Special Civil Suit No.46 of 2007, filed by the tanker owners against Essar Oil Ltd. for the release of tankers seized illegally by the company. Learned advocate Mr.Vaibhav Vyas has further submitted that when the interim order dated 27.08.2007 was passed, the tankers were not in the police custody, but the criminal complaint was under investigation as per Section 202 of the Code of Criminal Procedure, 1973 (in short, “the Cr.P.C.”), since the tankers were detained by a private party and not seized under the legal authority.

It is submitted that in these circumstances, the temporary mandatory injunction was lawfully granted. He has submitted that upon learning that the tankers were being detained without legal authority, the petitioner, in good faith, issued an interim direction that the company should not obstruct the plaintiffs from taking custody of the tankers, and Notices were issued to the defendant-Company, and the matter was posted for hearing on 01.09.2007. It is further submitted that with regard to Exh.14, an application filed by Mr.Vivek K. Ramchandani for impleading him as a party respondent, the petitioner issued a Notice to the opposite side and allowed them an opportunity to file a reply. It is submitted that as no reply was filed, the right to respond was closed and on 19.09.2007, the petitioner dismissed the application by noting that there was no dispute regarding ownership of the tankers and the criminal case mentioned therein was still at the preliminary stage under Section 202 of the Cr.P.C.

8. Learned advocate Mr.Vaibhav Vyas, has submitted that the order passed below application Exh.14 was never challenged before the higher forum, and the suit was eventually withdrawn voluntarily. He has submitted that neither party was compelled by the petitioner to withdraw the case. He has submitted that importantly, no challenge was ever made to any judicial order passed by the petitioner. He has further emphasized that all the defence witnesses, especially the advocates, who were parties in the suit, testified that no undue pressure was exerted by the petitioner. It is contended that the inquiry officer and the disciplinary authority have failed to consider or analyze this evidence. It is further submitted by learned advocate Mr.Vaibhav Vyas, that even if the orders passed by the petitioner were deemed to be legally incorrect, such errors do not constitute misconduct, let alone corrupt practice, and there is no material on record to indicate lack of integrity or any

improper motive hence, the conclusion of the disciplinary authority that the petitioner adopted corrupt practice is without foundation. In support of these submissions, learned advocate Mr.Vaibhav Vyas, has relied on the decision of the Supreme Court in the case of P.C. Joshi vs. State of U.P., (2001) 6 S.C.C. 491, wherein the Supreme Court has held that the judicial mistakes do not by themselves amount to misconduct. He has further placed reliance on the decision of the Supreme Court in the case of K.P. Tiwari vs. State of M.P., 1994 Supp. (1) S.C.C. 540 and has submitted that the Supreme Court has affirmed that the judicial independence must be protected, and erroneous decisions do not amount to misconduct absent *mala fides* or corrupt motive.

SUBMISSIONS ON BEHALF OF THE RES-HIGH COURT :

9. In response to the aforesaid submissions, learned advocate Mr.P.R.Abichandani, appearing on behalf of respondent No.2 – the Registrar General, High Court of Gujarat, has submitted that the impugned order of dismissal does not warrant any interference, as the same has been passed appropriately, having regard to the grave misconduct committed by the petitioner. It is submitted that, in Special Civil Suit No.46 of 2007, the petitioner granted ex-parte mandatory relief without assigning any reasons. Subsequent to the passing of the said order, an application came to be filed by one Mr.Vivek K. Ramchandani, Partner of Jay Ambica Oil Carriers and contractor of Essar Oil Limited, however, the petitioner did not pass any order on the said application, which was filed at Exh.14, and kept the same pending and in the meantime, on 07.09.2007, the plaintiffs, in Special Civil Suit No.46 of 2007, filed an application at Exh.19 seeking police assistance for execution of the order dated 27.08.2007. It is further submitted that, on 10.09.2007, the petitioner allowed the said application at Exh.19, and subsequently,

on 19.09.2007, rejected the application below Exh.14 for impleadment filed by Mr. Vivek K. Ramchandani, Partner of Jay Ambica Oil Carriers.

10. It is submitted by learned advocate Mr.Abichandani that the petitioner was fully aware of the entire incident at the time when the application below Exh.14 was filed by the contractor. Despite being made aware of such developments, the petitioner proceeded to allow the application below Exh.19, filed by the plaintiffs, seeking police assistance for enforcement of the order dated 27.08.2007.

11. While pointing out the tentative decision of the Disciplinary Committee, disagreeing with the findings recorded by the Inquiry Officer, it is submitted by learned advocate Mr.Abichandani that the Inquiry Officer erred in exonerating the petitioner from two of the charges. Consequently, a show cause notice dated 17.09.2010 came to be issued to the petitioner, calling upon him to show cause as to why he should not be held guilty of the charges which were, in fact, found to be proved by the Inquiry Officer.

12. Learned advocate Mr. Abichandani has further submitted that the Disciplinary Authority, upon due consideration, held the charges to be proved and, accordingly, issued a notice dated 15.11.2012 to the petitioner. It is submitted that a meeting of the Standing Committee was convened on 21.12.2010, wherein the entire record of the departmental inquiry was placed for consideration. Thereafter, on 02.02.2011, the Standing Committee recommended the dismissal of the petitioner from service with immediate effect, and the matter was placed before the Full Court (Chamber) for its approval. It is further submitted that the Full Court (Chamber) approved the said recommendation, pursuant to which, and based on the recommendation of the High Court, the Legal Department of

the State Government issued a notification dismissing the petitioner from service.

13. It is urged by learned advocate Mr.Abichandani that the impugned order of dismissal does not warrant interference, as the findings recorded by the Inquiry Officer, in respect of two of the charges, were duly considered, and the Disciplinary Authority also independently examined the findings of the Inquiry Officer in respect of the remaining charges, wherein the petitioner was exonerated. Upon a comprehensive and threadbare examination of the facts and the manner in which the petitioner passed the order in the Special Civil Suit, it is submitted that the penalty of dismissal cannot be said to be disproportionate to the gravity of the proved misconduct. He has also referred to a subsequent departmental inquiry being D.I. No.13 of 2008, which has been kept in abeyance with a condition that in case the petitioner is reinstated, the same will get revived. Accordingly, it is urged that the writ petition deserves to be dismissed.

14. We have heard the learned advocates appearing for the respective parties, at length.

ANALYSIS AND CONCLUSION :-

15. The petitioner, who was serving as an Additional Senior Civil Judge and Judicial Magistrate, First Class (JMFC) at Anjar, Gandhidham, District Kachchh – Bhuj, during the period from 21.12.2005 to 15.06.2008, was issued a charge-sheet dated 23.10.2008 under the provisions of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

16. In the statement of imputations, it is *inter alia* alleged that the petitioner adopted corrupt practices and failed to maintain absolute

integrity by favouring the plaintiffs in Special Civil Suit No.46 of 2007. The departmental proceedings arise out of the judicial orders passed by the petitioner in the said civil suit.

17. The relevant facts pertaining to Special Civil Suit No.46 of 2007, which have a direct bearing on the outcome of the present case, are as under :-

(A) A criminal complaint was filed by one Mr.Rajesh S. Chaudhary, Manager of Jay Ambica Oil Carriers - Contractor of Essar Oil Ltd., before the Judicial Magistrate, First Class, Mundra, on 03.08.2007, which came to be registered as Criminal Inquiry No.4 of 2007. Learned Magistrate forwarded the said complaint to Police Sub-Inspector, Mundra, for inquiry under Section 202 of the Cr.P.C. The complaint pertained to the illegal detention of two tankers, bearing registration No.GJ-12-W-6009 and No.GJ-12-Y-9418, which were transporting diesel for Essar Oil Ltd. on 10.07.2007. It was alleged that mischief had been committed during transportation by the drivers of both tankers, who absconded after leaving the vehicles at the depot. The complaint was filed against the tanker owners and drivers for shortage of high-speed diesel entrusted for transportation.

(B) The owners (plaintiffs) of the two tankers instituted Special Civil Suit No.46 of 2007 before the petitioner’s Court on 27.08.2007, seeking a declaration and permanent injunction for release of the detained tankers against Essar Oil Ltd. (The charge-sheet specifically refers that the owners, by suppressing the fact of the criminal complaint, instituted the special civil suit).

(C) The petitioner granted an *ex-parte* mandatory injunction below application Exh.5 on 27.08.2007 and issued a notice to the defendant - Essar Oil Ltd., to show cause as to why the said injunction should not be made absolute.

(D) The said temporary mandatory injunction restrained the company and its employees from obstructing the plaintiffs (owners of the tankers) from removing the subject tankers from the custody of the company.

(E) The returnable date of the application at Exh.5 was 01.09.2007. On the same day i.e., 01.09.2007, an application below Exh.14 came to be filed by Mr.Vivek K. Ramachandani, Partner of Jay Ambica Oil Carriers, and contractor of Essar Oil Ltd, for impleadment as a party in the suit. The said Exh.14 application was kept pending by the petitioner.

(F) On 07.09.2007, the plaintiffs filed an application at Exh.19, seeking action against the office-bearers, Chairman, and Directors of Essar Oil Ltd. for the alleged disobedience of the order passed by the Court.

(G) On 10.09.2007, the petitioner passed an order below Exh.19, directing the respondent-Company to hand over possession of the tankers to the plaintiffs. Thereafter, on 19.09.2007, the petitioner rejected the application below Exh.14 seeking impleadment as a party to the proceedings.

(H) Subsequently, the suit was withdrawn by the plaintiffs.

18. It is alleged that the petitioner compelled the respondent company - i.e., the defendant in Special Civil Suit No.46 of 2007 - to hand over possession of the tankers to the plaintiffs (owners of the tankers), and thereby openly assisted the plaintiffs in obtaining possession of the seized tankers, involved in the commission of a crime of theft of high speed diesel. It is alleged that the petitioner, for ulterior motive, did not pass any order on Exh.14 application for joining party.

19. In the charge-sheet, it is alleged that by such conduct, the petitioner is guilty of :-

(a) dereliction of duty;
(b) indulging in corrupt practices;
(c) committing the aforesaid acts of misconduct; and
(d) acting in a manner unbecoming of a Judicial Officer.

20. It was the specific case of the petitioner before the Inquiry Officer and the Disciplinary Authorities that he never compelled the defendants to hand over possession of the tankers, and in fact, the order passed below Exh.19 clearly indicates that the defendants themselves had agreed to hand over possession of the said tankers.

21. It is the case of respondent No.2 that the charge of corrupt practice and dereliction of duty emanates from the order dated 10.09.2007. The relevant extract of the order dated 10.09.2007 passed below Exh.19 reads as under: –

> *"4. Thereafter, today the defendant company appeared through their advocate and filed their reply. The defendant has stated that they did not want to violate the order of this court. But they have detained trucks due to request of Mundra Police Station's police. They have no intention to disobey the order of this court and they are ready and willing to give possession of the suit vehicles to plaintiff. I have heard Mr. F.H. Khoja Ld. Adv. for the defendant. He stated that specific direction should be given to Mundra Police Station's police.*
>
> *5. Looking to the above facts, it is admitted fact that suit vehicles are in possession of defendant. It is also true that the defendant has kept said vehicles due to the Mudra Police. But he Mundra police has not taken into their custody the said vehicles. They have not shown it as muddamal property of criminal case which is pending before Mundra court. The police are investigating the matter under section 202 of Cr.P.C. and they have no power to take vehicles in custody. They have only power to investigate and submit report, to concern court. They have submitted their report after investigation, to Mundra Court and Mundra Court has issued summons under section 204 of Cr.P.C. Now there is no investigation is pending for said vehicles should be detained in custody of defendant under the written request of police.*

6. In such circumstances, compliance of interim order is necessary at this time and no direction is required to be given to police.

Further the defendant is ready to comply with order of this court and ready to give possession of vehicles to plaintiff after producing proper authority or undertaking or receipt. Then help of police is not necessary. Hence, I pass following final order.

::ORDER::

An application for the help of police is hereby disposed of with following direction.

The defendant is hereby directed to give possession of suit vehicles with attached things to plaintiff or his driver or servant or authorized person.

The plaintiff is hereby order to give receipt to defendant after receipt of vehicles and inform to this court.

No order as to costs.

Pronounced on this 10th September 2007 in open court."

22. A bare perusal of the findings recorded in the order dated 10.09.2007 reveals that the defendant - Essar Oil Ltd. had stated on record that it had no intention to disobey the Court's order and was ready and willing to hand over possession of the suit vehicles. The petitioner also heard learned advocate Mr.F.S.Khoja, who appeared on behalf of the defendant–Company, and who, in fact, suggested that specific directions may be issued to Mundra Police Station. In the said order, the petitioner has categorically recorded that the Company had kept the vehicles and the police had not taken them into custody, nor the tankers were treated as *muddamal* property in the criminal proceedings pending before the Mundra Court. It was also recorded that the police were investigating the matter under Section 202 of the Cr.P.C., and thus, had no authority to seize the vehicles. The investigation report was submitted, summons under Section 204 of the Cr.P.C. were issued, and no further investigation was pending in respect of the said vehicles. In these circumstances, the petitioner concluded that no directions were necessary to be given to the police, especially since the defendant had expressed

readiness to comply with the Court's earlier order and willingly hand over possession of the tankers to the plaintiffs.

23. Thus, on a plain and simple reading of the order dated 10.09.2007 passed by the petitioner, it is explicit that it does not even remotely suggest that the petitioner has coerced the defendant-Company, to release the oil tankers lying at their depot.

24. We may further hasten to add that the case record does not reveal any documentary or oral evidence to suggest that the tankers were ever in the custody of the police. Upon a specific query raised by us to learned advocate Mr.Abichandani, appearing for respondent No.1, to point out any evidence showing that the vehicles were seized by the police and were in the police custody, nothing is pointed out to us. It is also not in dispute that the investigation was merely at the stage of inquiry under Section 202 of the Cr.P.C., and, therefore, the police had no authority to seize or retain custody of the vehicles. The vehicles in question, having been detained by the defendant–Company, remained in their possession. In fact, the Company agreed to release the vehicles and to hand over possession to the plaintiffs.

25. As a matter of fact, learned advocate Mr. Khoja, appearing for the defendant–Company before the Court below, had agreed that possession of the tankers may be handed over to the plaintiffs and that appropriate directions may be issued to the police. At this stage, we may refer to the statement of learned advocate Mr.Khoja recorded during the course of departmental proceedings, wherein he was examined as Defence Witness No.2. He has specifically deposed that, while deciding Exh.19, the Court neither compelled nor pressurized the defendant to release the vehicles, and that a voluntary statement has been made by him to that effect. In his

cross-examination, he has also admitted that there was no necessity to hear the third party (i.e. the partner of Jay Ambica Oil Carriers), as he had no legal interest in the subject matter and the plaintiffs were the rightful owners of the tankers. He further admitted that the vehicles were not under detention but were merely kept at the depot of the Company, and thus remained in its possession. Accordingly, the findings of the Inquiry Officer and the Disciplinary Authority - that the petitioner had passed the order dated 10.09.2007 to favour the plaintiffs by exerting pressure on the defendant-Company, stands contradicted by unparallel evidence on record.

26. In nutshell, the evidence, both documentary and oral, establish that the tankers were seized by Essar Oil Ltd. The contractor, M/s.Jay Ambika Oil Carriers were not the owner of the tankers. The plaintiffs were the owners of the tankers. The dispute was between the plaintiffs and the Company, and not with the contractor. Thus, the course adopted by the petitioner for not passing any order on the application at Exh.14 on 01.09.2007 filed by the Contractor for joining party, and subsequently rejecting the same vide order dated 19.09.2007 cannot be said to be unlawful. The company has admitted before the Court, presided by the petitioner, that the tankers were seized by it and was lying at their depot, and the plaintiffs were rightful owners of the tankers. Hence, in wake of clear and unambiguous judicial order, we fail to understand as to how and in what manner, the petitioner has indulged in corrupt practice.

27. It is also relevant to note that although a consolidated charge memo was issued to the petitioner, the Inquiry Officer bifurcated the same into four separate charges, of which only two were found to be proved. The Disciplinary Authority concurred with the findings of the

Inquiry Officer with respect to the grant of *ex-parte* mandatory injunction, and alleged that the delinquent, while dealing with the said application, overlooked the well-settled legal principles and unduly favoured the plaintiffs in gaining possession of the tankers.

28. It is significant to note that the civil suit was eventually withdrawn unconditionally by the plaintiffs, and no objection to such withdrawal was raised by the defendants. None of the judicial orders passed by the petitioner were ever challenged before any higher forum, and were accepted by all parties. At the most, it may be said that the *ex-parte* interim relief granted was not in strict conformity with the legal principles, but that by itself cannot be construed as a corrupt practice. Considering the fact that the tankers remained parked in the depot of the defendant–Company for considerable period, the petitioner, in the exercise of his judicial discretion, granted the interim relief restraining the officers of the defendant–Company from preventing the plaintiffs from removing the tankers. As mentioned hereinabove, the company later voluntarily agreed to release of the vehicles, which were in its possession, and not that with the police.

29. It is further alleged and a finding in this regard was recorded by the Inquiry Officer that the petitioner had falsely claimed that he was unaware of the criminal proceedings relating to the tankers, while adjourning the application at Exh.14 (for impleadment). Even assuming that the petitioner's explanation is incorrect, such inaction or lapse, in the absence of any concrete evidence to establish an ulterior motive, cannot give rise to a presumption of misconduct. Even otherwise, the dispute was between the plaintiffs-owners and the Company, which seized the vehicles. The allegation of theft of oil was also levelled by the Company, which ultimately agreed to hand over the vehicles to the plaintiffs. Accordingly, this allegation

too cannot be regarded as a grave or serious misconduct warranting dismissal from service.

30. While disagreeing with the Inquiry Officer, the Disciplinary Authority observed that although the plaintiffs had not disclosed the pendency of the criminal case relating to the vehicles in their civil suit, it was evident that the petitioner was aware of such proceedings when he passed the order below Exh.19 on 10.09.2007. Thus, the conclusion of the Disciplinary Authority holding that the petitioner committed grave misconduct by adjourning and subsequently dismissing the application at Exh.14, is premised exclusively on assumptions (*ipse dixit*).

31. Interestingly, the Inquiry Officer held that the order dated 19.09.2007, rejecting the impleadment application of M/s.Jay Ambica Oil Carriers (Exh.14), was proper in view of the fact that there was no dispute regarding the ownership of the vehicles, and no relief for damages or compensation was sought. The suit was instituted merely for a declaration against illegal detention. However, the Disciplinary Authority disagreed with this finding and held that the petitioner had committed misconduct by adjourning the impleadment application. An adverse inference was drawn merely because the suit was later withdrawn and the application had remained undecided. The conclusion by the disciplinary authority in this regard is also premised on surmises and conjectures.

32. However, both the Inquiry Officer and the Disciplinary Authority have failed to consider the deposition of the Defence Witnesses produced by the petitioner. The most material witness - Mr.Rajesh S. Chaudhary, the complainant, whose complaint gave rise to the entire episode - was examined as Departmental Witness

No.1. The Inquiry Officer has recorded that it is not proved that the complaint was given by Mr.Rajesh S. Chaudhary on 30.11.2007 to the Vigilance Officer, Shri B.U.Joshi, since Mr.Chaudhary has specifically denied of giving any complaint against the petitioner. In his deposition before the Inquiry Officer, he has unambiguously deposed that both tankers were in the custody of the Company. He also confirmed that he was serving as a Clerk in the Company and never lodged any complaint against the petitioner.

33. The following facts have emerged from the record and stand established in favour of the petitioner : -

(i) There is not even a speck of evidence on record in the entire disciplinary proceedings to suggest that the petitioner has, for extraneous consideration or for any personal benefit, passed the orders in Special Civil Suit No.46 of 2007, and also in Exh.14 and Exh.19 applications. No material has surfaced on record to establish that the petitioner indulged in corrupt practice or acted with an intent to favour the plaintiffs, or that he compelled the defendant–Company to hand over the tankers detained in their depot to the plaintiffs.

(ii) There is no evidence on record to suggest that the tankers were in the custody of the police, nor is there any proof to indicate that the petitioner was aware of such custody pursuant to the filing of a criminal complaint. On the contrary, the material placed on record shows that the vehicles remained in the depot of the defendant–Company and were never seized by the police as *muddamal* property.

(iii) The order dated 19.09.2007 passed below Exh.14, whereby the petitioner rejected the application filed by M/s. Jay Ambica Oil Carriers seeking impleadment, has not been challenged by any

party. The Inquiry Officer has, in fact, recorded a categorical finding that the said order was just and proper, as there was no legal dispute between the said contractor and the plaintiffs (owners of the tankers). Therefore, no legal or procedural error can be attributed to the petitioner in rejecting the said application.

(iv) The order passed below Exh.19 also does not reveal, in any manner, that the petitioner had indulged in any corrupt practice. Rather, the learned advocate appearing for the defendant–Company has deposed in favour of the petitioner, stating that the Company had no objection to the tankers being handed over to the plaintiffs. The order dated 10.09.2007 specifically records a consensual statement made on behalf of the Company, to the extent that there is no evidence to suggest that the petitioner compelled either the learned advocate or the Company to part with possession of the vehicles. Significantly, the said order has not been challenged by any of the parties to the suit.

(v) The Special Civil Suit was later withdrawn unconditionally, and such withdrawal was not objected to by any party, including the contractor who had earlier sought to join the proceedings. The entire case of the Disciplinary Authority is thus founded on nebulous factors. The findings recorded by the Disciplinary Authority, while disagreeing with the well-reasoned conclusions of the Inquiry Officer with respect to two charges, are based on no persuasive evidence and does not inspire judicial confidence.

34. We shall now refer to the exposition of law on the issue involved.

35. The Supreme Court, in the case of Abhay Jain vs. High Court of Judicature for Rajasthan, 2022 (13) S.C.C. 1, after survey of array of judgements, including the decision in case of ***P.C.Joshi (supra***),

rendered in the cases of the judicial officers, who have passed wrong orders or are found negligent in passing the judicial order, has reiterated the approach to be adopted by the High Courts in the disciplinary proceedings. The relevant extract of the judgement is incorporated as under:

> *"63 A 3-Judge bench of this court in Ramesh Chander Singh vs High Court of Allahabad [(2007) 4 SCC 247] has specifically held that:*
>
> > *This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution.*
> >
> > *xxxxxxxx*
> >
> > *We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality.*
> >
> > *xxxxxxx*
> *64 xxxxxx*
>
> *65 This court in P.C. Joshi vs State of U.P. [(2001) 6 SCC 491] held that:*
>
> > *"That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best, he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K. Dhawan case [(1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24*

ATC 1] and A.N. Saxena case [(1992) 3 SCC 124 : 1992 SCC (L&S) 861 : (1992) 21 ATC 670] that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case."

66 We concur with the view of this Court in the aforesaid case that merely because a wrong order has been passed by the appellant or the action taken by him could have been different, this does not warrant initiation of disciplinary proceedings against the judicial officer.

67 This court in Krishna Prasad Verma vs State of Bihar [(2019) 10 SCC 640], while setting aside the High Court's order, quashed the charges against the officer therein and granted him consequential benefits while holding that:

"No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming of a judicial officer, these must be dealt with strictly. However, if wrong orders are passed, that should not lead to disciplinary actions unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file.

xxxxxxxx

We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect."

(emphasis supplied)

68 Furthermore, this Court has recently held in Sadhna Chaudhary (supra) that:

"20. We are also not oblivious to the fact that mere suspicion cannot constitute 'misconduct'. Any 'probability' of misconduct needs to be

supported with oral or documentary material, even though the standard of proof would obviously not be at par with that in a criminal trial. While applying these yardsticks, the High Court is expected to consider the existence of differing standards and approaches amongst different judges. There are innumerable instances of judicial officers who are liberal in granting bail, awarding compensation under MACT or for acquired land, backwages to workmen or mandatory compensation in other cases of tortious liabilities. Such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.

21. xxxxxxx
24. xxxxxxx

25. Had the charge been specific that the decision-making process was effectuated by extraneous considerations, then the correctness of the appellant's conclusions probably would not have mattered as much. ……..

26. We can find no fault in the proposition that the end result of adjudication does not matter, and only whether the delinquent officer had taken illegal gratification (monetary or otherwise) or had been swayed by extraneous considerations while conducting the process is of relevance. Indeed, many-a-times it is possible that a judicial officer can indulge in conduct unbecoming of his office whilst at the same time giving an order, the result of which is legally sound. Such unbecoming conduct can either be in the form of a judge taking a case out of turn, delaying hearings through adjournments, seeking bribes to give parties their legal dues etc. None of these necessarily need to affect the outcome. However, importantly in the present case, a necessarily need to affect the outcome. However, importantly in the present case, a perusal of the chargesheet shows that no such allegation of the process having been vitiated has been made against the appellant.

27. There is no explicit mention of any extraneous consideration being actually received or of unbecoming conduct on the part of the appellant. Instead, the very basis of the finding of 'misbehaviour' is the end result itself, which as per the High Court was so shocking that it gave rise to a natural suspicion as to the integrity and honesty of the appellant. Although this might be right in a vacuum, however, given how the end result itself has been untouched by superior courts and instead in one of the two cases, the compensation only increased, no such inference can be made. Thus, the entire case against the appellant collapses like a house of cards."

Conclusion

28. xxxxxxxx

69 In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. Moreover, the enquiry officer virtually sat as a court of appeal picking holes in the order granting bail, even when he could not find any extraneous reason for the grant of the bail order. Notably, in the present case, there was not a string of continuous illegal orders that have been alleged to be passed for extraneous considerations. The present case revolves only around a single bail order, and that too was passed with competent jurisdiction. As has been rightly held by this Court in Sadhna Chaudhary (supra), mere suspicion cannot constitute "misconduct". Any 'probability' of misconduct needs to be supported with oral or documentary material, and this requirement has not been fulfilled in the present case. These observations assume importance in light of the specific fact that there was no allegation of illegal gratification against the present appellant. As has been rightly held by this Court, such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer."

36. The note of the preceding observations of the Apex Court, the legal position is summarized as under: -

a) The judicial officer cannot be subjected to disciplinary proceedings merely because judgments/order passed by him/her are wrong.

b) If the High Courts were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's *bona fides* and the order itself should have been actuated by malice, bias or illegality.

c) In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of

the judicial officer concerned, and can be taken into consideration while considering career progression of the judicial officer concered.

d) Unless there are clear-cut allegations of “misconduct”, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect, or the judicial officer has been negligent in ignoring any fact. The allegations of extraneous influences, corrupt practice are required to be proved by persuasive evidence, and not on surmises and conjectures.

e) Mere suspicion cannot constitute “misconduct”. Any 'probability' of misconduct needs to be supported with oral or documentary material, even though the standard of proof would obviously not be at par with that in a criminal trial. While applying these yardsticks, the High Court is expected to consider the existence of differing standards and approaches amongst different judges.

f) Mere suspicion cannot constitute "misconduct". Any 'probability' of misconduct needs to be supported with oral or documentary material, more particularly when, there was no allegation of illegal gratification against the judicial officer.

g) If in every case where an order of a subordinate court is found to be faulty a disciplinary action was to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of

writing a judgment so as not to face a disciplinary enquiry and thus such approach will have a deleterious effect on their independence and boldness.

37. On the issue of departmental inquiry stemming out of a complaint and the legal evidence to be adduced by the Inquiry Officer in the inquiry proceedings, we also refer to the recent decision of the Supreme Court in the case of Maharana Pratap Singh vs. State of Bihar, 2025 INSC 554 :-

> *"42. We do not consider that the Inquiry Officer was justified in the approach he adopted while conducting the inquiry. Findings had to be returned by him neither on his ipse dixit nor surmises and conjectures but on the basis of legal evidence. A Constitution Bench of this Court, speaking through Hon'ble P.B. Gajendragadkar, J., in Union of India v. H.C. Goel AIR 1964 SC 364 pointed out that in carrying out the purpose of rooting out corruption, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. Although technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, nevertheless, the principle that in punishing the guilty scrupulous care should be taken to see that the innocent is not punished, applies as much to regular criminal trials as to disciplinary enquiries held under statutory rules. This has, thus, been the well-settled position of law for decades and bearing such law in mind, we have no hesitation to hold that the reason for which the Inquiry Officer doubted the version of PW-2 in his cross-examination was not available to be assigned without first returning a finding attributing the fault for the delay to the appellant.*
>
> *43. At this juncture, it is imperative to further underline that the chargesheet against the appellant was issued based on the written complaint of the informant. Law is again clear to the effect that mere production of a document does not constitute proof. If chargesheet is issued on the basis of a written complaint, the author/complainant has to be produced. The decision of this Court in Bareilly Electricity Supply Co. Ltd. vs. Workmen & Ors.30 is an authority for this proposition. Notably, in the instant case, the informant/complainant had not been examined. This, we hold is one other glaring error in the decision-making process."*

38. The foregoing authoritative pronouncements of the Supreme Court, when applied to the facts of the present case, lead to only one inescapable conclusion—that the impugned order of dismissal is not founded on any legally admissible evidence and rests entirely on

the *ipse dixit*, conjectures, and surmises of the Disciplinary Authority. In fact, this is a classic case of no evidence. None of the parties to the proceedings were aggrieved by the orders passed by the petitioner in the discharge of his judicial functions. However, we may add a caveat, that the accusation of extraneous consideration or corrupt practice emerging from anonymous complaint cannot be ignored merely because all the parties to the proceedings have accepted the decision of the Court. There may be cases, where the parties to the proceedings may have acted in sync or in connivance to obtain an order, and none of them may take risk to challenge the order/decision. In such cases, the High Court cannot remain mute spectator, and allow the misconduct to be perpetuated by sitting idle on any complaint even anonymous, if the allegations *prima facie* appear to be true. In the present case, we do not find these elements emerging from the evidence. The Apex Court has held that mere suspicion should not be allowed to take the place of proof even in domestic inquiries.

39. Thus, after scaling the merits of the matter upon an overall evaluation of the material on record, and having regard to the settled principles of law as enunciated by the Supreme Court, we are of the considered opinion that the initiation of disciplinary proceedings, the findings in this regard, and impugned order of dismissal, are unsustainable in law, and demands interference by this Court.

40. However, it appears that at the relevant time, the petitioner was also subjected to another Departmental Inquiry being D.I. No.12 of 2008, wherein it is alleged that he had taken Rs.1,50,000/- from the builder and dismissed Civil Suit No.13 of 2001 instituted by the victim of earthquake. The inquiry was closed by the respondent no.2 vide a decision dated 21.06.2011 with a clear understanding that, if

the petitioner is reinstated to the original post on the basis of any order passed by the competent court, then, in that case, the departmental proceedings will stand revived. It is settled legal precedent, that in case, the delinquent is issued two different charge sheets, and if he is dismissed after holding inquiry in one of the charge-sheets; the inquiry in other charge-sheet has to be kept in abeyance, and in the eventuality of relationship of the employer-employee of being restored, in view of setting aside of the dismissal, it is always permissible to proceed with the inquiry relating to another charge-sheet. (Vide State of Maharashtra vs. Vijay Kumar Aggarwal, 2014 (13) S.C.C. 198).

: FINAL ORDER :

41. We declare that the disciplinary proceedings initiated and concluded vide charge-sheet dated 23.10.2008 against the petitioner as unfair and unjust. As a sequel, we quash and set aside the Notification dated 06.05.2011 imposing the punishment of dismissal under Rule 6(8) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. Further directions are issued as under:

a) Respondent no.2 is directed to reinstate the petitioner as an Additional Senior Civil Judge and JMFC and issue posting order at any place, which may include the last place from where he was dismissed. The petitioner shall not insist to be posted on a particular place of his choice;

b) The Departmental Inquiry being D.I. No.12 of 2008 shall be revived, and shall be continued from the stage, it was kept in abeyance/ or closed;

c) Since both the charge-sheets (i.e. D.I. No.12 of 2008 and D.I. No.13 of 2008) were co-extensive, the conferment of the consequential benefits, on account of setting aside of the dismissal order passed in D.I. No.13 of 2008, is made subject to further orders, which may be passed in D.I. No.12 of 2008;

d) The petitioner is ordered to be reinstated for the purpose of facing D.I. No.12 of 2008. It will be open for the respondent no.2 to pass an order for reviving the Departmental Inquiry D.I. No.12 of 2008 and any further order, if necessitated, may be passed. Appropriate order of reviving D.I. No.12 of 2008 shall be passed within a period of 06 (six) weeks from the date of receipt of the writ of the order of this Court;

e) In case, the respondent no.2 orders revival of D.I. No.12 of 2008, the same shall be completed expeditiously. The petitioner shall fully co-operate with the said disciplinary proceedings.

f) The petitioner shall be reinstated within a period of 06 (six) weeks from the date of receipt of the writ of the present order.

42. The writ petition is ***PARTLY ALLOWED***. Rule is made absolute to the aforesaid extent.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(R. T. VACHHANI, J)

MAHESH/1

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MAHESH OMPRAKASH BHATI(HC01086), PRIVATE SECRETARY, at High Court of Gujarat on 09/07/2025 14:48:14