IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17422 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

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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 ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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ANOPSINH HARISINH BHAGORA
Versus
STATE OF GUJARAT & 2 other(s)

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Appearance:
MR. G.M.JOSHI, SENIOR ADVOCATE with VYOM H SHAH(9387) for the Petitioner(s) No. 1
MS. DHWANI TRIPATHI, AGP, for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE A.Y. KOGJE**

Date : 16/06/2022
ORAL JUDGMENT

[1] This petition under Article 226 of the Constitution of India is filed by the petitioner challenging the order dated 27.10.2015 passed by the respondent-State by which the punishment was inflicted upon the petitioner by deduction of 100% monthly pension. The petitioner also challenges the communication dated 09.02.2016 by which the respondent-State refused to renew/reconsider the impugned order dated 27.10.2015.

[2] It is a case where the petitioner who was serving as Police Sub-Inspector was proceeded departmentally on account of an incident involving escape of under-trial prisoner from the custody. The challenge to the impugned order is two fold, firstly on merits where learned Senior Advocate Mr. G.M.Joshi appearing for the petitioner has contended that there is no evidence of any involvement of the petitioner in the escape of under-trial from the custody as the petitioner was not found part of the escort/japta to the hospital from where he made the escape. Secondly, other police personnel who formed the escort group and were only responsible when the under-trial prisoner was hospitalized were also proceeded, but were inflicted with only punishments like withholding of increment or penalty to the tune of Rs.5,000/- etc. whereas against the petitioner, the effect of order is that of dismissal from service. Therefore, it is argued that the case of the petitioner requires to be reconsider even on the aspect of punishment.

[3] Learned Senior Advocate for the petitioner in support of his argument has taken this Court through the charges against the petitioner and the inquiry report pursuant to the inquiry and submitted that the only connecting factor of the petitioner that the escape of the under-trial prisoner from the hospital is that the petitioner was in contact on mobile with the under-trial prisoner, his friend, treating doctor of under-trial prisoner and the jailer.

[3.1] It is submitted that the there are no proceedings initiated against the jailer or the doctors who are also Government servants. Moreover, the petitioner had given proper explanation or the reason for which he was in contact with the doctor and the jailer. It is submitted that such reasons were proper and genuine, the authorities have not taken into consideration. Learned advocate has relied upon the decision of **Anand Regional Coop. Oil Seedsgrowers' Union Limited v/s. Shaileshkumar Harshadbhai Shah**,. Reported in **(2006) 6 SCC 548** to

substantiate his argument that the institution has to maintain parity in punishment and in the present case, the other delinquents of the same incident have not been punished as severally as the petitioner and therefore, on the ground of parity for punishment, at least the case of the petitioner deserves consideration. Learned advocate in this regard has also relied upon the decision in the case of **Nareshchandra Bhardwaj v/s. Bank of India and others**, reported in **AIR 2019 SC 2075**.

[4] Learned Assistant Government Pleader at the outset submitted that the action on the part of the petitioner is of a grave nature where on account of his dereliction of duty, the under-trial prisoner had escaped from his custody. The petitioner was the highest officer responsible for the escort party of the under-trial while he was hospitalized. The authorities while considering the case of the petitioner were able to establish that the petitioner had played role even to the extent of creating a ground to see to it that the under-trial is for some ingenuine reason shifted to the hospital and from there he manages to escape from the custody and therefore, it is the petitioner who had set up the background and engineered the escape. It is submitted that the inquiry has been conducted in due course and by applying the principles of natural justice and following all the procedural laws and it is only thereafter, by taking into consideration the nature of evidence on record that the punishment is inflicted. It is submitted that the case of the petitioner on the ground of parity cannot be taken into consideration as the role of the other delinquents who were present when the escape was made was only their presence whereas the case against the petitioner that he had connived with the under-trial accused, his friends and other Government servants to stage and escape of the under-trial prisoner. Therefore, the role of the petitioner being much graver, the petitioner has been held guilty and while inflicting the punishment as the petitioner had retired, the Government was

within its rights to invoke Rule 24 of the Gujarat Civil Service (Pension) Rules, 2002 and passed the order of withholding of 100% pension.

[4.1] Learned Assistant Government Pleader has relied upon the decision in the case of **Union of India and others v/s. Dalbir Singh,** reported in **(2021) 11 SCC 321** in support of the contention that the interference by the High Court under Article 226 of the Constitution of India is justified only if the disciplinary authority has based its finding of "no evidence or in case of infraction of any rule or regulations or the violation of principles of natural justice". It is submitted that in the instant case there is sufficient evidence and therefore, no interference is required either on merits or on the ground of parity of punishment.

[5] Heard learned advocates for the parties and perused the documents placed on record. It is a case where the petitioner was issued with the charge-sheet, wherein Jigar @ Dholiya Satishbhai Patel, resi. At–Thamna, under trial prisoner of the offence u/s. 302, 344, 364 of I.P.C. registered in Rural Police Station - Anand vide F. C.R. no. 12/2008 was admitted for the treatment as an indoor patient in Room no. 4 of Anand Municipality General Hospital under the accused custody of 4 police men for the period from 08:00 hrs. from 26/09/2012 to 08:00 hrs. On 27/09/2012. The said prisoner Jigar @ Dholiyo Satishbhai Patel was the offender of serious offence like double murder, had absconded from the legal custody of the persons who were with him in surveillance at 19:30 hrs. Dt. 26/09/2012 and the petitioner has colluded the accused Jigar @ Dholiya Satishbhai Patel with the Doctor Mr. Arvind Jetha Dalvadi of Municipal Hospital, Anand. The petitioner also has talked with the accused and with the friend of accused from his mobile no. 9998188313 and has committed serious misconduct. The petitioner has also made arrangements to give the tiffine from house to the accused without the permission of Sub-Jailer and also abetted with

the accused, with the government Doctor and with the Jailer and thereby, the petitioner has committed serious misconduct and negligence in duty by abetting each other to escape the accused.

[6] In the year 2012, an FIR being C.R.No.I-235 under Sections 223, 224, 225(a) and 114 of the IPC was registered with the Anand Town Police Station wherein an under trial prisoner named Jigar @ Dholiya Satishbhai Patel arrested in Anand Rural I-C.R. No.12 of 2008 under Sections 302, 344 and 364 of IPC and was admitted in Anand Municipality Hospital had fled away from the hospital, wherein four police personnel were appointed from 26.09.2012 at 8:00 hours to 27.09.2012 till 8:00 hours at the hospital as Kaidi Japta. In the meantime of this deployment of 4 personnel prisoner Jigar @ Dholiya was escaped/fled.

[6.1] Charge-sheet dated 16.11.2013 was issued to the petitioner. The petitioner replied to the said charge-sheet on 16.12.2013. After receiving the reply by the petitioner, the departmental proceedings was initiated against the petitioner on 10.01.2014 which was completed on 09.10.2014. The petitioner in the meantime was transferred to Surendrangar District on 19.10.2012 and from the same place the petitioner was superannuated on 31.12.2013. The office of the Superintendant of Police, Anand had sent the departmental inquiry report to the office of the Superintendent of Police, Surendrangar. As the petitioner was superannuated from Surendrangar on 31.12.2013 the departmental inquiry report was forwarded to Home Department for final decision.

[6.2] The Home Department on 02.05.2015 issued show-cause notice to the petitioner that why the pension or part thereof should not be deducted. Before passing any order second time representation was made by the petitioner on 27.07.2015.

[6.3] From the record, it appears that four police persons who were deployed at the hospital were also penalized/charge-sheeted by the authorities. The names of the said four personnel are as under:-

(1) Armed Head Constable-Ghanshyambhai Popatbhai
(2) Lok Rakshak-Yogeshkumar Arvidbhai
(3) Lok Rakshak-Virambhai Sarabhai
(4) Constasble-Pratapsinh Hemaji.

[7] From the inquiry report which contains the evidence in the form of statement recorded during the inquiry by various witnesses would go on to indicate that the petitioner was indeed in touch with the friend of the under-trial prisoner during the proximate period. He was also in contact on mobile which apparently was being used by the under-trial himself and in the proximate period the petitioner was in touch with the doctor as well as the jailer. Even if the explanation offered by the petitioner with regard to his contact with the doctor as well jailer may be accepted, but his mobile contact with the friend of a under-trial prisoner as well as on the mobile number allegedly used by the under-trial person himself was sufficient for the authority to presume the role of the petitioner in the entire incident more particularly when such Call Detail Record was of proximate period of the incident of escape. The narration of the gist of the oral evidence of the witnesses points a finger towards the complexity of the petitioner. For this purpose, the Court has referred to the gist of the statement given by one of the witnesses namely Valimullakhan Munavarkhan Patahn, Buckle No.04, Head-Quarter, wherein he has categorically stated that the friend of the under-trial prisoner was permitted at the behest of the petitioner to enter into hospital where the under-trial prisoner was hospitalized and has categorically stated that it was with the permission of the present petitioner that he was allowed to enter. In the cross-examination he has stood with his version given in the inquiry. Similarly, statement of witness Pratapsinh Hemaji, Buckle No.641,

Anand Town Police Station, also substantiates the same clearly indicating the role of the petitioner and therefore, in the opinion of the Court, the authority was justified in accepting the inquiry report.

[8] The argument made on behalf of learned advocate for the petitioner regarding the presumption by the authorities only on the basis of calls made inter-se between the accused, friends of the accused and the jailer and doctor does not disclose the nature of conversation or the subject of conversation and therefore, the explanation offered by the petitioner ought to have been considered in this regard. This Court is of the view that in service jurisprudence, it is the preponderance of possibilities on the the basis of which the authority is expected to arrive at conclusion. As held in the preceding paras even if the explanation offered for the mobile conversation with doctor and jailer is accepted, there is no denial nor any explanation to the conversation of the petitioner with the friends of the under-trial prisoner or on the mobile phone operated by the under-trial prisoner himself.

[9] In that view of the matter, it is not required for the authority to search for the evidence which is in the nature to establish the guilt beyond reasonable doubt, but in the facts of the present case, the parameters of preponderance of possibilities is clearly achieved on the basis of ocular evidence of the witnesses as well as supporting documentary evidence. In that view of the matter also, the Court is not inclined to interfere with the finding arrived at by the authority against the petitioner.

[10] In so far as the procedural aspect of conducting the departmental inquiry is concerned, there is no serious challenge to it however, having gone through the record which includes the charge-sheet imputation of charges, the inquiry report, final notice and the replies filed by the petitioner from time to time which go on to indicate that the principles of natural justice have not been violated and there is no procedural lapse.

[11] In view of the aforesaid also, the Court is not inclined to interfere with the decision of the authority in holding the petitioner guilty of the charges.

[12] The view of the Apex Court is supported by the decision of the Apex Court **Union of India and others v/s. Dalbir Singh (Supra)** in para-28, which reads as under:-

> "28. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time."

[13] Second aspect of the matter being the proportion of punishment, whereby the impugned order 100% pension has been deducted, the Court would like to refer to the decision in case of **Anand Regional Coop. Oil Seedsgrowers' Union Limited**

(Supra), wherein the Supreme Court in paras-27 to 29 which held as under:-

> "24. The Labour Court although has jurisdiction to consider the question in regard to the quantum of punishment but it had a limited role to play.
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> 25. It is now well-settled that the industrial courts do not interfere with the quantum of punishment unless there exists sufficient reasons therefor. [See North Eastern Karnataka R.T.Corpn. V. Ashappa, State of U.P. v. Sheo Shanker Lal Srivastava, A. Sudhakar v. Post Master General , Mahindra and Mahindra Ltd. v. N.B.Narawade, M.P. Electricity Board v. Jagdish Chandra Sharma , Hombe Gowdan Educational Trust and Another v. State of Karnataka and Bharat Petroleum Corpn Ltd v. T.K. Raju).
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> 26. A wrong test was applied herein by the Labour Court in observing "If the nature of the offence is grave he could have been inflicted punishment of stoppage of the increments". On what premise the said observations were made is not known.
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> "27. There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The Management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme."

[14] It is a matter of record now that the respondent-State has also proceeded against the other police personnel for the same incident however, three constables i.e. Ghanshyambhai Popatbhai was given charge-sheet and minor penalty were attracted as per the Bombay Police (Discipline and Appeal), Rules 1956 wherein, his one increment was stopped for six months by Superintendent of Police, Anand, the second Lok-Rakshak namely Yogeshkumar Arvindbhai was also given a charge-sheet under Bombay Police (Discipline and Appeal) Rules, 1956 and he was also given minor penalty for fine of one basic pay by Superintendent of Police, Patan and No.3 i.e. Lok-Rakshak Virambhai Sarabhai was dismissed from the service by Deputy Police Commissioner, Police Head Quarter, Surat City and against which he preferred an appeal to Police Commissioner, Surat

City and dismissal was reduced to fine of Rs.5,000/-.

[15] Moreover, nothing has come on record about the action taken by the State against the other erring person like jailor or the medical officer qua whom also role is attributed in this incident.

[16] In this view of the matter, the Court deems it judicious to consider the case of the petitioner on the ground of parity with other delinquent. Hence, the punishment inflicted of 100% withdrawal of the pension to be harsh punishment and hence, it is deemed fit to modify the impugned order to the extent of punishment.

[17] The Court has also considered the fact of the long tenure of service period of the petitioner. During his career, nothing adverse is brought on record and this being the sole incident, the entire service record cannot be disregarded.

[18] In view of the aforesaid, the Court is of the opinion that the impugned order be modified to read that the deduction of pension be 25% instead of 100% which would commensurate with the proved guilt. The petitioner is therefore, entitled to receive pension to aforesaid extent. As the entitlement is decided by this order, petitioner will not receive any interest on claim of arrears.

[19] With the aforesaid, the petition stands ***partly allowed***. Rule is made absolute to the aforesaid extent.

(A.Y. KOGJE, J)

SIDDHARTH