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Exh.....

**IN THE COURT OF 3RD ADDL. DISTRICT JUDGE, RAJKOT**

**AT RAJKOT**

**REGULAR CIVIL APPEAL NO. 33 OF 2003**

**Appellant/s :-**

- 1] Authorized Officer/Depot Manager 'A'**  
Gujarat State Road Transport Corporation  
Gondal
- 2] Divisional Director**  
Gujarat State Road Transport Corporation-Gondal
- 3] Gujarat State Road Transport Corporation**  
Through General Manager  
Transport Office, Astodiya, Ahmedabad.

**VERSUS**

**Respondent:-**

**Chotalal Karshanbhai Rathod**

Hindu, Adult

Addressee of: Patidal, Tal.: Gondal,

Dist.: Rajkot.

**Appearance:**

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Mr. J V Yagnik, Ld. Advocate for the Appellant.

Mr. L. J. Shahi, Ld. Advocate for the Respondent.

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**-::JUDGEMENT::-**

1] The present appeal has been filed by the appellants (original defendants) being aggrieved against the judgment passed by the learned Civil Judge (Senior Division), Rajkot in Regular Civil Suit No. 565 of 2000 on 25.06.2003, wherein, the Learned Trial Court decreed the suit of the plaintiff. For the sake of convenience, original plaintiff is referred herein as respondent and original defendants as appellants.

2] Brief facts of the case leading to the instant appeal are as under:-

2.1] That the plaintiff-respondent was appointed as Badli Kamdar/ Conductor with the appellants S.T. Corporation having badge No.17832 and on 30/07/1999 he was on duty as conductor in Bus

and police raid was carried out in the bus and 04 bottles of illegal liquor were found behind the cabin of the driver of the bus, and both driver and conductor of the bus were made accused regarding illegal possession and transportation of liquor bottles. Thereafter, on 06/08/1998, charge-sheet was filed by the S.T. Corporation against the present respondent who was working as conductor, on the basis of F.I.R. and the statement of the plaintiff recorded by the police, wherein, the respondent-plaintiff had defended that liquor was not found from his possession and he was not aware of the same, and as such, no case is made out against him. Subsequently, without examining witnesses independently and on the basis of brief deposition of Reporting Officer, charges were proved against the plaintiff/respondent, and thereafter, he was dismissed from the service on the basis of said inquiry conducted against him.

**2.2]** The said order of dismissal was challenged by the plaintiff vide Regular Civil Suit No.565/2000, wherein, it was stated that, the person who has conducted inquiry and passed the dismissal order against the plaintiff was not appointing authority of the plaintiff, and as such, was not competent to remove him from the service. It was

further submitted that the principles of natural justice were not followed while conducting the inquiry, which was conducted without jurisdiction, and as such, inquiry conducted by the Department is abuse of power and further the order of dismissal is illegal, arbitrary and is liable to be set-aside. It was further submitted that, the case on which the plaintiff was charge sheeted is already pending in the Criminal Court and further plaintiff had examined two of the passengers of the bus, who were travelling in the said bus at the time of alleged raid, however, the same were wrongly discarded by the Inquiry Officer on surmises, and as such, inquiry has been conducted with prejudiced mind and has not been conducted in accordance with law and by observing principles of natural justice, and as such, is liable to be set-aside. The plaintiff has further prayed for declaration declaring that the show cause notice issued to the plaintiff is illegal and unconstitutional and is void, and further order passed on the basis of the said show cause notice is also illegal and arbitrary and be declared to be void. Further, permanent injunction directing the defendants not to prohibit the plaintiff in conducting his duty was also sought and other reliefs and the cost of the suit was

also prayed to be awarded to the plaintiff.

**2.3]** The appellants appeared in response to the notice issued on the plaint and in their written statement denied the averments made in the plaint, and it was stated that, Inquiry Officer was competent to conduct the inquiry and further to remove the plaintiff from the services. It was submitted that the inquiry was conducted in proper manner and by observing principles of natural justice and without any prejudiced mind, and as such, is legal and as per settled principle of law. It is submitted that plaintiff was given an opportunity to defend his case in the inquiry and to cross-examine the Reporting Officer; however, plaintiff has not shown his willingness to cross-examine the Reporting Officer. Further, witnesses examined by the plaintiff in support of his case were not able to show any proof regarding they are travelling in the bus at the time of police raid, and as such, rightly discarded by the Inquiry Officer. It was submitted that the proper opportunity was accorded to the plaintiff to put his defence, and as such, there was no violation of rules of principle of natural justice and the inquiry was conducted in accordance with prescribed rules and dismissal of plaint was prayed for.

**2.4]** Subsequently, the Ld. Trial Court has framed the following issues at Exh.20.

- 1) Whether plaintiff proves that the competent authority has not passed sentence order against the plaintiff ?
- 2) Whether plaintiff proves that the inquiry held by the defendant against plaintiff is illegal and not given an opportunity of hearing to the plaintiff ?
- 3) Whether plaintiff proves that the conviction order passed against plaintiff is exorbitant ?
- 4) Whether the suit of the plaintiff is maintainable ?
- 5) whether plaintiff is entitled to get relief as prayed in suit para-9?
- 6) What order and decree ?

**2.5]** The findings of Ld. Trial Court to the aforesaid issues are as under:

- 1) In the affirmative.
- 2) In the affirmative.
- 3) In the affirmative.

- 4) In the affirmative.
- 5) In the affirmative.
- 6) As per final order.

**2.6]** After completion of trial, the Ld. Trial Court had decreed the suit of the plaintiff vide judgment and decree dated 25/06/2003. The Trial Court has declared that the show cause notice dated 04/02/2000 was illegal, arbitrary and unconstitutional and was declared as void and the consequent order passed on the basis of said show cause notice on 16/05/2022 was also declared as illegal, void and unconstitutional and was set-aside. The defendants were directed to reinstate the plaintiff and to pay him back wages and all other benefits of service from the day from which he was dismissed from the service.

**3]** Being aggrieved and dissatisfied from the said judgment and decree dated 25/06/2003 passed in Reg. Civil Suit No.565/2000, the defendants – appellants had preferred an appeal vide Regular Civil Appeal No. 33/2003, which was dismissed by the then Joint District Judge, Rajkot vide order dated 10/02/2004, and thereafter,

the appellants-defendants had preferred 2<sup>nd</sup> Appeal No. 60/2004 before the Hon'ble High Court of Gujarat at Ahmedabad and the Hon'ble High Court vide order dated 03/10/2022 has remanded the case back to the Appellate Court observing that the points of determination as required to be framed in accordance with Order-41, rule-33 of the Code were not framed in the appeal and detailed discussion was not made in the order of the Appellate Court and fresh appreciation of the material was not made, and as such, direction was issued to the First Appellate Court to decide the same afresh in accordance with law and on merits formulating the points of determination and after affording an opportunity of hearing to the Learned Counsel for the respective parties.

4] It is submitted by Learned Counsel appearing for the appellants that the order passed by the Ld. Trial Court is illegal and arbitrary as the Civil Court has no jurisdiction to try and entertain the civil suit based on cause of action which is subject matter of Industrial Disputes Act and the Industrial Tribunal being the court constituted for determining the disputes between workman and management including the order of termination and the Industrial Tribunal has



jurisdiction to try and entertain the said dispute and the Civil Court has no jurisdiction to entertain and decide the same. It is further submitted that even on merits, the Ld. Trial Court has not appreciated material placed on record and the fact that the proper opportunities were accorded to the plaintiff while conducting inquiry. It is submitted that, it is well settled law that disciplinary proceedings are altogether different and the finding of the Criminal Court or the proceedings before the Criminal Court are not required to be taken into consideration in those proceedings. It is further submitted that even if it is assumed that Civil Court has jurisdiction, then also Civil Court cannot act as Appellate Court over disciplinary authority and has only limited jurisdiction in those matters and cannot interfere in the proceedings of the Disciplinary Authority. It is submitted that the plaintiff was not only provided show cause notice after filing of charge-sheet to file reply but was also provided an opportunity to cross-examine the Reporting Officer which the plaintiff declined. Further, the plaintiff was also awarded proper opportunity to prove his defence but the plaintiff failed to prove his defence and as the misconduct committed by the plaintiff was of serious nature,

dismissal order was rightly passed against the plaintiff.

Learned Counsel for the appellants has further submitted that, during the pendency of the proceedings, the age of superannuation of the plaintiff-respondent has reached, and as such, even otherwise the plaintiff cannot be reinstated in service and the relief claimed by the plaintiff in that regard has become in-fructuous, and as such, the decree cannot be hold in light of the said development. Further, plaintiff has also not claimed back wages in the prayer clause of the suit and as such same also cannot be awarded to him. It is submitted that on all these grounds, the present appeal is liable to be allowed and the judgment and decree passed by the Ld. Trial Court is liable to be quashed and set-aside. Ld. Counsel has further relied upon following citations in support of his arguments:

- (i) *Chandrakant Tukaram Nikam Vs. Municipal Corporation of Ahmedabad, 2002 LawSuit (SC) 167;*
- (ii) *State of Haryana Vs. Bikar Singh, 2006 LawSuit (SC) 218.*

5] Learned Counsel appearing for the plaintiff-respondent has submitted that the inquiry was not conducted in accordance with law

and by observing principle of natural justice and the plaintiff was not given fair opportunity to defend his case and the entire proceedings were passed on conjectures and surmises. It is further submitted that the appellants have also violated the provisions of Art.311 of the Constitution of India and the dismissal order was passed by the person who was not competent to pass the same. It is further submitted that, bare perusal of inquiry proceedings and the material produced before the court, reflect that the entire proceedings were conducted in a very hasty manner and without affording opportunity to defend himself and merely on the basis of police report and without any independent evidence produced in the inquiry proceedings. It is further submitted that the plaintiff had already been acquitted by the Criminal Court in the police case filed against him and a copy of the judgment was also placed on record and once the inquiry proceedings were based merely on police documents, judgment of the Criminal Court cannot be ignored. It is further submitted that Civil Court has jurisdiction, if the plaintiff is able to show that he has not come before the court on the basis of provision under Industrial Disputes Act but has come on the basis of violation

of rules of natural justice and the provisions of the Constitution of India. It is submitted that the Ld. Trial Court has rightly decreed the suit as defendants had no substance in their arguments or defence. Ld. Counsel for the plaintiff-respondent has thus prayed that appeal be dismissed with costs and the judgment and decree of the Ld. Trial Court be confirmed. Ld. Counsel has also additionally submitted written arguments at Exh. 19 and relied upon following citations in support of his submissions:

- (i) *LIC of India Vs. Ram Pal Singh Bisen, 2010 (0) ALJ-SC 253;*
- (ii) *Rajasthan State Road Transport Corporation and Anr. Vs. Bal Mukund Bairwa, 2009 (2) G.L.H. 348;*
- (iii) *The Rajasthan State Road Transport Corporation and Anr. Vs. Krishna Kant etc., AIR 1995 SC 1715;*
- (iv) *Director & Anr. V/s. Savitaben Mulji Raichura, 2012 LawSuit(Guj) 951;*
- (v) *Mohanlal Popatbhai Patel Vs. The Gujarat State Road Transport Corporation and Anr., 1977(1)SLR30;*
- (vi) *Amarsing Setasing Medatia Vs. Gujarat State Road Transport*

*Corporation and Ors., decided on 01/10/1979;*

(vii) *The Principal, Sainik School Balachadi and Others Vs. Visvanath Ganganath Bhargav, Vol. XXIII GLT 152 decided on 08/01/1986;*

(viii) *Deputy Commissioner of Police, Rajkot & Anr. V. Haidarmiya Hesemiya Kadri, 1992 Vol. XXXIII(1) 167 ;*

(ix) *Badridan Bheravadan Gadhavi V. State of Gujarat and Others, 1984 G.L.H. 958*

6] In view of the facts of the case and pleadings and evidence of both the parties on record and the arguments advanced by the Ld. Advocates, the following points arise for the determination of the appeal:

- 1] Whether the Civil court has jurisdiction to try and entertain the suit filed by the plaintiff against his termination order ?
- 2] Whether the appellants have violated the provisions of rules of natural justice and the Constitution of India ?

- 3] Whether the Authority who has passed the dismissal order of the plaintiff was competent to pass and remove the plaintiff from his service ?
  - 4] Whether the plaintiff can be awarded reliefs in terms of prayers sought in the plaint ?
  - 5] Whether the judgment and decree passed by the Ld. Trial Court in 565/2002 on 25/06/2003 is liable to be interfered with ?
  - 6] What Order?
- 7] My findings on the above points are as under :-
- 1] In Affirmative
  - 2] In Affirmative
  - 3] In Negative
  - 4] In Negative
  - 5] In Affirmative
  - 6] As per Final Order

**:: REASONS ::**

**ISSUE NO. 1 to 3:**

- 8] In the Appeal at hand, the plaintiff was admittedly working as badli kamdar/conductor with the defendant organization. It is the case of the appellants that an FIR was lodged against the plaintiff regarding the illegal transportation of unauthorised liquor in the ST bus and on the basis of the same, charge-sheet was issued by the department against the plaintiff and departmental inquiry was conducted against him wherein the charges against the plaintiff got proved and thereafter he was dismissed from the service.
- 9] First of all, it has to be seen if the Civil Court has jurisdiction to try and entertain the suit against the dismissal order of the employee. Admittedly, plaintiff was not working in administrative or managerial capacity and was working as badli kamdar/conductor at the time of his termination. There is no assertion nor any evidence was led by the plaintiff on the point that the plaintiff was not

workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

- 10] As per Section 2(A) of the Act, any dismissal or termination of workman by the employer shall be deemed to be an industrial dispute. Same reads as under:

*“Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. --Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute”.*

Further as per Section 2(k) of the Act, Industrial dispute to mean any dispute or difference between the employers and employers, or between employers and workmen, or between workmen and workmen, which is



connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

For adjudication of said disputes, Labour Courts and Tribunals are constituted under Sections 7, 7(A) to 7(C) of the Act

11] In *Premier Automobiles Limited Versus Kamalakar Shantharam Wadke*, AIR 1975 S.C.2238, the issue of jurisdiction of Civil Court in Industrial disputes was before Hon'ble Supreme Court and Hon'ble Apex Court has set out four broad principles:

*"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court;*

*(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his*

*remedy for the relief which is competent to be granted in a particular remedy;*

*(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act;*

*(4) If the right which is sought to be enforced is a right created under the Act such as Chap. VA then the remedy for its enforcement is either S.33C or the raising of an industrial dispute, as the case may be."*

**12]** Further, in *The Rajasthan State Road Transport Corporation and Another, Etc., Versus Krishnakanth, Etc., (1995) 5 SCC 75*, Hon'ble Supreme Court evolved following principles:

*"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute*

*an“industrial dispute” within the meaning of Section 2(k) or Section 2A of the Industrial Disputes Act, 1947.*

*(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.*

*(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 -- which can be called “sister enactments”; to Industrial Disputes Act -- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial*

*Disputes Act. Otherwise, recourse to civil court is open.*

*(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.*

*(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly -- i.e., without the requirement of a reference by the Government -- in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a*

*long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.*

*(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to “statutory provisions”. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.*

*(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and*

*revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.”*

- 13] Thus, in both the judgements referred above, Hon’ble Supreme Court propounded that where the disputes relates to the enforcement of a right or an obligation created under the Industrial Disputes Act or on the basis of standing order, the jurisdiction of civil court is impliedly barred and only remedy is to approach Courts and Tribunals created under the Industrial Disputes Act.
- 14] Relying upon the above referred judgements passed by the Hon’ble Supreme Court, in ***Rajasthan SRTC Vs. Zakir Hussain reported in (2005) 7 SCC 447***, Hon’ble Supreme Court held that the employee ought to have worked out his remedies under the Industrial Disputes Act and the Civil Court jurisdiction could not have been invoked. In the said judgment, the Hon’ble Supreme Court was dealing with the

case of a Conductor who was on daily wages on probation for a period of two years and whose service came to be terminated on the ground of unsatisfactory performance. The challenge to the order of termination was by way of a suit for declaration that the termination order was illegal, against the principles of Natural Justice and was therefore liable to be set aside.

15] However, in *Rajasthan SRTC Vs. Mohar Singh, (2008) 5 SCC 542* Hon'ble Supreme Court held that the civil court had jurisdiction to entertain a suit against dismissal order where the plaintiff claim benefit of a fundamental right under Article 14 of the Constitution of India or mandatory provisions of statute or statutory rules governing the terms and conditions of service. It was further held that only If a right is claimed under the Industrial Disputes Act or the sister laws, the jurisdiction of the Civil Court would be barred, but if no such right is claimed, civil court will have jurisdiction.

16] Further, in *Rajasthan SRTC Vs. Bal Mukund Bairwa*

*reported in (2009) 4 SCC 299*, Hon'ble Supreme Court after referring the earlier decisions in Premier Automobiles and Krishnakanth (supra) observed that where employer is a State within the meaning of Article 12 of Constitution of India, even gross violation of principles of natural justice has been held to come within the ambit of Article 14. It was further held that if an employee intends to enforce his constitutional rights or right under a statutory Regulation, Civil court will have the jurisdiction but if he claims his rights and corresponding obligations only in terms of the provisions of Industrial Disputes Act or the sister laws, civil court will have no jurisdiction. It was further observed that merely because the employee is a workman within the meaning of Industrial Disputes Act will not take away the jurisdiction of civil court and it has to be determined in lights of the facts of each case . It was further observed as under:

*“If the infringement of Standing Order or other provisions of the Industrial Disputes Act are alleged, the civil court's*



*jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.”*

The Hon’ble Supreme Court further held as under:

*“28. In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom.*

*However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid*

*down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. (supra) shall prevail. 29. An assumption on the part of this Court that all such cases would fall only under the Industrial Disputes Act or sister laws and, thus, the jurisdiction of the civil court would be barred, in our opinion, may not be the correct interpretation of Premier Automobiles Ltd. (supra) which being a three-Judge Bench judgment and having followed Dhulabhai (supra), which is a Constitution Bench judgment, is binding on us.”*

- 17] Thus, as per the law laid down by Hon’ble Supreme Court as referred above, civil court has jurisdiction to entertain the civil suit if the same is based on the violation of constitutional provisions or of principles of natural justice or statutory regulations of the corporation but if the same is based upon the violation under the Industrial Dispute Act,

jurisdiction of civil court is barred. In the matter at hand, Plaintiff has claimed his remedy on the basis of violation of principles of natural justice and Constitutional provisions and not on the basis of violation of any provision of Industrial Disputes Act. It is contended by the Ld. Counsel for the plaintiff that the inquiry was conducted in a very dubious and mechanical manner without following the principles of natural justice.

- 18]** Now, let us have a look on the provisions of Article 311 of the Constitution of India dealing with dismissal, removal of employees employed in civil capacity under Union or State, which reads as under:

*"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed*

*(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges*

*Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply*

*(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*

*(c) where the President or the Governor, as the case may be, is*

*satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry*

*(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause ( 2 ), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."*

**19]** Thus, from the perusal of the above said article, it is clear that no person in the Service of State employed in Civil Capacity shall be dismissed or removed except after an inquiry wherein the employee has been informed of the charges levelled against him and after giving a reasonable opportunity of hearing in respect of those charges. Further the person removing the employee from service shall not be subordinate to the authority by which he was appointed.

**20]** In the present case, admittedly, the charge sheet was issued after around 7-8 days after the lodging of FIR against the

plaintiff, wherein the charges were levelled against the plaintiff on the basis of FIR filed against him and only Reporting Officer was examined to prove his charge sheet on the basis of FIR. No independent witness or evidence was produced against the plaintiff in the said inquiry proceedings and only explanation of the plaintiff was recorded and further the witness examined by him were discarded.

**21]** It was not the case of the appellant/defendants that the Reporting Officer was present at the time when the liquor was allegedly recovered from the bus. The entire inquiry proceedings were conducted in a hasty manner without affording any proper hearing or opportunity to plaintiff-defendants to defend his case and the plaintiff was held guilty in the inquiry proceedings.

**22]** As per the charges against the plaintiff, the liquor was found in the bus behind the driver seat. There was no independent material to show the complicity of the plaintiff

in the transportation of liquor and the complicity was shown only on the basis of police FIR. It is pertinent to mention here that the criminal case lodged against the plaintiff resulted into the acquittal of the plaintiff by the competent criminal court. However, the plaintiff was inducted in the inquiry proceedings much before even the filing of charge sheet against him and ultimately the plaintiff was found guilty in the inquiry proceedings and thereafter was dismissed from the service after providing him the opportunity to show cause as to why he was not to be removed from service. Interestingly the person who issued the charge sheet, who conducted the inquiry, who held the plaintiff guilty and further issuing show cause notice regarding the penalty imposed after passing the penalty of dismissal from service was one and the same person which is against the well settled cannons of principles of natural justice and also against the settled rule of *audi alteram partem*. The said person was examined in evidence by the defendants/appellants, wherein in his

cross-examination, he admitted that the Divisional Director is the appointing authority of the plaintiff and he is working under him and not holding the said post. No material has been placed on record to show the delegation of power to him. Further, the fact that the plaintiff was removed from service by the authority subordinate to the appointing authority itself is in violation of Article 311 Clause 1 of the Constitution of India.

- 23]** Thus, from the material placed on record it is clear that the inquiry proceedings against the plaintiff was conducted in an undue haste manner and even though the charges were levelled merely on the basis of FIR and independent witness was not produced in the inquiry proceedings to substantiate the allegations in the FIR, defendants had even not waited for the judgment of the Criminal Court regarding the criminal allegations against the plaintiff. It is true that the departmental inquiry is an independent proceeding and has no bearing regarding the outcome of a criminal case. Even



when the person is acquitted in a criminal case can be convicted in departmental inquiry but in that scenario, in my respectful thought, the evidence coming in the departmental inquiry should be independent and the material should not be based wholly on the police papers. Even in the present case, ultimately no independent material has been produced on record to substantiate the allegations and as such the inquiry proceedings apparently were laced with the element of bias and the gross violation of principles of natural justice. The issues are decided accordingly.

**ISSUE NO. 4 & 5 :**

- 24] In the case at hand, plaintiff in the prayer clause of the suit prayed for the relief of declaration seeking declaration that the show cause notice issued to the plaintiffs by the defendants is illegal and unconstitutional and is void. Further, relief of declaration that the order passed on the basis of said show cause notice was illegal and

unconstitutional and void was sought. Apart from the same permanent injunction to the effect that the defendant shall not obstruct the plaintiff in discharging his duties was sought for. Admittedly, no relief of reinstatement of the plaintiff in the service of defendants and further of payment of back wages to the plaintiffs and the consequential benefits was sought.

25] It is well settled law that where the plaintiff can seek further relief but has not prayed for the same, the mere relief of declaration cannot be granted. In the present case plaintiff has prayed for the relief of simplicitor declaration without asking for the consequential reliefs and as such the relief claimed by plaintiff itself is not maintainable in the present form.

26] In *MUNI LAL Vs. THE ORIENTAL FIRE & GENERALINSURANCE COMPANY LTD. & ANR.*, 1996 SCC (1) 90, suit was instituted seeking a declaration that the appellant is entitled to the total loss of the truck from the

Insurance Company. The said suit was dismissed by the trial court holding that the suit for mere declaration without consequential relief for payment of compensation for the loss of truck or specified amount of compensation from the respondents was not maintainable. Subsequently, an application under Order 6, Rule 17 C.P.C. was filed in the appellate Court seeking consequential relief, however, both the appellate court as well as the Hon'ble High Court dismissed the claim holding that the suit is barred by limitation. Upholding the dismissal of claim, Hon'ble Supreme Court held that the the courts below rightly refused the declaratory relief as the same was without any consequential relief of payment of quantified amount. The Hon'ble Court further held that any amendment sought to grant consequential relief cannot be permitted after the suit was barred by limitation during the pendency of the proceeding in the appellate court or the second appellate court.

27] Further, admittedly the plaintiff attained the age of

superannuation during the pendency of the proceedings as is apparent from the written submission on behalf of the plaintiff itself. It is contended by the Ld. Counsel appearing the appellants that as the plaintiff had attained the age of superannuation during the pendency of the proceedings he cannot be reinstated into service and the case of the plaintiff becomes in-fructuous. Admittedly, the plaintiff has attained the age of superannuation and as such even otherwise he cannot be reinstated into service. Further, even if the relief of declaration would be awarded in favour of plaintiff, that would be of no avail as the plaintiff has not sought the relief of reinstatement into service and further of payment of back wages along with all consequential benefits and the continuity of service. It is well settled preposition of law that Civil Court cannot award more relief than that claimed in the plaint specifically.

28] In *Bachhaj Nahar Vs. Nilima Mandal & Anr. CIVIL APPEAL NOS.5798-5799 OF 2008 decided on 23/09/2008*, Hon'ble Supreme Court observed as under:

*“16. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a 16 particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on*

*examination of facts grant any relief as it thinks fit. In a suit for recovery of Rs. one lakh, the court cannot grant a decree for Rs. Ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court 17 grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.*

- 29]** Thus in view of the discussion made above, the relief claimed by the plaintiff cannot be awarded to him and further the reliefs which are not claimed also cannot be awarded by the Court on its own and thus the findings of the Ld. Trial Court directing the reinstatement of plaintiff into service of defendant and further of payment of back wages cannot sustain and are liable to be set aside. Thus, I pass the following order.

**ISSUE NO. 6:**

- 28.** In the result, following order is passed.

**:: ORDER ::**

1. The present Regular Civil Appeal is hereby allowed in terms of discussion made above.
2. The Judgment passed on 25.06.2003 and decree dated 27.06.2003 by the Ld. Civil Judge (Senior Division), Rajkot in Regular Civil Suit No. 565 of 2000 is hereby set aside and the Civil Suit bearing No. 565 of 2000 filed by the plaintiff is dismissed. No order as to costs. Decree be drawn accordingly
3. R&P be sent back to the concerned Court along with the copy of this Judgment.

Pronounced in open court today at Rajkot on this 3<sup>rd</sup> day of April, 2023.

Date: 03/04/2023

**(PRASHANT JAIN)**

**3<sup>rd</sup> Addl. District Judge, Rajkot.**

**UID Code: GJ01507**