***MAHARASHTRA ADMINISTRATIVE* TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.315/2004.**

Dhanraj Yashwant Ghatol,
Aged about 33 years,
R/o Mahajanpura, Bhatkuli Road,
Amravati. **Applicant.**

**-Versus-**.

1. The State of Maharashtra,
   Through its Secretary,
   Department of Social Welfare,
   Mantralaya, Mumbai-32.

2. The Project Officer,
   Integrated Adivasi Vikas Prakalp,
   Pandharkawada, Distt. Yavatmal.

3. The Additional Commissioner,
   Adivasi Vikas Teosa Jeen,
   Vilasnagar Road, Amravati.

4. The Commissioner,
   Adivasi Vikas Bhavan,
   M.S. Nasik Road, Nasik.

5. The Head Master,
   Govt. Ashram School, Korata,
   Tq. Umarkhed, Distt. Yavatmal. **Respondents.**

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Shri T. B. Golhar, the Ld. Advocate for the applicants.
Mrs. M.A. Barabde, the Ld. P.O. for the respondents.

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**Coram:- B. Majumdar, Vice-Chairman and**
**Justice M.N. Gilani, Member (J).**
**Dated:- 7th August, 2014.**

**Order** **Per: Member (J)**

The issue involved in this O.A., is whether the applicant, who was removed from service following disciplinary proceedings, is liable to be reinstated on acquittal by the criminal court on the ground of identity of charges in the disciplinary as well as criminal proceedings.

2. On 22.9.1993, the applicant was appointed as teacher in Government Ashram School at village Khairkheda, District Yavatmal. The Ashram Schools in the State are run under the control of the respondent No.4. The incident occurred on 29.9.1999. The applicant was charged with misconduct of taking liberty with girl student of 6th standard studying in the school where the applicant was working as teacher. The offence punishable under Section 376 of the Indian Penal Code and under the provisions of Section 3 (i) (xii) of the Scheduled Caste, Scheduled Tribe (Pre. Atrocities) Act, 1989 was registered against the applicant and for that he was tried before the Court of Additional Sessions Judge, Pusad. On 17.11.2003, the learned Additional Sessions Judge, Pusad acquitted the applicant. Simultaneously, the disciplinary proceedings proceeded against the applicant. He was served with a chargesheet dated 30.11.1999 (6.12.1999). He was charged on two counts. Enquiry was concluded on 16.3.2002 and on 30.10.2002, he was imposed with penalty of removal from service. The applicant preferred departmental appeal challenging the order of his removal from service, which on 29th March 2004 came to be dismissed. Therefore, this O.A.

3. It is contended by the learned counsel for the applicant that in view of the clean acquittal of the applicant in the criminal case, findings recorded on identical set of facts cannot be sustained. According to him, charges levelled against the applicant in both the disciplinary and criminal proceedings were identical and evidence was also common. He placed reliance upon the decision in case of ***Capt. M. Paul Anthony V/s Bharat Gold Mines Limited and another reported in AIR 1999 SC 1416***. Facts of that case were, the appellant was security officer at Bharat Gold Mines Limited and was posted at Kolar Gold Fields.

On the First Information Report lodged with the police, raid was conducted in the residential premises of the appellant and allegedly gold ball and gold bearing sand were recovered. On the same set of facts, constituting the raid and recovery, the disciplinary proceedings were initiated against the appellant. Recovery of gold ball and gold bearing sand was treated as misconduct and based upon that, chargesheet was served on the appellant. Finding of guilt was recorded by the Enquiry Officer. In this backdrop, their Lordships held thus:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom'. The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges are established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case". (emphasis ours)

4. Let us advert to the facts of the case in hand. It appears from the judgment of acquittal (Annexure-B) that the applicant was charged for committing rape on the said girl and secondly he was charged under the Atrocities Act. In substance, it was single charge of sexually abusing the girl student. As she belonged to Scheduled Caste, additional charge under the Scheduled Caste, Scheduled Tribe (Pre. Atrocities) Act, 1989 was levelled. In the departmental enquiry, the applicant was charged with the following:

''**बाब १ :**- दिनांक २८.०९.१९९९ चे संध्याकाळी शाळा सुटण्याच्या थोडा वेळ अगोदर श्री घाटोळ,प्राथमिक शिक्षक यांनी कु.रुपवंती हिला जवळ बोलावून आज रात्री खोलीवर ये असे तिला सांगितले. कु.रुपवंती ही बाब तिच्या गावातील रहिवासी असलेली दुसरी विद्यार्थीनी कु. रुख्मा देवराव बोडखे,वय १० वर्ष इयत्ता ४ थी या विद्यार्थीनीला सांगितले कु. रुपवंती ही कु. रुख्मा हिला असे सांगितले की कु.रुपवंती हिला शिकविणा-या श्री घाटोळ सरांनी तिला रात्री ११.०० वाजता त्यांच्या खोलीवर बोलाविलेले आहे.आली नाही तर तिला उद्या शाळेत मारतो अशी धमकी देखील श्री घाटोळ यांनी दिली असल्याचे सांगितले वास्तविक रात्रीच्या वेळी शाळेच्या विद्यार्थीनिंना घरी बोलाविण्याची आवश्यकता नाही. पण श्री घाटोळ यांनी अश्या प्रकारचे वर्तण केल्यामुळे त्यांनी शाळेच्या संहितेचा भंग केलेला आहे.

**बाब २.** दिनांक २८.०९.१९९९ चे रात्री सर्व विद्यार्थीनी जेवन करुन झोपी गेल्या असता रात्री ११.०० ते ११.३० चे सुमारास कु.रुपवंतीने कु.रुख्माला झोपेतून उठविले व तिला सोबत लघवीसाठी चल म्हणून सांगितले व त्या दोघी बाहेर पडल्या. त्यावेळी आश्रम शाळेची दायी श्रीमती सुमन बुरकुले यांनी हटकले त्यावेळी आम्ही लघवीला जात आहोत असे सांगून त्या बाहेर पडल्या, बाहेर आल्यानंतर त्यांना श्री घाटोळ दिसले व श्री घाटोळ यांनी मुलींना बोलावून कु. रुपवंतीला आत खोलीवर चल नाहीतर उद्या तूला वर्गात मारेल असे म्हटले. त्यामुळे कु. रुपवंती कु.रुख्मासह त्यांच्या खोलीवर गेली तिथे श्री घाटोळ यांनी रुख्माला खोलीचे एका बाजूला बसवून कु. रुपवंतीस अलिंगन दिले व स्वताचे कपडे काढून निशाशी जबरीने संभोग केला अश्या प्रकारे त्यांनी घृणास्पद गैरकृत्य केलेले आहे. त्यामुळे त्यांचे विरुध्दा अनुसूचित जाती / जमाती महिला अत्याचार प्रतिबंधक कायदा कलम ३(१) प्रमाणे गुन्हा क्रमांक ८६/९९ भा.द.वी.कलम ३७६ नुसार गुन्हा दाखल करण्यात आलेला आहे''.

5. From the above, it is evident that the first charge of misconduct had nothing to do with the allegations of committing rape. It purely

describes the conduct of the applicant which was unbecoming of a teacher in the school. It should be borne in mind that in a criminal trial, if the prosecutrix turns hostile, charge of rape or even outraging modesty cannot be proved. Before the Court as well as the Enquiry Officer, the victim girl did not speak against the applicant. In view of the prosecutrix's turning hostile, learned Sessions Judge had no alternative than to acquit the applicant. Certainly, this was not honourable acquittal. On the record, copies of deposition of the witnesses recorded in the Sessions Trial are placed. There are witnesses who spoke to the effect that when the round of hostel was taken, two girls were found missing. Thereafter the girls were found in the room where he applicant was residing. The learned P.O. was fair enough to place before us the original proceedings in the departmental enquiry. Although the victim turned hostile, the girl accompanied her categorically stated that on 28.9.2009, the victim had told her that she was called by the applicant. Therefore, she and victim went to the room of the applicant at midnight. After entering in the room, the victim put out the lamp. She could not see what went on between the applicant and the said girl because of darkness. Thereafter 5 to 6 villagers came in front of the room. They caught hold both the girls and carried them to the Police Patil. This version is supported by other witnesses. In the FIR lodged by the victim, she had alleged that the applicant committed sexual intercourse with her. During medical examination (Medical Officer not examined), hymen of the victim was found torn. With this evidence, the enquiry officer was justified in coming to the conclusion that the applicant is guilty of grave misconduct.

6. It is well settled that the approach and objection in criminal proceedings and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the preliminary question is whether the employee is

guilty of such conduct as would merit action against him, whereas in criminal proceedings, the question is whether the offences registered against him are established. Standard of proof, mode of enquiry and rules governing the enquiry and trial are altogether different. Doctrine of proof beyond doubt has no application in the disciplinary proceedings. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion. (Relied, ***Lalit Kumar V/s Canara Bank AIR 2003 SC 1795)***.

In ***Southern Railway Officers' Association and others V/s Union of India and another, AIR 2010 SC 1241***, it was held thus:

"Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge".

The principle that even if there is an identify of charge levelled against the delinquent before the criminal court as well as before the enquiry officer, an order of discharge or acquittal by criminal court shall not be a bar to the award of departmental punishment, has been reiterated in the following decisions:

i) Deputy Inspector General of Police and another V/s S. Samuthiram, AIR 2013 SC 14.

ii) Commissioner of Police, New Delhi and another V/s Mehar Singh reported in AIR 2013 SC 2861.

iii) State of West Bengal and others V/s Shankar Ghosh, 2014 LAB. I.C. 1579.

7. This is a case where a teacher who is shouldered with onerous responsibility of teaching ethics, moral conduct besides the subject in syllabus, had taken liberty with teenaged naïve girl studying in 6$^{th}$ standard. Even act of

calling the girls to his room at midnight by itself is an act depicting grave misconduct which has transgressed all norms of decency and defiled entire profession. The fact that during the criminal trial and disciplinary proceedings, he could manage to win over her parents and got her statement recorded in his favour, speaks volumes about his potential to get the things managed. In the backdrop of facts and circumstances of the case, exercise of the power of judicial review is not at all warranted. It is well settled that the judicial review is not directed against the decision, but is confined to the decision making process.

8. In the result, we do not find any substance in this O.A.

O.A. stands dismissed.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

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