Reserved On : 25/02/2026
Pronounced On : 11/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17655 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 6624 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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FAZLURAHEMAN HADERBUX SHAIKH
Versus
STATE OF GUJARAT

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Appearance:
MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
MR SIDDHARTH RAMI, AGP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

COMMON CAV JUDGMENT

1. Both these batches of writ petitions are interconnected with each other as the petitioner has challenged his suspension in connection with the misconduct allegedly committed by him in the years 2000-2001 and also challenged the order of penalty inflicted upon him for the very misconduct. Thus, both these matters were heard and decided together by way of this common judgment.

1.1 Heard Mr.Vaibhav Vyas, learned advocate for the petitioner and Mr.Siddharth Rami, learned AGP appearing for the respondent-State at length.

2. The writ present petition, being Special Civil Application No.17655 of 2017 is filed under Article 226 of the Constitution of India, seeking the following reliefs:

> *"(A) Quash and set aside the impugned punishment order dated 2.6.2017, Annexure-A to this petition, and*
>
> *(B) pending admission and final disposal of this petition the Honourable Court may be pleased to stay the operation, implementation and execution of the impugned order dated 2.6.2017, Annexure-A to this petition, and*
>
> *(C) Award the cost of this petition, and"*

2.1 The writ present petition, being Special Civil Application No.6624 of 2010 is filed under Article 226 of the Constitution of India, seeking the following reliefs:

> *"(A) quash and set aside the impugned suspension order dated 28.05.2010, Annexure-A to this petition, and*
>
> *(B) pending admission and final disposal of this petition the Honourable Court may be pleased to grant the mandatory injunction against the further the implementation and operation of the impugned suspension order dated 28.5.2010, Annexure-A to this petition, and*
>
> *(C) Award the exemplary cost of this petition, and"*

SHORT FACTS OF THE CASE:

3. It is the case of the petitioner that the petitioner had initially joined service on 10/05/1982, as a Class-II officer under the administrative control of the Director of Employment and Training, Gujarat State. The appointment of the petitioner was as Principal (Class-II). The next higher post in the said hierarchy is Assistant Director (Training) (Class-I).

3.1 The Gujarat Public Service Commission had issued an advertisement in the year 1985 inviting applications for direct recruitment to the said post. The petitioner appears to have applied pursuant to the advertisement and got selected and due to the intervention of this Court, the petitioner was appointed to the said post.

3.2 While the petitioner was posted as Principal (Class-I) at I.T.I., Gondal, he was placed under suspension on 28/05/2010 which was revised on 25/06/2010, in connection with the misconduct allegedly committed by the petitioner before a period of one decade in the years 1999-2001. The petitioner appears to have challenged the said order of suspension before this Court by way of a writ petition, being Special Civil Application No.6624 of 2010, which is admitted by this Court.

3.3 The petitioner was served with a charge-sheet on 21/06/2010 in connection with the said alleged misconduct. As can be seen from the aforesaid charge-sheet that there were in all five charges levelled against the petitioner, out of which only charge No.4 was in relation to a financial irregularity and the other charges are trifling in nature. Upon conclusion of the inquiry, the Inquiry Officer vide his report dated 20/03/2013, exonerated the petitioner from four charges but held that charge No.5 was partly proved against the petitioner. It is not in dispute that the petitioner retired from service on 30/04/2011 on attaining the age of superannuation.

3.4 It requires to be noted here that one Mr.N.D.Sharma, Supervisor Instructor working in the institute where the

petitioner was serving as Principal was also subjected to a charge of financial irregularity in connection with the Charge No.4 levelled against the petitioner. The record suggests that said Mr.Sharma was exonerated from such charge by the Inquiry Officer and the same was accepted by the respondent.

3.5 The disciplinary authority initially had accepted the said inquiry report by issuing a show cause notice dated 18/09/2013 by supplying a copy of the inquiry report to the petitioner. The petitioner had requested him to grant him a personal hearing which was granted by the respondent vide its communication dated 04/12/2013. The petitioner appears to have submitted his written reply on 06/12/2013 contending *inter alia* that even charge No.5 was not partially proved against him as there was no delay on his part in not sending his service-book in time.

3.6 After about more than a year on 20/01/2015, the respondent had called upon the petitioner to submit his defence/additional reply as the Competent Authority of the respondent – State was not in agreement with the finding of the Inquiry Officer so far as Charge Nos.1 to 4 and the partial proving of Charge No.5 were concerned. The petitioner appears to have sought the reasons for the disagreement from the respondent vide his letter dated 28/01/2015. Thereafter, the respondent vide its letter dated 16/02/2015 supplied the the so-called reason for disagreement. It requires to be noted here that a bare reading of the said communication would indicate that the Competent Authority has held that Charge

No.1 to 4 are proved. As such, it is not a letter containing the reason for disagreement but the guilt of the accused in connection with Charge No.1 to 4 is believed to have been proved.

3.7 The petitioner submitted his detailed defence/reply on 23/02/2015. The aforesaid reply of the petitioner was not accepted by the State, rather it had initially taken a decision to impose a penalty of a pension cut of Rs.1,500/- per month for five years but upon consultation with the Gujarat Public Service Commission (GPSC), the Commission vide its letter dated 04/10/2016 disagreed with the aforesaid punishment to be imposed upon the petitioner and suggested a pension cut of Rs.1,500/- per month for 10 years. Thus, the show cause notice dated 27/10/2016 was served upon the petitioner before imposing aforesaid punishment. The same was replied by the petitioner vide his replies dated 08/11/2016 and 14/03/2017.

3.8 After considering the aforesaid, the State vide its impugned order dated 02/06/2017 imposed a punishment of a pension cut of Rs.1,500/- per month for 10 years, as per Rule 24 of the Gujarat Civil Service (Pension) Rules, 2002 (hereinafter referred to as ***"the Rules, 2002"***). The aforesaid impugned order is challenged by the petitioner before this Court by filing a writ petition, being Special Civil Application No.17655 of 2017.

SUBMISSIONS OF THE PETITIONER:

4. Mr.Vyas, learned advocate for the petitioner has assiduously argued and made the following submissions:

4.1 The petitioner was served with charge-sheet on 21/06/2010 in connection with alleged misconduct on his part committed by him over a period of one decade ago in the years between 1999 and 2001. It is a clear case of victimization as none of the charges were proved on record but to deprive the petitioner from getting a promotion to a higher post, he was subjected to departmental proceedings, thereby order of suspension was passed in connection with the said alleged misconduct.

4.2 The State has miserably failed to justify the delay in the initiation of the departmental inquiry against the petitioner, that too on charges trifling in nature except Charge No.4, which was also not proved as recorded by the Inquiry Officer in his report. The inquiry was not concluded for more than seven years from its initiation after the service of charges and the petitioner though retired from service on 30/04/2011 has to face a pension cut vide the impugned order dated 02/06/2017.

4.3 The State is not in a position to justify the change of its stand by disagreeing with the reasons assigned by the Inquiry Officer by holding that Charge No.1 to 4 are not proved and Charge No.5 is partially proved. At the first instance, in the year 2013, the State called upon the petitioner to submit his

reply qua Charge No.5 which was held to be partially proved against him by the Inquiry Officer, whereby the rest of the charges held to be not proved by the Inquiry Officer were accepted by the State. Nonetheless, the State vide its show cause notice dated 20/01/2015 called upon the petitioner to submit his reply against all the charges as the Competent Authority of the State had shown disagreement with the reasons of the Inquiry Officer exonerating the petitioner from Charge Nos.1 to 4.

4.4 The State has not assigned any independent reason for the disagreement with the Inquiry Officer, which is a *sine qua non* while issuing the show cause notice dated 20/01/2015. The letter dated 16/02/2015 alleged to have been issued by supplying the reason for disagreement by the State would clearly indicate that the Competent Authority of the State has already decided that Charge No.1 to 4 are proved. Thus, no purpose would have been served by allowing the petitioner to submit his reply to the aforesaid show-cause notice as the Competent Authority had already made up its mind. There is a clear violation of the principles of natural justice at the hands of the State.

4.5 The impugned order of punishment is a non-speaking order, inasmuch as no reasons were assigned by the Disciplinary Authority disagreeing with the reply of the petitioner. It is settled law that any order passed by an Administrative Authority must assign reasons; otherwise, such order is unsustainable in law.

4.6 The impugned order of penalty is not passed in consonance with Rule 24 of the Rules, 2002; rather it is passed without jurisdiction. As per the aforesaid Rule, unless there is grave misconduct or negligence on the part of the pensioner during the course of his service which caused financial loss to the Government, no pension cut could have been imposed upon the pensioner. There is nothing on record to show any financial loss caused to the Government rather letter dated 29/09/2016 issued by the Industrial Training Institute, Dahod in which the petitioner was Principal, to the Deputy Director, Employment and Training, Gandhinagar, states that upon checking the contingency bill Nos.420, 425 and 426 dated 29/03/2001, the purchased goods were received by the Institute, and thereby there is no financial loss caused to the State, thus, it is not necessary to initiate any recovery proceedings.

4.7 After the submission of the inquiry report, the departmental notes would clearly indicate that the department concerned is in agreement with the report of the Inquiry Officer. None of the charges are proved against the petitioner and they are, as such, trifling in nature. So far as charge No.5 is concerned, there was as such no delay on the part of the petitioner in sending his service-book as he was on leave at the relevant point of time. Assuming without admitting that the petitioner’s reply dated 09/08/1999 may be factually incorrect as ITI, Visnagar sent his service-book to ITI, Dahod on 11/04/1999, then also, for such conduct of the

petitioner, he would not entail with a punishment in the form of a pension cut.

4.8 The petitioner was wrongly held guilty of charge No.4 as for the very charge, one Mr.N.D.Sharma, Supervisor Instructor was exonerated by the Inquiry Officer and the same was accepted by the State. It is a clear case of discrimination by the State when it has taken a different stand in the case of the petitioner. The role of the petitioner being Principal is not to routinely check the goods received by the Institute. The Presenting Officer failed to examine the inspecting authority i.e. the Regional Deputy Director, Vadodara at whose instance the State framed charge No.4 against the petitioner. The witnesses examined by the Presenting Officer have not supported the case of the department. For all these reasons, the petitioner cannot be held guilty for charge No.4. The impugned order of punishment be quashed and set aside.

4.9 Once the charges are not proved against the petitioner and as such, no penalty could have been imposed upon the petitioner as per Rule 24 of the Rules, 2002, then the order of suspension would not sustain in law and the same may also be quashed and set aside.

4.10 To buttress his argument, Mr.Vyas, learned advocate for the petitioner has relied upon the following judgments:

(i) Judgment dated 26/06/2024 passed by Division Bench of this Court in case of Ea Singh (Edwin Annett

Singh) and others vs. State of Gujarat, being Letters Patent Appeal No.934 of 2015.

(ii) Union of India and others vs. P. Gunasekaran – 2015 (2) SCC 610.

(iii) Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others – 2010 (9) SCC 496.

(iv) Bongaigaon Refinery & Petrochemicals Ltd. vs. Girish Chandra Sarma – (2007) 7 SCC 206.

(v) State Of Andhra Pradesh vs. N. Radhakishan – 1998 (4) SCC 154.

(vi) Decision dated 10/11/2025 passed by this Court in case of Rasiklal Ambalal Makwana vs. State of Gujarat, being Special Civil Application No.14341 of 2019.

4.11 Making the above submissions, Mr.Vyas, learned advocate for the petitioner would pray to this Court to allow the present petition.

SUBMISSIONS OF THE RESPONDENT:

5. *Per Contra*, Mr. Rami, learned AGP, has vehemently opposed the submissions made by the learned advocate for the petitioner as well as the prayers made in this petition, by making the following submissions:

5.1 The allegations of delay and laches in the initiation and conclusion of the inquiry are unsustainable. At the relevant point of time, the petitioner ought to have raised such issues. Once the petitioner participated in the inquiry, he lost his right to question the inquiry on the ground of delay in its initiation.

5.2 The petitioner has failed to show any prejudice caused to him due to the alleged delay in the initiation of the inquiry.

5.3 Along with the petitioner, the Store Keeper and Assistant Store Keeper were also charge-sheeted for Charge No.4 in question and all were found guilty of serious misconduct, whereby punishment was imposed upon them.

5.4 The case of the petitioner was referred to the Gujarat Public Service Commission who recommended to increase the period of the pension cut from five years to ten years and after observing the principles of natural justice, the impugned order of penalty was passed by the respondent.

5.5 The respondent had supplied the reasons for disagreement to the petitioner vide its letter dated 16/02/2015. The charge No.4 was serious in nature and having been found proved against the petitioner, an order of penalty was imposed upon him.

5.6 At the relevant point of time, upon receipt of the inquiry report, the department concerned had not referred the matter to the Additional Chief Secretary of the Gujarat Administrative Department of State, which is a *sine qua non* in the case of the petitioner being a Class-I officer. The department required to send a copy of the inquiry report as the Inquiry Officer had not found that charge Nos.1 to 4 proved against the petitioner and in those circumstances, whether to accept such report as

it is, the opinion/decision of the Secretary of the concerned department as well as the Additional Chief Secretary of G.A.D. would be final. Thus, when such report was brought to the notice of G.A.D., it had disagreed with the reasons of the Inquiry Officer and advised the department concerned to issue show-cause notice in this regard to the petitioner.

5.7 The file notings upon which strong reliance is placed by the petitioner would have no effect unless any decision based upon such noting was communicated to the petitioner.

5.8 Since the petitioner was subjected to penalty having been found guilty of serious charges, the petitioner was correctly put under suspension and such period of suspension cannot be regularized.

5.9 Mr.Rami, learned AGP, has relied on the following judgments in support of arguments:

(i) Mahadeo vs. Sovan Devi – 2023 (10) SCC 807.

(ii) The State Of Madhya Pradesh vs Akhilesh Jha - 2021 (12) SCC 460.

(iii) Union of India and others vs. P. Gunasekaran – 2015 (2) SCC 610.

(iv) State of U.P. & Anr. v. Man Mohan Nath Sinha & Anr. – 2009 (8) SCC 310.

***(v) 1996 (3) SCC 157* - Prohibition & Excise Dept. v. L. Srinivasan.**

5.10 By making the above submissions, Mr.Rami, learned AGP would urge this Court to dismiss the present petition.

6. No other and further submissions have been made by the learned advocates for the respective parties.

ANALYSIS :

7. Having heard the learned advocates for the respective parties and after going through their pleadings and documents, the following would emerge:

7.1 The petitioner was serving as a Principal (Class-I) at I.T.I., Gondal and he was suspended vide order dated 28/05/2010, which was revised on 25/06/2010. The petitioner was suspended in connection with the misconduct allegedly committed by the petitioner before a period of one decade in the years 1999-2001, which was challenged by him by way of a writ petition, being Special Civil Application No.6624 of 2010.

7.2 The petitioner was served with a chargesheet on 21/06/2010 for the said alleged misconduct committed by him. There were in all five charges levelled against him. Out of five, only charge No.4 was grave in nature as it speaks of a financial irregularity alleged to have been committed by the petitioner in regard to the purchase of 12 items worth Rs.2,90,890/-, though it was registered in the Purchase Register but during a surprise check by the Deputy Director, Vadodara on 07/04/2001, it was not found in the store. So far as the rest of the charges are concerned, they were not as serious as Charge No.4 and as such, they would not amount to

grave misconduct or negligence as per Rule 24 of the Rules, 2002.

7.3 The Inquiry Officer vide his report dated 20/03/2013 arrived at a conclusion that charge Nos.1 to 4 are not proved against the petitioner and so far as charge No.5 is concerned, it is partially proved.

7.4 The department concerned appears to have sent a copy of the inquiry report with its show-cause notice dated 18/09/2013 and after giving an opportunity of hearing to the petitioner vide its letter dated 04/12/2013 and after the receipt of the detailed written reply dated 06/12/2013 of the petitioner, the respondent sat tight over the matter for a long time.

7.5 The respondent vide its letter dated 20/01/2015 shown his disagreement with the inquiry report so far as Charge Nos.1 to 4 are concerned and called upon the petitioner to submit his reply. The petitioner appears to have submitted detailed reply on 28/01/2013 and requested the respondent to give the reason for the disagreement.

7.6 Instead of supplying the reasons for disagreement, the respondent vide its letter dated 16/02/2015 communicated to the petitioner that charge Nos.1 to 4 are proved against the petitioner as decided by the authority. Thereafter, on the premise of showing disagreement with the inquiry report, the

reasons were communicated to the petitioner. But the fact remains that the respondent has already reached to the conclusion that charges Nos.1 to 4 are proved against the petitioner.

7.7 After the receipt of the additional and final reply of the petitioner dated 23/02/2015, without dealing with any of his contentions, the respondent passed an order of punishment whereby a penalty of a pension cut of Rs.1,500/- for ten years was imposed upon him as per Rule 24 of the Rules, 2002. It appears that initially the respondent was of the view that the aforesaid pension cut may be considered for five years but on the recommendation of the GPSC finally decided to impose it for ten years.

8. I am conscious of the fact that the scope of judicial review of this Court in the order of punishment imposed by the disciplinary authority is very limited. It is trite that this Court cannot sit in appeal over the order of punishment passed by the authority. Yet, upon appreciation of the aforesaid submissions canvassed by the learned advocates for the respective parties and due to the following reasons, this Court would like to interfere with the impugned order of punishment and suspension, by exercising its discretion in favour of the petitioner.

DELAY IN INITIATION AND CONCLUSION OF INQUIRY :

9. The initiation of the inquiry by issuing a charge-sheet on 21/06/2010 for alleged misconduct committed by the

petitioner in the years 1999 to 2001, itself shows that there was delay in the initiation of the inquiry against the petitioner. There is no reasonable justification forthcoming from the side of the respondent for causing such inordinate delay in the initiation of inquiry except the excuse that the matter was pending between the departments and necessary opinion/approval was sought for from the Vigilance Department.

9.1 The inquiry report came to be submitted by the Inquiry Officer on 20/03/2013 and the petitioner was called upon on 18/09/2013 to submit his reply qua charge No.5 which was partially proved as per the Inquiry Officer's report and later on the respondent showed its agreement with the report of the Inquiry Officer on 20/01/2015 followed by the so-called reasons for disagreement on 16/02/2015 and finally the impugned order came to be passed on 02/06/2017.

9.2 If the starting point of the inquiry by issuing charge-sheet on 21/06/2010 culminated into order of penalty on 02/06/2017, the aforesaid period itself shows that there was delay in the initiation of the inquiry and further inordinate delay in the completion of the inquiry which caused immense mental distress to the petitioner and as he was put under suspension prior to the issuance of the charge-sheet, it damaged his reputation as well. It is not out of place to mention here that the petitioner came to be retired on 30/04/2011 on attaining the age of superannuation. Therefore, the petitioner was subjected to inquiry at the fag end of his

service career for the alleged misconduct committed before one decade.

9.3 At this stage, it would be apt to refer to and rely upon the decision of the Hon'ble Apex Court in the case of **Amresh Shrivastav vs. State of Madhya Pradesh and others - 2025 SCC Online SC 693,** wherein it was held thus :

> *"18. Reference in this regard can be made to the decision of this court in **State of Madhya Pradesh vs. Bani Singh and Another [1990 Supp SCC 738]**, wherein the court noted that there was no reason to interfere with the quashing as the disciplinary proceedings were initiated after 12 years of delay. A reference should also be made to the decision of this Court in **P.V. Mahadevan vs. MD, T.N. Housing Board [(2005) 6 SCC 636]**, **where it has been reiterated that continuing the departmental proceedings after an undue delay would be unjust, causing unnecessary mental distress and damaging the reputation of the employee for the mistakes committed by the department in initiating disciplinary proceedings.**"*
>
> *(emphasis supplied)*

9.4 It is also not out of place to refer to and rely upon the pertinent observations of the Hon'ble Apex Court in the case of **N. Radhakrishnan (supra)** in regard to what would be the effect of delay in the disciplinary proceedings at the hands of authority :

> *"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is*

> *no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he s not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."*
>
> *(emphasis supplied)*

9.5 Thus, considering the aforesaid facts and circumstances and in the absence of any cogent and justifiable reason on the part of the respondent in initiating and concluding the inquiry within a reasonable period of time, and applying the ratio of the aforesaid decisions to the case on hand, according to my view, the delay has caused great prejudice to the interest of the petitioner, inasmuch as the petitioner was put under suspension at the fag end of his service and accordingly, the petitioner was deprived of receiving service benefits.

NON-SUPPLY OF REASON FOR DISAGREEMENT RATHER BELIEVED THAT CHARGES ARE PROVED PRIOR TO PASSING OF FINAL ORDER :

10. It is a settled legal position that if the disciplinary authority does not agree with the report of the inquiry officer,

it is supposed to assign its reasons for disagreement while issuing a show-cause notice calling upon the delinquent to submit his reply. Even after the receipt of the reply of the delinquent, if the disciplinary authority does not agree with the reply of the delinquent, it is required to issue a final show-cause notice to the delinquent.

10.1 At this stage, it would be apt to refer to a decision of the Division Bench of this Court in the case of **Ea Singh (Edwin Annett Singh) and others (supra),** wherein, after considering the entire case law, the Division Bench held thus:

> *"48. From the conspectus of the aforementioned observations of the Supreme Court and this Court, the following aspects are required to be maintained when the Disciplinary Authority disagrees with the findings of the Inquiry Officer.*
>
> ***(a) There has to be tentative/proposed findings of the Disciplinary Authority disagreeing with the Inquiry Officer's report recorded in the show-cause notice.***
>
> ***The show-cause notice of disagreement should be issued to the delinquent calling upon him as to "why the findings which are in his favour is/are not required to be reversed."***
>
> *(c) While issuing the show-cause notice, the expression "charges are proved" should be avoided, since the same will reflect a predetermined application of mind by the Disciplinary Authority.*
>
> *(d) Such show-cause notice shall not stipulate the imposition of a particular penalty, minor or major. The expression "why any of the penalty/punishment shall not be imposed" should be avoided.*
>
> *(**e) After considering the reply of the delinquent to the show-cause notice of disagreement, the Disciplinary Authority has to pass an order***

> ***recording a definite finding of guilt reversing the findings of the Inquiry Officer, by holding the charges as proved or not proved****.*
>
> ***(f) After recording such findings, it is essential that the delinquent is issued a final show-cause notice calling upon his explanation for the imposition of punishment [Vide Lav Nigam (Supra)].***
>
> *(g) After receipt of the reply to the show-cause notice, the Disciplinary Authority has to pass a reasoned and speaking order imposing appropriate punishment prescribed under the Rules governing disciplinary proceedings.*
>
> *49. The theory of prejudice will also not apply in such cases. Thus, the procedure adopted by the Disciplinary Authority does not meet the parameters enunciated by the Supreme Court in the aforementioned decisions. Hence, the punishment order, which is premised on such a faulty approach, cannot be sustained."*
>
> (Emphasis supplied)

10.2 It is not in dispute that in the case of hand, at the relevant point of time instead of showing the reasons for disagreement, which is a *sine qua non*, the department concerned issued a show-cause notice to the petitioner on 18/09/2013 calling upon him to submit his reply qua charge No.5 partially proved in the inquiry. Thereafter, on 20/01/2015 informed to the petitioner that the competent authority is not in agreement with the inquiry report. Thereafter, on demand by the petitioner, vide its communication dated 16/02/2015, the petitioner was supplied with so-called reasons for disagreement. A bare reading of the aforesaid communication dated 16/02/2015 clearly shows that the competent authority had already made up its mind and as

such observed in the said communication that it was decided that charge Nos.1 to 4 are proved. Since the respondent had already decided that the aforesaid charges are proved, it would be an empty formality to call upon the petitioner to submit his final reply. This would not only violation of the principles of natural justice but it amounts to arbitrariness on the part of the respondent.

10.3 Apart from the aforesaid, after receiving the final reply from the petitioner dated 23/02/2015, when the disciplinary authority had not accepted his explanation, as per the aforesaid judgment of Division Bench more particularly decision of Hon'ble Apex Court in the case of **Lav Nigam vs. Chairman and M.D., ITI - 2006 (9) SCC 440**, it was incumbent upon the disciplinary authority to issue a final show cause notice calling upon the petitioner to submit his final explanation before imposition of punishment. Undisputedly, such recourse was not adopted by the respondent as no final show cause notice came to be issued and served upon the petitioner, which is per se illegal.

10.4 Thus, in view of the aforesaid, the respondent has not observed the principles of natural justice after issuing notice dated 20/01/2015 and as such taken a decision that charge No.1 to 4 are proved as stated in its communication dated 16/02/2015 while supplying the so-called reasons for disagreement tantamount to pre-judge the issue and the recourse adopted by the respondent is not in consonance with law.

NON-SPEAKING PUNISHMENT ORDER :

11. Even the impugned order of punishment dated 02/06/2017 is a non-speaking order, inasmuch as neither any findings nor any reasons were recorded by the disciplinary authority insofar as proving of charge Nos.1 to 4 and partial proving of charge No.5, as the case may be; rather, the disciplinary authority has accepted the guilt of the petitioner by reiterating the said charges served upon the petitioner along with the charge-sheet.

11.1 There is no cavil that any order passed, either by an administrative or quasi-judicial authority, must assign reasons. In a case where, the order impugned is found to be a non-speaking order, this Court feels that such interference is required. ***[See-Masood Ahmed Khan and others (supra)].***

11.2 Thus, having found that the impugned order is a non-speaking order and that it has not dealt with any of the submissions/contentions raised by the petitioner in his written reply, then impugned order is not sustainable in law, inasmuch as the impugned order was passed in violation of the principles of natural justice.

NON-PROVING OF CHARGE NO.4 :

12. As observed hereinabove, out of five charges, only charge No.4 was grave in nature as it relates to alleged financial irregularity by the petitioner when he was Principal

in I.T.I., Dahod. It was alleged that on 07/04/2001, there was a surprise inspection by Deputy Director, Vadodara, at the said Institute. At the time of such surprise inspection, it was found that though 12 items were found in the Purchase Register being received through bills but on its physical check, the same were missing, so it was alleged that by submitting wrong bills of Rs.2,90,890/- for 12 items, financial irregularity committed by the petitioner.

12.1 The inquiry officer in his report has categorically recorded that department witnesses examined in the inquiry have given different depositions then what was agreed by them in the minutes recorded on 07/04/2001. It has been further observed that Trade Instructor has confirmed that goods are received in good condition and issued the certificate in this regard which was counter-signed by the Deputy Director, Vadodara. According to the Inquiry Officer, these evidence cannot be ignored.

12.2 It also appears from the statement of Store Keeper Mr.Moghia that goods were returned back at 11.00 a.m. on 07/04/2001 as found defective, whereas the surprise inspection taken place at about 16.00 hours on 07/04/2001. It is further stated by him that vendor has replaced the goods on 09/04/2001 which was not informed to the Deputy Director, Vadodara on the date of his surprise visit on 07/04/2001.

12.3 It is also not in dispute that Mr.N.D.Sharma, who was Supervisor Instructor in the said I.T.I. on 07/04/2001, also

faced with similar charge like charge No.4 in question, wherein finally he was exonerated by the respondent vide its office order dated 10/07/2017. This would clearly show that the disciplinary authority has picked and conveniently chosen the petitioner and, as such, the petitioner was made a scapegoat. ***[See-Girish Chandra Sarma (supra)].***

12.4 It is true that learned AGP Mr.Rami during the course of his submission informed this Court that so far as Store Keeper / Assistant Store Keeper are concerned, both were found guilty of a similar charge like charge No.4 in question and accordingly, order of penalty is imposed upon them. Nonetheless, there is nothing on record to substantiate the aforesaid submission.

12.5 Be that as it may, the fact remains that Presenting Officer has failed to bring evidence on record to substantiate and prove charge No.4 against the petitioner who was Principal of the said I.T.I. The witnesses of the department examined before inquiry officer had not supported the case of the department. Rather their version would support the case of the petitioner. Furthermore, when said Mr.Sharma has been exonerated from charge of financial irregularity in question, who issued a certificate about receipt of good quality of all 12 items received by said I.T.I., according to my view, such charge No.4 cannot be said to have been proved by Presenting Officer. Even considering the aforesaid facts and designation of the petitioner being Principal, he was not in-

charge of the store, by no stretch of imagination, the disciplinary authority could not have held the petitioner guilty for charge No.4.

ORDER OF PENALTY PASSED CONTRARY TO RULE 24 OF THE PENSION RULES, 2002 :

13. So far as rest of the charges are concerned, they are either stale or trifling in nature. Charge No.1 speaks about temporary absence of the petitioner on 07/04/2001 as he was not available during surprise inspection of Deputy Director, Vadodara. The charge No.2 speaks about unauthorized absence of the petitioner on 09/08/1999, 10/08/1999 and 27/08/1999 as his leave was not sanctioned by Deputy Director, Vadodara, whereby the petitioner violated Rule 44 of Leave Rules. The charge No.3 was in regards to absence from duty on 24th and 25th January, 2000, though his miscellaneous leave was cancelled. So far as charge No.5 relates to not sending his service-book in time and also not incorporating the order of penalty in his service-book.

13.1 The inquiry officer had dealt with all these charges and during the course of submissions, Mr.Rami, learned AGP is unable to substantiate that findings recorded by the inquiry officer exonerating the petitioner from all charges except the finding that charge No.5 is partially proved, i.e., not sending the service-book in time, are either erroneous or perverse or contrary to the evidence brought on record during the course of inquiry.

13.2 In view of above, I am of the view that the aforesaid charges were also not proved and as such charge No.5 which is held to be partially proved as per inquiry report, even if taken as it is, it would not amount to any grave misconduct or negligence by the petitioner as required under Rule 24 of the Rules, 2002 for imposing penalty of pension cut.

13.3 At this stage, I would like to refer Rule 24 of the Rules, 2002 which reads as under :

> *"24. Right of Government to withhold or withdraw pension : (1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement :*
>
> *Provided that the Gujarat Public Service Commission shall be consulted before any final order is passed in respect of officers holding posts within their purview :*
>
> *Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension can be reduced below the minimum fixed by Government.*
>
> *(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government employee had continued in service.*
>
> *(b) The departmental proceedings, if not instituted while the Government employee was in service, whether before his retirement or during his re-employment-*

(i) shall not be instituted save with the sanction of the Governer,
(ii) shall not be in respect of any event which took place more than four years before such institution, and
(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government employee during his service.
(3) In case of a Government employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 144 to 146 shall be sanctioned.

(4) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government employee.

(5) For the purpose of this rule :-
(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government employee or pensioner, or if the Government employee has been placed under suspension from an earlier date, on such date, and
(b) judicial proceedings shall be deemed to be instituted -
(i) in case of criminal proceedings, on the date on which the complaint or report is made by a police officer of which the Magistrate takes cognizance, and
(ii) in case of civil proceedings, on the date of presenting the plaint in the court."

13.4 The bare reading of sub-rule 1 of Rule 24 of Rules, 2002 is clearly suggests that in a case of grave misconduct or negligence of a pensioner – Government employee, which caused financial loss to the Government, in that eventuality, Government can recover such loss from amount of pension.

13.5 It would be apt to note here that vide letter dated 29/09/2016 issued by said I.T.I., Dahod to the respondent that

there is no financial loss caused in regard to purchase of 12 items are concerned and accordingly, it is stated in the said letter that there is no need to initiate any recovery proceedings. Therefore, as per the department concerned, there is no financial loss caused as alleged in charge No.4.

13.6 Assuming for the time being that charge No.1, 2, 3 and 5 are proved but when the petitioner is already retired from service as on the date of passing of impugned order of penalty, as per Rule 24 of the Rules, 2002, no penalty in the form of pension cut could have been imposed upon him. According to my view, respondent is unable to substantiate that aforesaid charges are so grave in nature, whereby it can impose punishment of pension cut as per Rule 24 of the Rules, 2002.

13.7 Thus, in view of the aforesaid facts and in absence of any grave misconduct or negligence on the part of the petitioner causes financial loss to respondent – State, which is sine qua non to impose penalty of pension cut as per Rule 24 of the Rules, 2002, it is hereby held that impugned order whereby imposing penalty of pension cut of Rs.1,500/- per month for 10 years is without jurisdiction and uncalled for penalty.

14. In view of the aforesaid, this Court is of the view that apart from delay in initiation and conclusion of inquiry, there is basic infirmity remains on part of the disciplinary authority in issuing the aforesaid communication dated 16/02/2015 and

having found that the impugned order is a non-speaking one, this goes to the root of the matter. For the aforesaid reasons, I am not at all impressed with any of the submissions of learned AGP Mr.Rami and the judgments cited by him are not applicable to the facts of the present case.

15. Thus, in view of the foregoing reasons, the impugned order cannot be allowed to stand anymore. Since the impugned order of punishment is unsustainable in law, consequently, the impugned suspension order dated 28/05/2010 is also not sustainable in law.

CONCLUSION:

16. In view of the foregoing observations, discussions and reasons, I am of the view that the impugned order of punishment dated 02/06/2017 is bad in law. Accordingly, the impugned order dated 02/06/2017 is hereby quashed and set aside.

16.1 Since the impugned order of penalty dated 02/06/2017 is quashed and set aside, *a fortiori,* the impugned suspension order dated 28/05/2010 is also hereby quashed and set aside.

16.2 Once the impugned order dated 02/06/2017 is no longer survives as quashed, the amount recovered by the respondent from the pension of the petitioner, i.e., the pension cut of Rs.1,500/- per month for 10 years, is required to be returned back to the petitioner with 6% interest p.a. from the date of

its actual recovery till date of its refund.

16.3 The respondent is hereby directed to calculate the amount of refund including interest and the same shall be paid to the petitioner on or before 15/05/2026, failing which the respondent – State shall have to pay an additional amount of Rs.50,000/- as cost/penalty for such delayed payment.

17. In view of the foregoing conclusions, the present petition is allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

18. Direct service is permitted.

(MAULIK J. SHELAT, J)

GAURAV J THAKER

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAURAVKUMAR JANARDANBHAI THAKER(HC00951), Principal Pvt. Secretary, at High Court of Gujarat on 11/03/2026 11:48:44