IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22629 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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

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RAMSINGBHAI SABURBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
VYOM H SHAH(9387) for the Petitioner(s) No. 1
MR. KURVEN DESAI, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 23/03/2022
ORAL JUDGMENT

1 Rule returnable forthwith. Mr.Kurven Desai, learned Assistant Government Pleader waives service of rule on behalf of the State – respondent.

2 The order under challenge is the order dated 04.06.2019 passed by the respondent No.3, by which, the services of the petitioner have been terminated on the ground that the petitioner has been convicted for

offences under Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

3 Mr.Vyom Shah, learned counsel for the petitioner, would submit that against the order of conviction, the petitioner has filed Criminal Appeal No. 1087 of 2019, wherein, the execution of the sentence has been suspended. The other ground raised by Mr.Shah, learned counsel, is that the services of the petitioner could not have been terminated despite such conviction without a show cause notice.

4 Mr.Kurven Desai, learned Assistant Government Pleader for the State, would submit that it is a settled proposition of law that once the petitioner has been convicted, termination has to follow without the procedure of show cause notice.

5 Considering the decisions of this Court, specially the one relied by Mr.Shah, learned counsel in Special Civil Application No.9743 of 2020 dated 07.10.2020, which took into consideration the decision of the Full Bench in the case of ***V.D.Vaghela vs. G.C.Raiger, Deputy IGP,*** reported in ***1993 (2) GLH 1005,*** it is borne out that termination of service without issuance of a notice prior to the order and without considering the reply of the petitioner was bad.

6 The decision rendered by this Court in Special Civil Application No. 9743 of 2020 read as under:

"7. It would be relevant to extract the entire relevant discussion

from judgment in Budhsinh Jaisinh Patel (supra) to become part of the reasoning of this order applicable to the present petitioner.

"4. Assailing the impugned order, primarily and principally on the ground of non-observance of principles of natural justice that prior notice was not given before passing the order of the dismissal, learned advocate for the petitioner Mr.Gautam Joshi pressed into service decision of the Division Bench of this Court in Ahmadkhan Inayatkhan v. District Superintendent of Police, Banaskantha [1989 (2) GLR 1301]. Therein a government servant who was convicted by the criminal court and whose appeal against the conviction was pending in the High Court, came to be dismissed on the basis of the conviction. The dismissal did not precede with the issuance of notice. The Court held that failure to give notice vitiated the dismissal.

4.1.On the other hand, learned Assistant Government Pleader Mr.K.M. Antani harped on the decision of this Court in H.N. Rao v. State of Gujarat [2000(3) GLH 358]. On the basis of this decision, it was submitted that the Court in terms held that notice was not necessary before passing order of dismissal upon the event of conviction. It was submitted that the decisions which were relied on by this Court in Ahmadkhan Inayatkhan (supra) were considered and contrary view was taken in H.N. Rao (supra) which is required to be followed.

4.2 The decision of the Supreme Court in Union of India v. V.K. Bhaskar [(1997) 11 SCC 383] was relied on, in which it was held that dismissal from service on the ground of conduct which led to conviction on a criminal charge could be passed, for which pendency of an appeal against conviction was no bar. Learned Assistant Government Pleader proceeded to refer to the decision of the Full Bench of this Court in V.D. Vaghela v. G.C. Raiger, Deputy IPG [1993 (2) GLH 1005] in which the meaning and import of the word 'conviction' was highlighted in the context of clause (a) of Second Proviso to Article 311(2) of the Constitution, to lay down that the conviction is arrived at when recorded by the competent criminal court in the first instance.

5 The proposition of law in Ahmadkhan Inayatkhan (supra) relied on behalf of the petitioner and what is held in H.N. Rao (supra) stand in opposite.

5.1 However, the law has developed and travelled farther, which is to be learnt and gathered from decision of the Apex Court in Union of India v. Sunil Kumar Sarkar [(2001) 3 SCC 414]. It would be worthwhile to advert to analyse. In Kiritkumar D. Vyas v. State of Gujarat [1982 (2) GLR 79] this Court held, "mere

conviction, therefore cannot be utilised for passing an order of dismissal blindfoldedly without hearing the delinquent on the question of sentence. Needless to add that this would be so even in case where the disciplinary authority exercises powers under Rule 14 of the Gujarat Civil Services (Discipline and Appeal) Rules.". Kiritkumar D. Vyas (supra) was a Division Bench judgment. Relying on the same in a similar set of facts, learned Single Judge of this Court in Shankabhai Naginbhai Patel being Special Civil Application No.2349 of 1998 set aside the order removing the petitioner of that petition keeping it open for the respondent to pass fresh order after giving opportunity.

5.1.1 The Division Bench in Ahmadkhan Inayatkhan (supra) relied on the decision in Kiritkumar D. Vyas (supra) as well as another decision also of this Court in Laxman Waghgimal v. K.N. Sharma, D.S.P., Kutch [1985 GLH (UJ-28) 20]. On the basis of the said decisions, in Ahmadkhan Inayatkhan (supra) it was ruled in paragraph 3 that,

> *"In this decision, this Court held that even though this rule does not contemplate giving of the notice, it must be read into this rule that notice should be given to satisfy the principles of natural justice."*

5.1.2 Since in H.N. Rao (supra), a view was taken that show- cause notice was not necessary, in paragraphs 6 adn 7 of the judgment, the Court referred to the decisions taking contrary view including Shankabhai Naginbhai Ptael (supra) and Kiritkumar D. Vyas (supra) to hold that they did not take the correct view.

5.2 Now proceeding to look at The Supreme Court decision in Sunil Kumar Sarkar (supra), it dealt with the case of a delinquent undergoing sentence of imprisonment. The respondent was found guilty and sentenced under the General Court Martial to rigorous imprisonment for six years under the Army Act. The High Court found fault with the order of dismissal passed by the disciplinary authority on the ground that the same was solely based on conviction suffered by the respondent in the Court Martial proceedings. It was held by the High Court that the disciplinary authority had a predetermined mind when it passed the order of dismissal.

5.2.1 In the context of the aforesaid facts the Supreme Court held, "This is a summary procedure provided to take disciplinary action against a government servant who is already convicted in a criminal proceeding. The very foundation of imposing punishment under Rule 19 is that there should be a prior conviction on a criminal charge. Therefore, the question of having a

predetermined mind does not arise in such cases. All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show-cause notice and reply to such show- cause notice, if any, should be properly considered before making any order under this Rule. Of course, it will have to bear in mind the gravity of the conviction suffered by the government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment. In the instant case, the disciplinary authority has followed the procedure laid down in Rule 19, hence, it cannot be said that the disciplinary authority had any predetermined mind when it passed the order of dismissal." (Para 8) It is thus considered an essential requirement that before disciplinary authority passed the order of dismissal against the respondent who was convicted of criminal charge to give show- cause notice and to consider the reply given to the show-cause notice. The Supreme Court held that at that stage the question of having predetermined mind did not arise in such cases. In other words, the Court considered the procedure of giving notice and consider defence of the convict at that stage to be the meaningful exercise. Dispensation of notice before taking action of dismissal against the convicted person which is based on the theory of empty formality was found not tenable in law. The authority could not have judged at the stage of taking the action of dismissal that the person to be dismissed was not prejudiced since there was already a conviction recorded against him. The stage to apply the test of prejudice would arrive at a subsequent point of time. The requirement of giving notice and appreciating the reply of the person concerned was not viewed as an empty formality but a condition precedent before passing the order of dismissal under the Rule. The observance of natural justice to this extent was treated as pre-requisite in law.

6 In view of the aforesaid decision in Sunil Kumar Sarkar (supra) and the ratio thereof, the decisions of this Court in H.N. Rao (supra) and those judgments taking the view that prior notice is not necessary, no more stand to be the good law. The ratio in Sunil Kumar Sarka (supra) would prevail and the proposition of law laid down by this Court in Kiritkumar D. Vyas (supra), Shankabhai Naginbhai Patel (supra) as well as in Ahmadkhan Inayatkhan (supra) stand revived to be the law holding the field to be applied.

6.1 In the aforesaid view, the impugned action taken against the petitioner to terminate his service without issuance of notice prior to the order and without considering his reply is illegal. Therefore,

order dated 24th February, 2017 passed by respondent No.3-District Superintendent of Police, Dahod as well as further orders dated 25th May, 2017 passed by the Director General of Police, Panchmahals, Godhra Range, Godhra dismissing the appeal and the order of the revisional authority-respondent No.1 Director General and Inspector General of Police further dismissing the Revision Application, cannot sustain and they are herewith set aside."

8. In view of above discussion and reasons, the impugned orders of termination of the service of the petitioner are quashed ad set aside and the petitioner shall be entitled to be reinstated in service on his original post with all consequential benefits and back wages. The reinstatement to the petitioner shall be granted within 15 days from the date of receipt of this order and the petitioner shall be paid consequential benefits including the back wages arising to be paid by virtue of this order, within four weeks from the date of his reinstatement."

7 In view of the discussion above, the petition is allowed. The order of termination dated 04.06.2019 is quashed and set aside and the petitioner shall be reinstated in service on his original post with all consequential benefits and backwages. Reinstatement shall be granted within a period of four weeks from the date of receipt of copy of this order and the consequential benefits to be paid within two weeks thereafter.

It is clarified that the respondent authorities are not precluded from passing appropriate order afresh in accordance with law after giving opportunity of hearing to the petitioner and considering the reply which may be filed. Rule is made absolute accordingly with no orders as to costs.

(BIREN VAISHNAV, J)

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