39. By issuing the restrictive directive of "minimal appointment of teachers" on election duties the Election Commission has ensured that the electoral process does not impose onerous demands on the educational system. In the wake of the preceding discussion Guideline No. 1.5d clearly mandates that teachers will be employed on election duties only after all other categories of employees mentioned in the Election Guideline No. 1.5d have been exhausted. In other words the appointment of Booth Level Officers or assignment of election duties shall be first made from the pool of all categories of employees depicted in the Election Guidelines No. 1.2 except for teachers. There may be occasions when even after appointment of all other categories of employees (apart from teachers) vacancies of Booth Level Officers are not filled and there is need for additional hands. In that situation alone teachers can be appointed as Booth Level Officers and assigned election duties. Engagement of teachers on election duties shall always be a measure of last resort, and only after all other options in Election Guidelines No. 1.2 and 1.5d have been exercised.

H. Final Directions:

40. Accordingly, the respondent authorities are directed to refix the deployment of teachers as Booth Level Officers or on other election duties in light of the above interpretation of Election Commission Guideline No. 1.5d read with Election Commission Guideline No. 1.2. In case other categories of staff mentioned in Election Guideline No. 1.2 are available, teachers shall not be deployed on election duties or appointed as Booth Level Officers. The exercise shall be completed within a period of three months.

41. However, till such exercise is carried out the concerned teachers will have to discharge their electoral duties as contemplated in the impugned list of BLO dated 16.08.2024 passed by the respondent No. 7 i.e. District Magistrate/District Electoral Registration Officer, Jhansi. The petitioner shall perform the electoral duties on holidays and after teaching hours till fresh orders in compliance of directions in this writ petition. The impugned order/list shall however abide by the fresh orders to be passed by the respondent No. 7 pursuant to the above directions.

42. With the aforesaid directions, the writ petition is finally **disposed of.**

(2025) 2 ILRA 687
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.02.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 56331 of 2012

Sripal Giri ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mr. H.M.B. Sinha, Advocate

Counsel for the Respondents:
C.S.C.

A. Service Law – Disciplinary proceedings – Punishment - Civil Service (Classification, Control and Appeal) Rules, 1930 - Fundamental Rule 54-B - The most important feature about the decision of the Government to pay allowances for the period of suspension is that a decision in this regard has to be taken by the Disciplinary Authority, after giving a notice to the government servant and calling for his explanation within the period specified under Fundamental Rule 54 of the Financial Hand Book. Here,

admittedly, no notice was served upon the petitioner, calling for his explanation by the Disciplinary Authority as to why for the period of his suspension from service, nothing towards his emoluments be paid, except the subsistence allowance that he had received. (Para 26)

B. Rule 5 of the Rules of 1999 - It says that for the period of suspension after notice to the employee, a decision shall be taken by the Disciplinary Authority, whether the period of suspension shall be treated as one spent on duty or not. But, that power may not entirely apply in this case. In any case, even if there were such a power in the Disciplinary Authority, it has to be exercised reasonably; not capriciously. (Para 31)

C. The decision to discount the entire period of time that the petitioner remained out of service on account of the order of dismissal passed by the respondents and since quashed by this Court in the earlier writ petition, is not one of the penalties envisaged under the Service Rules; to be specific the eight penalties enumerated in Rule 3 of the Rules of 1999. Therefore, this deprivation, inflicted upon the petitioner, not being one of the enumerated penalties, going by the salutary principle that no order, visiting a person with adverse civil consequence, ought be made without a reasonable opportunity of hearing to him, the order would be bad for want of notice and opportunity.

D. If Rule 5 of the Rules of 1999 has any bearing on the issue *proprio vigor* or by analogy, before a deprivation of this kind for the period of dismissal was brought upon the petitioner, it was incumbent to issue notice to him in this regard and hear him on the point. This has admittedly not been done. This devastating prejudicial measure, a part of the impugned order, has come together with the order of punishment of reduction to the lowest stage in the time scale awarded to the petitioner with this Court granting liberty to the respondents to award a lesser penalty, instead of dismissal earlier ordered. **If at all any kind of a measure prejudicial to the petitioner's interest, apart form the penalty imposed under the Rules, were to be taken by the respondents, it had to be with due notice and opportunity to the petitioner, afforded separately.** (Para 32)

E. Violative of Articles 14 and 16 of the Constitution - Apart from this part of the order being bad on account of want of notice and opportunity to the petitioner, the order is utterly arbitrary, capricious and whimsical. It is found that the penalty of dismissal from service earlier awarded to be shockingly disproportionate. The penalty of dismissal was regarded too severe by this Court and that judgment of the Court was accepted by the respondents without invoking any appellate procedures.

If the respondents had not erred in passing an order of dismissal from service for a relatively trivial misconduct, the petitioner would have continued in service, suffering some minor penalty. There would be continuity in service for him, which would at least preserve his seniority and contribute to his post retiral benefits. In one stroke of pen, the petitioner has been deprived of all these benefits by this part of the order impugned. It is beyond any standard of reasonableness or fairness why an employee, who is held by this Court to have been awarded a shockingly disproportionate terminal punishment for a relatively trivial misconduct with a direction to award a lesser punishment, upon reinSt.ment would loose the benefit of continuity in service, including seniority and reckoning of the period of service for the purpose of post retiral benefits. This part of the order, to the clear understanding of the Court, given the circumstances that the petitioner's dismissal from service was regarded as shockingly disproportionate, is both arbitrary and unfair. (Para 33)

The impugned order dated 19.07.2012, to the extent it punishes the petitioner, is hereby quashed. (Para 35)

Writ petition allowed. (E-4)

Precedent followed:

1. Gaya Prasad Yadav Vs St. of U.P. through Principal Secretary & anr., 2022 SCC OnLine All 685 (Para 20)

2. Akhilesh Kumar Awasthi Vs St. of U.P. & ors., 2008 (4) AWC 4061 (Para 26)

3. Ram Kripal Srivastava Vs U.P.P.S.T., 2011 SCC OnLine All 3339 (Para 28)

4. Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & ors., (2013) 10 SCC 324 (Para 33)

Precedent distinguished:

Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs Rabindranath Chaubey, (2020) 18 SCC 71 (Para 21)

This writ petition assails an order passed by the Joint Commissioner (Commercial Tax), holding charge of the Deputy Commissioner (Administration), Commercial Tax, Noida dated 19.07.2012 to the extent it punishes the petitioner after disciplinary proceedings.

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order passed by the Joint Commissioner (Commercial Tax), holding charge of the Deputy Commissioner (Administration), Commercial Tax, NOIDA dated 19.07.2012 to the extent it punishes the petitioner after disciplinary proceedings.

2. The facts, giving rise to this writ petition, are necessary to recount, notwithstanding the fact that the issue involved here is limited. The petitioner is a *Sewak* (Class-IV employee) in the service of the Trade Tax Department and posted in the NOIDA Region, District Gautam Budh Nagar. In the night intervening 06/07.07.1995, the petitioner was posted at the Mohan Nagar, Ghaziabad Check-post along with two other *Sewak*, Ram Swarup and Kushalpal. The allegation against the petitioner was that along with the two other *Sewak*, he permitted a vehicle, bearing Registration No. DL-G/9490, to pass through the Check-post without checking its papers. The petitioner was placed under suspension pending inquiry along with Ram Swarup, one of the two other *Sewak*, *vide* order dated 27.12.1995. He was served with a charge-sheet on 25.10.1999. The petitioner filed his reply on 01.02.2000, denying the charges. The Inquiry Officer held an inquiry, returning a finding of guilt against the petitioner on both charges. The petitioner says that the Inquiry Officer had remarked that the petitioner and the other two *Sewak*, Ram Swarup and Kushalpal, were equally guilty. About Kushalpal, it is said that though equally answerable, he was not suspended or charge-sheeted.

3. The petitioner was served with a show cause notice dated 09.03.2000, to which he submitted a reply dated 13.03.2000. The Assistant Commissioner (Administration), Trade Tax, NOIDA, Gautam Budh Nagar *vide* order dated 14.03.2000 proceeded to dismiss the petitioner from service. The petitioner preferred a departmental appeal, which was rejected by the Deputy Commissioner (Office Trade Tax), NOIDA *vide* order dated 09.11.2001. The petitioner challenged these orders before this Court by means of Writ-A No.20574 of 2008. The said writ petition came to be allowed by this Court in part, setting aside the order of dismissal, on the ground that it was disproportionate punishment, with a remit of the matter to the Disciplinary Authority to pass orders afresh "awarding some lesser punishment". The writ petition, that was indeed partly allowed, was expressed to

have been disposed of by the learned Judge deciding it, who *vide* judgment and order dated 17.04.2012 remarked:

"The charges have been made out against the petitioner of allowing one truck to pass on that date without having a valid gate pass.

The petitioner's services have been brought to an end for one single incident.

It has been stated by the petitioner in para 25 of the writ petition that two other class IV employees were also present along with the petitioner but they have not been faced with any kind of punishment. This factum is not denied in the counter affidavit filed by the State.

In the counter affidavit filed by the State other than this incident, no other reference has been made out to the past or previous conduct of the petitioner which was against the interest of the department.

It is also not denied by the State that there were two other persons posted along with the petitioner on the same night and they have not been given any punishment.

For a single act of carelessness and negligence, it is only the petitioner who has been given the extreme punishment of termination from service.

The appellate authority while imposing punishment has not made any discussion as to why this extreme punishment alone would be justified in the facts and circumstances of the case.

In my opinion, the punishment which has been imposed on the petitioner of termination is too harsh and disproportionate to the charges which have been found against him. Therefore I set aside the order of termination. The matter is remitted to the punishing authority for awarding some lesser punishment, which it thinks fit and appropriate in the facts and circumstances. The matter of awarding lesser punishment may be decided by the authority within a period of three months from the date of placing this order before the authority concerned. This order may be placed before the authority by the petitioner within ten days from today. Certified copy of this order may be given to the petitioner on payment of usual charges within 48 hours.

The writ petition is disposed of as above. No costs."

4. In compliance with this order, the petitioner was treated to have been reinstated in service, but continuing under suspension w.e.f. 17.04.2012, to wit, the date of our judgment passed in Writ-A No.20574 of 2008. A show cause notice was issued to the petitioner on 09.07.2012, annexing therewith a copy of the inquiry report, on the foot of which the order of dismissal from service, since quashed by this Court, was founded. The show cause notice dated 09.07.2012 deserves to be quoted for the relevant part thereof:

"आपके विरूद्ध जारी आरोप पत्र के क्रम में जांच अधिकारी द्वारा अपनी जांच रिर्पोट (प्रमाणित प्रति संलग्न) में सभी आरोपों के आपके विरूद्ध प्रमाणित होना पाया गया है। अतः आपको निर्देशित किया जाता है कि आप नोटिस प्राप्ति के तीन दिन के भीतर जांच रिपोर्ट के संदर्भ में अपना लिखित अभिकथन अधोहस्ताक्षरी के समक्ष प्रस्तुत करते हुए कारण बताएं कि क्यों न आपके विरूद्ध आरोप प्रमाणित पाये जाने के फलस्वरूप आपको सेवा से हटा दिया (रिमूवल कर दिया) जाए।

इस संबंध में यदि आपको व्यक्तिगत रूप से कुछ कहना है तो आप दिनांक 12.07.2012 को प्रातः 11 बजे मेरे समक्ष उपस्थित होकर अपना पक्ष प्रस्तुत कर सकते हैं।" (emphasis by Court)

5. The petitioner submitted a reply to the show cause notice and shorn of unnecessary detail about the technical

pleas, which the petitioner raised in his reply dated 10.07.2012, all that need be said is that the Joint Commissioner (Trade Tax), holding charge of the Deputy Commissioner (Administration), Commercial Tax, NOIDA, proceeded to pass an order dated 19.07.2012, reinstating the petitioner in service, but nevertheless punishing him. It is the part of the order dated 19.07.2012, imposing punishment upon the petitioner, which is impugned in the present writ petition and shall be referred to hereinafter as 'the impugned order'.

6. Aggrieved by the impugned order, the petitioner has instituted this writ petition under Article 226 of the Constitution.

7. Parties having exchanged affidavits, the writ petition was admitted to hearing on 05.08.2024, which proceeded forthwith but remained inconclusive on that day. The hearing was adjourned to the following day i.e. 06.08.2024, when learned Counsel for the parties concluded their submissions. Judgment was reserved.

8. Heard Mr. H.M.B. Sinha, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel appearing on behalf of the State, representing all the respondents.

9. Though not directly in issue, but related to the proceedings, is the show cause notice dated 09.07.2012, that was issued after this Court set aside the order of dismissal and remitted the matter to the Disciplinary Authority to make fresh orders, awarding some lesser punishment. The clear purport of the order dated 17.04.2012, that this Court passed, was that the lesser punishment to be awarded, was to be a non-terminal punishment. However, the show cause notice dated 09.07.2012, that was issued by the Deputy Commissioner (Administration), Commercial Tax, NOIDA, asked the petitioner to show cause why in view of the findings of the Inquiry Officer, he may not be removed from service. The issue has largely become academic now since a final order has been made, punishing the petitioner with a non-terminal punishment, now impugned, but it is very exceptionable that the Deputy Commissioner (Administration), Commercial Tax, NOIDA should have issued a show cause notice, asking the petitioner why he should not be removed from service. The show cause notice dated 09.07.2012 is clearly in violation of our order dated 17.04.2012 passed in Writ-A No.20574 of 2008. As already remarked, since the proceedings having culminated in a non-terminal order of punishment, we rest the matter here; of course, recording our disapproval to the contents of the show cause notice dated 09.07.2012.

10. We must remark here that the office of the present writ petition is limited to see if the impugned punishment, now awarded, is valid in law. The question of guilt is no longer open to the petitioner to assail in view of the curtailment of the petitioner’s right to question it by the judgment of this Court dated 17.04.2012 passed in Writ-A No.20574 of 2008. That judgment of ours upholds the petitioner’s guilt, but quashes the order of dismissal from service on the ground of quantum, or so to speak, though the expression is not employed there, the punishment being ‘shockingly disproportionate’. It is in the perspective of these limitations that Mr. H.M.B. Sinha, learned Counsel for the petitioner was truly livid in his criticism of

the order impugned. He submits that the punishment awarded by the impugned order is still 'shockingly disproportionate', considering the nature and the gravity of the charges, which are trivial in nature and do not at all warrant the imposition of a major penalty. He emphasizes that the petitioner's integrity and dedication has not been doubted. To the contrary, these have been endorsed by the Inquiry Officer.

11. It is argued by the learned Counsel for the petitioner that the entire service record of his is unblemished. It is said that the impugned punishment brings his entire career to a naught, inasmuch as the period from 14.03.2000 to 20.04.2012 is not to be reckoned for any purpose, including pensionary benefits. The other part of the order, by which the petitioner has been punished with a reduction to the minimum stage in the ordinary time-scale for a *Sewak* permanently, is criticized as shockingly disproportionate punishment awarded to the petitioner, not at all commensurate to the charges found proved. The other direction, not to pay any salary to the petitioner for the period of suspension except the subsistence allowance, as if it were a part of the punishment, has been assailed as illegal. Mr. Sinha submits that a direction not to pay salary to an employee upon reinstatement beyond his subsistence allowance paid during the period of suspension is not a punishment under the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999'). He submits that salary for the period of suspension can be denied, in full or part, after following the procedure prescribed for the purpose under Fundamental Rule 54-B of the Civil Service (Classification, Control and Appeal) Rules, 1930, as applicable in Uttar Pradesh (for short, 'the CCA Rules').

12. It is further submitted by Mr. Sinha that the impugned order to the extent that it punishes the petitioner is grossly arbitrary and violative of Articles 14 and 16 of the Constitution, inasmuch as admittedly three men were assigned identical duties of holding guard at the check-post and the allegations against them are not similar, but identical, to wit, permitting one vehicle to escape without getting its papers checked. However, out of the three employees, two have been completely exonerated, with no action and the petitioner has been singled out without any distinguishing feature being there about him. He has been made a scapegoat and visited with disproportionate penalty.

13. Ms. Monika Arya, learned Additional Chief Standing, on the other hand, submits that the petitioner has been reinstated in service and not awarded any terminal penalty in compliance with this Court's order. So far as the quantum of punishment is concerned, it is within the province of the Disciplinary Authority, and, this Court cannot interfere with the quantum unless it be shockingly disproportionate. She submits that the element about the punishment being shockingly disproportionate stands eliminated with the award of a non-terminal punishment. It does not lie in the petitioner's mouth or this Court's domain to dictate to the Disciplinary Authority precisely what punishment is to be awarded to the petitioner.

14. We have carefully considered the rival submissions advanced by learned Counsel for both parties and perused the record.

15. The punishment, that has been awarded to the petitioner, has three

components to it, which can be parsed as follows:

(i) The petitioner, upon reinstatement in service as a Sewak, would stand reverted to the minimum stage in the ordinary time-scale, instead of the first promotion pay-scale that he was receiving at the time of suspension from service;

(ii) The petitioner, during the entire period of suspension from service, would receive no other emoluments, except his subsistence allowance; and,

(iii) The entire period from 14.03.2000 to 24.04.2012, to wit, the date of the petitioner's dismissal from service and the date that he presented his joining report, respectively, would be regarded as break in service and this period shall not reckon towards any service benefit.

16. The penalties, which may be awarded to a government servant, are spelt out by Rule 3 of the Rules of 1999. The penalties are broadly classified into minor and major penalties. Rule 3 of the Rules of 1999 reads:

"3. Penalties.—

The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants :

Minor Penalties:

(i) Censure;

(ii) Withholding of increments for a specified period;

(iii) Stoppage at an efficiency bar;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;

(v) Fine in case of persons holding Group 'D' posts : provided that the amount of such fine shall in no case exceed twenty five per cent of the month's pay in which the fine is imposed.

Major Penalties:

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualifies from future employment.

Explanation.- The following shall not amount to penalty within the meaning of this rule, namely :

(i) Withholding of increment of a Government servant for failure to pass a departmental examination or for failure to fulfil any other condition in accordance with the rules or orders governing the service;

(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficient bar;

(iii) Reversion of a person appointed on probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation."

17. Clearly, the penalty of reduction to the lowest grade in the time-scale awarded to the petitioner falls in the category of a major penalty under Rule

3(ii) of the part of the Rule dealing with major penalties. The nature of the misconduct, that has been found for the petitioner, has been opined by this Court *vide* the judgment and order dated 17.04.2012 passed in Writ-A No.20574 of 2008 as *"a single act of carelessness and negligence"*. This Court has frowned upon the fact that the petitioner was singled out for the award of extreme penalty of termination whereas the other two *Sewak*, who had identical duties and responsibilities to check papers of vehicles, passing through the check-post, were not awarded any punishment at all. The punishment of termination, as this Court has described in the judgment under reference, which really refers to the order of dismissal earlier passed against the petitioner, since quashed, has been opined to be too harsh and disproportionate to the charges found proved. The matter was remitted to the Disciplinary Authority for the purpose of awarding some lesser punishment. While it is true, as Ms. Monika Arya submits that we cannot dictate the Disciplinary Authority the punishment to be awarded in a case where the guilt is found proved, but can only interfere on grounds of the penalty being shockingly disproportionate can it be said that having once regarded the penalty earlier awarded as shockingly disproportionate, we are precluded from holding that a slightly lesser punishment awarded for a minor infraction or misdemeanour by the government servant concerned, cannot again be regarded by us as shockingly disproportionate. We do not think so.

18. The penalty of dismissal from service was indeed outrageous for the misconduct found proved against the petitioner. It was a case where a solitary vehicle got away from the check-post under the charge of three *Sewak*, all Group-D employees, without its papers being checked. It was given a chase and apprehended. It did not lead to any loss of revenue for the State. These three men were performing their duties of checking papers for the passing vehicles in the night intervening 06/07.07.1995 at the Mohan Nagar Check-post from 9.00 p.m. to 7.00 a.m. The petitioner seems to have a clean record and this is the only misconduct found proved against him. Though not a ground in any manner to exonerate the petitioner, it is indeed surprising that the other two similarly circumstanced employees, assigned identical duties at the check-post, have not been penalized at all. In these circumstances, cumulatively taken the award of a major penalty of reduction to the lowest grade in the time-scale, which involves a perpetual reduction, indeed seems to be again shockingly disproportionate. There is no principle, by which our conscience once shocked, cannot be twice shaken. Reduction to the lowest grade in the time-scale perpetually for a Group-D employee, like the petitioner, is almost as shocking as his earlier dismissal. We hold accordingly.

19. Though not our province to direct the award of a particular penalty or award it ourselves in substitution of the Disciplinary Authority's discretion in this regard, given the misconduct found proved against the petitioner and the way the respondents have dealt with him so far, we would have thought of restricting the respondents' discretion in the matter to the award of one or the other of the minor penalties that they thought commensurate. But, we notice that the petitioner has retired from service pending this petition. Therefore, we leave the respondents free to award such

punishment to the petitioner, as the Rules permit, commensurate to his guilt. If it is permissible under the Rules to award some punishment to the petitioner, now a retired employee, our remarks about the shocking disproportionality of the major penalty awarded by the order impugned shall be borne in mind by the Disciplinary Authority.

20. A corollary of the question is : What penalty can now be imposed upon the petitioner, who is a retired employee? While there is no cavil about the principle that any inquiry commenced while the employee was in service can continue after his retirement, without the necessity of a sanction by the Governor under Article 351-A of the Civil Service Regulations (for short 'CSR'), the question, however, is if all those penalties that could be imposed while the employee was in service can be awarded. In case of government servants serving the Government of Uttar Pradesh, the rules applicable would limit the power of punishment to that postulated under Article 351-A of the CSR. The power under Article 351-A can be exercised by the Governor alone and no one else. The punishments are limited to the withholding or withdrawing of pension or any part of it, besides the right of ordering recovery from the pension. In this connection, reference may be made to the Bench decision of this Court in **Gaya Prasad Yadav v. State of U.P. through Principal Secretary and another, 2022 SCC OnLine All 685. In Gaya Prasad Yadav** *(supra)*, which related to a Constable of the Armed Police, the following remarks of their Lordships are apposite :

31. The question, therefore, in this case to be considered as to whether any such rule, as discussed in the case of *Rabindranath Choubey* (supra) by the Hon'ble Supreme Court exists in the Conduct, Discipline and Appeal Rules governing the appellant-petitioner.

32. The State Government in exercise of its powers vested in it under the Police Act, 1861 has framed "The U.P. Police Officers of the Subordinate Ranks(Punishment and Appeal) Rules, 1991". The Rules are statutory in nature. Two types of punishment are provided in Rule 4, according to which major penalties include (i) dismissal from service, (ii) removal from service and, (iii) reduction in rank including reduction to a lower-scale or to a lower stage in a time scale whereas minor penalties include (i) withholding of promotion, (ii) fine not exceeding one month's pay, (iii) withholding of increment, including stoppage at an efficiency bar and, (iv) Censure. The procedure for award of punishment is provided in Rule 14.

33. Rule 14(1) provides for the procedure for major penalty, according to which the proceedings are to be conducted in accordance with the procedure laid down in appendix-I appended to the Rules. Rule 14(2) states that minor penalty may be imposed after informing the Police Officer in writing of the action to be proposed to be taken against him and what imputation of the act or omission on which action is proposed to be taken after giving him reasonable opportunity of making representation.

34. In U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 there is no provision akin to the provision of 34.2 of the Discipline and Appeal Rules, as discussed in the case of *Rabindranath Choubey* (supra). Even the Civil Service Regulations does not contain any such rule or provision which may permit passing of order of dismissal or for that matter any other

penalty in case the employee has retired. Learned State Counsel has also not been able to place any such rule before us.

35. In absence of any rule, which permits imposition of punishment of dismissal after retirement or which deems the employee-employer relationship to be continued even after retirement for the purposes of disciplinary proceedings, in our opinion, the judgment of Hon'ble Supreme Court in the case of *Rabindranath Choubey* (supra) does not have any application in this case. Accordingly the reliance placed by the learned State Counsel on the said judgment is misplaced. As already observed above, Hon'ble Supreme Court in the case of *Prabhakar Sadashiv Karvade* (supra) has clearly held that penalty of dismissal cannot be imposed on an officer/employee after his retirement after attaining the age of superannuation unless there exists a specific rule in that behalf. If the disciplinary enquiry is instituted prior to retirement of the employee concerned, the same will continue by operation of Article 351A of Civil Service Regulations as held by Hon'ble Supreme Court in the case of *Harihar Bholenath* (supra). However, in such a case if the employee is found to be guilty of grave misconduct of or is found to have caused pecuniary loss to the Government, it is the Governor who can take action as provided in Article 351-A of the Civil Service Regulations.

21. It may be remarked here that under the Rules of 1999 are the CSR and there is no fiction of the kind involved in Rule 13.2 of the Conduct, Discipline and Appeal Rules, that applied in **Chairman-cum-Managing Director, Mahanadi Coalfields Limited v. Rabindranath Chaubey, (2020) 18 SCC 71.** Under the Rules involved in **Mahanadi Coalfields Limited** *(supra),* a legal fiction is there, providing that if disciplinary proceedings are instituted prior to retirement of an employee, those proceedings shall not only be deemed to be proceedings after retirement, but the proceedings shall be concluded in the same manner as if the employee had continued in service. It was a rule of this kind involved in **Mahanadi Coalfields Limited** that led their Lordships of the Supreme Court to conclude that a major penalty can be imposed on the employee there. But, in this case, as in **Gaya Prasad Yadav**, no such rule has been brought to the Court's notice. These remarks of ours shall be borne in mind by the Disciplinary Authority while deciding upon the penalty to be imposed upon the petitioner commensurate to his misconduct. It will also be borne in mind as to who is the competent authority now, who may award the appropriate penalty to the petitioner.

22. The other limb of the penalties, that have been imposed, is deprivation of emoluments for the period of suspension, over and above the subsistence allowance, payable or paid. A look at Rule 3 of the Rules of 1999 does not show that deprivation of emoluments, during the period of suspension, is in fact any kind of penalty, that may be imposed upon a government servant found derelict in disciplinary proceedings.

23. Rule 4 of the Rules of 1999 speaks of suspension and Rule 5 about pay and allowances etc. for the period of suspension. Rule 5 is relevant to the point, that arises here for consideration. It reads:

"5. Pay and allowance etc. of the suspension period.- After the order is passed in the departmental enquiry on the basis of criminal case, as the case may be,

under these rules, the decision as to the pay and allowances of the suspension period of the concerned Government servant and also whether the said period shall be treated as spent on duty or not, shall be taken by the disciplinary authority after giving a notice to the said Government servant and calling for his explanation within a specified period under Rule 54 of the Financial Hand Book, Volume-II, Parts II to IV."

24. Fundamental Rule 54 of the Financial Hand Book, Volume-II, Parts II to IV, provides:

"54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirment, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of noncompliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held], the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the

Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

NOTE—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.

(6) The payment of allowances under sub-rule (2) of sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of his removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE—Where the Government servant does not report for duty within reasonable time after the issue of the orders of reinstatement after dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge."

25. What appears, therefore, from a reading of the provisions of Rule 5 of the Rules of 1999 conjointly with Fundamental Rule 54 of the Financial Hand Book, is that the payment of emoluments during the period of suspension from service would be governed by Rule 5 of the Rules of 1999. Deprivation of emoluments during the period of suspension from service, or for that matter, the period that the petitioner has remained out of service on account of the order of dismissal, since quashed by this Court, would all be governed by Rule 5 of the Rules 1999 read with Fundamental Rule 54 of the Financial Hand Book. This is particularly so as the order of dismissal being quashed on ground that the penalty imposed was disproportionate with liberty to award a lesser punishment, which the Disciplinary Authority thought fit, the order of dismissal stands effaced. The only other option that this Court left with the respondents being a lesser punishment, apparently a non-terminal one, the fact that the petitioner remained out of employ on

account of the order of dismissal, is a position brought upon themselves by the respondents. The petitioner never refused to work or delayed matters either during the disciplinary proceedings or in prosecuting his case in Court – as much as he could do. It is to be noticed that Rule 3 of the Rules of 1999, which speaks about minor and major penalties, does not at all mention deprivation of salary for the period of suspension from service or the period of time that the employee remained out of service on account of a terminal order of punishment, which is later on set aside by a Court with liberty to impose a lesser punishment, as one of the penalties that could be imposed. Therefore, for the respondents to visit the petitioner with the penalty of depriving him of all emoluments during the entire period of suspension, except his subsistence allowance, cannot be regarded as an order passed by the respondents in the exercise of their disciplinary jurisdiction to punish him. It is a power traceable to Rule 5 of the Rules of 1999, dealing with pay and allowances for the period of suspension.

26. The most important feature about the decision of the Government to pay allowances for the period of suspension is that a decision in this regard has to be taken by the Disciplinary Authority, after giving a notice to the government servant and calling for his explanation within the period specified under Fundamental Rule 54 of the Financial Hand Book. Here, admittedly, no notice was served upon the petitioner, calling for his explanation by the Disciplinary Authority as to why for the period of his suspension from service, nothing towards his emoluments be paid, except the subsistence allowance that he had received. In this connection, reference may be made to **Akhilesh Kumar Awasthi v. State of U.P. and others, 2008 (4) AWC 4061**, where relying on the provisions of Fundamental Rule 54 of the Financial Hand Book, it was held:

"11. Now coming to the question as to whether the order passed by the revisional authority denying arrears of pay to the petitioner for the period he was under suspension as well as the period he was out of employment pursuant to the dismissal order dated 2.5.1994 is correct or not, I find that such an order can be passed by the competent authority only after issuing a show cause notice to the employee concerned as contemplated under Fundamental Rule 54, which reads as under: (quoted portion omitted)

12. A bare perusal of the aforesaid provision makes it clear that before passing an order depriving the Government servant of full salary for the period of suspension or when he was out of employment, a show-cause notice has to be issued to the concerned Government servant and only thereafter, the competent authority may pass appropriate order considering various aspects."

27. Now, **Akhilesh Kumar Awasthi** *(supra)* was a case where the order of dismissal was passed against the petitioner in that writ petition on 02.05.1994. By that time, the Rules of 1999 had not come into force. Therefore, the CCA Rules applied, by virtue of which salary for the period of suspension could be denied only in accordance with Fundamental Rule 54. Now, the CCA Rules by virtue of Rule 17 of the Rules of 1999 stand rescinded, but the provisions of Rule 5 of the Rules of 1999 and adoption of the period of notice prescribed under Fundamental Rule 54 of the Financial Hand Book, make it imperative for the Disciplinary Authority to

serve a notice upon a government servant before deciding to deprive him of the whole or any part of his salary for the period of his suspension from service beyond the subsistence allowances already received. Therefore, by dint of what Rule 5 of the Rules of 1999 provides, the principle laid down by this Court in **Akhilesh Kumar Awasthi** would still apply; may be by virtue of a different set of rules that are *para materia*.

28. For the same reason, a reference to the Bench decision of this Court in Ram Kripal Srivastava v. U.P.P.S.T., 2011 SCC OnLine All 3339, which relates to the period of time when the CCA Rules applied as also the relevant provisions of Fundamental Rules 54 and 54-B of the Financial Hand Book, would also be apposite. In Ram Kripal Srivastava (supra), it was observed by their Lordships of the Division Bench:

"22. A perusal of Sub-rules (3) and (5) of Fundamental Rule 54-B shows that the competent authority shall take a decision about the amount to be paid to the Government Servant during the period of suspension (not less than the subsistence allowance already received by him) after giving notice to him with respect to quantum proposed and after considering the representation, if any, made by him. The scope of the aforesaid decision is entirely different. The question as to whether full salary should be paid to the Government Servant or not, is not a kind of punishment provided under CCA Rules, 1930 as applicable in Uttar Pradesh but it is other than the punishment enumerated therein. However, it cannot be doubted that when disciplinary authority thinks that entire salary should not be paid to Government Servant for the period of suspension, such an order entails into civil consequences to the delinquent employee. Therefore consistent with the principles of natural justice, Fundamental Rule 54-B, Sub Rules (3) and (5), contemplate issuance of a show cause notice and thereafter an order needs be passed by the competent authority after considering representation, if any, of the delinquent employee. It is thus evident that along with order of punishment no decision can be taken by a competent authority to deny full salary to delinquent employee unless procedure prescribed under Fundamental Rule 54-B is observed."

29. For the said reason, the part of the impugned order, depriving the petitioner of his emoluments during the period of suspension, without following the procedure postulated under Rule 5 of the Rules of 1999, would clearly be vitiated.

30. This takes us to the last part of the penalty carried in the order impugned. And, that directs that the entire period from 14.03.2000 to 24.04.2012, that is to say, the date of the petitioner's dismissal from service and the date that he presented his joining report, respectively, would be regarded as break in service and shall not reckon towards any service benefits.

31. There is some investiture of this kind of a power in the Disciplinary Authority under Rule 5 of the Rules of 1999, where it says that for the period of suspension after notice to the employee, a decision shall be taken by the Disciplinary Authority, whether the period of suspension shall be treated as one spent on duty or not. But, that power may not entirely apply in this case. In any case, even if there were such a power in the Disciplinary Authority, it has to be exercised reasonably; not capriciously. This

case, we think, is not entirely covered by Rule 5, because it is not one where the petitioner has faced a suspension pending inquiry, ending in reinstatement with some non-terminal penalty. The petitioner, after disciplinary proceedings, was dismissed from service and upon a challenge before this Court, the order of dismissal was quashed with liberty to the Disciplinary Authority to award a lesser penalty. The respondents have regarded the period between 14.03.2000, when the petitioner was dismissed from service, and the date when he presented his joining report i.e. 24.04.2012, as break in service that would not reckon towards any service benefit. Apparently, it would not count towards the petitioner's continuity in service, seniority or even for the limited purpose of his entitlement post retiral benefits.

32. The decision to discount the entire period of time that the petitioner remained out of service on account of the order of dismissal passed by the respondents and since quashed by this Court in the earlier writ petition, is not one of the penalties envisaged under the Service Rules; to be specific the eight penalties enumerated in Rule 3 of the Rules of 1999. Therefore, this deprivation, inflicted upon the petitioner, not being one of the enumerated penalties, going by the salutary principle that no order, visiting a person with adverse civil consequence, ought be made without a reasonable opportunity of hearing to him, the order would be bad for want of notice and opportunity. If Rule 5 of the Rules of 1999 has any bearing on the issue *proprio vigor* or by analogy, before a deprivation of this kind for the period of dismissal was brought upon the petitioner, it was incumbent to issue notice to him in this regard and hear him on the point. This has admittedly not been done. This devastating prejudicial measure, a part of the impugned order, has come together with the order of punishment of reduction to the lowest stage in the time scale awarded to the petitioner with this Court granting liberty to the respondents to award a lesser penalty, instead of dismissal earlier ordered. If at all any kind of a measure prejudicial to the petitioner's interest, apart form the penalty imposed under the Rules, were to be taken by the respondents, it had to be with due notice and opportunity to the petitioner, afforded separately.

33. Apart from this part of the order being bad on account of want of notice and opportunity to the petitioner, we think that the order is utterly arbitrary, capricious and whimsical. The reason is that this Court found the penalty of dismissal from service earlier awarded to be shockingly disproportionate. Though, that expression was not employed in the judgment and order passed in Writ-A No.20574 of 2008, this Court after quashing the order of dismissal, ordered the respondents to award a lesser punishment, which the Disciplinary Authority thought fit. The penalty of dismissal was regarded too severe by this Court and that judgment of the Court was accepted by the respondents without invoking any appellate procedures. If the respondents had not erred in passing an order of dismissal from service for a relatively trivial misconduct, the petitioner would have continued in service, suffering some minor penalty. There would be continuity in service for him, which would at least preserve his seniority and contribute to his post retiral benefits. In one stroke of pen, the petitioner has been deprived of all these benefits by this part of the order impugned. It is beyond any standard of reasonableness or fairness why an employee, who is held by this Court to

have been awarded a shockingly disproportionate terminal punishment for a relatively trivial misconduct with a direction to award a lesser punishment, upon reinstatement would loose the benefit of continuity in service, including seniority and reckoning of the period of service for the purpose of post retiral benefits. Though, it has not been specifically said in the order impugned that the period, during which the petitioner was not in service, would not count towards his entitlement for the post retiral benefits, but the direction to treat it as break in service has that consequence unmistakably. This part of the order, to the clear understanding of the Court, given the circumstances that the petitioner's dismissal from service was regarded as shockingly disproportionate, is both arbitrary and unfair. It is violative of Articles 14 and 16 of the Constitution. Reference here may be made to the principles laid down by the Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others, (2013) 10 SCC 324**, governing continuity of service and the entitlement to back-wages for an employee upon his reinstatement in service, in consequence of an order of the Court, where his termination is held bad. In **Deepali Gundu Surwase** *(supra),* the following principles were laid down:

"38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or

workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman." (emphasis by Court)

34. In the totality of circumstances obtaining the direction to regard as break in service for the petitioner, the total period that he had remained out of employment on account of the order of dismissal from service, since quashed by this Court, cannot be sustained and has to be undone.

35. In the result this petition **succeeds** and is **allowed**. The impugned order dated 19.07.2012 passed by the Joint

Commissioner (Commercial Tax), holding charge of the Deputy Commissioner (Administration), Commercial Tax, NOIDA, to the extent it punishes the petitioner, is hereby **quashed**. The respondents may pass a fresh order awarding such punishment as the changed status of the petitioner on account of his supervening retirement from service may admit under the Rules, bearing in mind the guidance in this judgment. The respondents shall also pass further orders regarding the petitioner's entitlement to receive emoluments for the period of suspension from service, after putting him to notice for the limited purpose as aforesaid and affording him due opportunity. The petitioner shall, however, be entitled to the benefit of continuity in service, which shall reckon towards the determination of his post retiral benefits. The question of earning increments while the petitioner was in service and arrears, if any, payable on that account, would be subject to the penalty that is ultimately awarded by the respondents.

36. There shall be no order as to costs.

(2025) 2 ILRA 704
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.02.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Writ C No. 9298 of 2021

Birjesh Aggarwal ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Brajesh Shukla, Krishna Dutt Tiwari

Counsel for the Respondents:
C.S.C.

Civil Law – Indian Stamp Act, 1899 - Section 47-A - Deficiency of Stamp Duty – A big chunk of land was sub-divided into 37 small plots, having a common passage of 9 meters, which was duly approved by the Development Authority. The exit of the colony joined the main road. Petitioner purchased a residential plot situated on the 9-meter-wide internal road, but deficiency of stamp duty was imposed, treating the plot as if situated on the main road, merely because the larger chunk of land abutted the main road, and that too without any spot inspection. *Held:* Once a colony is approved by the Development Authority, the internal roads therein are also deemed approved and are to be maintained by the Authority thereafter. Once the sub-division and the common road have been approved by the Development Authority, the inference drawn that the petitioner's plot is situated on the main road has no legs to stand on. Merely because the road of the colony joins the main road, as stated above, will not entitle the authorities to charge the deficiency of stamp duty on the petitioner as compared to the first plot, which is adjacent to the main road. (Paras 8, 9)

Allowed. (E-5)

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard learned counsel for the petitioner and learned ACSC for the State - respondents.

2. The instant writ petition has been filed challenging the impugned order dated 04.11.2020 passed by the respondent no. 2 in Case No. 03364/2019 as well as the impugned order dated 08.02.2021 passed by the respondent no. 3 in Appeal No. 00018/2021.