IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.28874 of 2023

An application under Articles 226 and 227 of the Constitution of India.

Malaya Ranjan Dash ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner: - Mr. Budhadev Routray
Senior Advocate

For Opp. Parties: - Mr. Pitambar Acharya
Advocate General
Mr. Aurobinda Mohanty
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE S.S. MISHRA

Date of Hearing: 04.04.2025 Date of Judgment: 02.05.2025

S. K. SAHOO, J. The foundation of justice is good faith. The good faith of the Judges is the firm bed-rock on which the system of administration securely rests. Richard Eyre said, "The principle of acting in good faith is at the heart of decent work."

In the case in hand, the crux of the matter lies in whether the alleged act/omission on the part of the petitioner can be said to be a 'misconduct' or an act done on 'good faith' which could at best be termed as an inadvertent mistake or error of judgment.

The petitioner Malaya Ranjan Dash, who is an officer in the rank of Odisha Superior Judicial Service has filed this writ petition with a prayer for a direction to quash the impugned notification no.2100 dated 21st December 2022 under Annexure-22 in which he has been awarded with the major penalty of reduction to a lower grade i.e. Selection Grade (SG) in the same rank of District Judge as envisaged in Sub-rule (vi) of Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 (hereafter '1962 Rules') and fixation of his pay at the initial scale of Selection Grade with entitlement to annual increments in the Selection Grade and that his upgradation to the next higher grade in the Supertime Scale to be considered after five years. He has also challenged the consequential office order no.6950 dated 16th February, 2023 of the Govt. of Odisha, Home Department under Annexure-23, with a further prayer to exonerate him of all the charges and extend all service benefits attached to the post of a District Judge (Super Time Scale) w.e.f.

21st December, 2022 treating the entire disciplinary proceeding including the enquiry undertaken by the Inquiring Authority to be illegal and in violation of principle of natural justice and/or to pass any other order/orders, direction/directions as this Court deems fit and proper for the ends of justice.

2. The factual matrix of the case is as follows:-

(i) The petitioner got selected in the written test for the post of District Judge directly from the Bar in the year 2010 and attended the interview on 4th September 2010 and came out successful and declared topper amongst four candidates and selected for the post of District Judge through direct recruitment from the Bar in that year. During his entire service career, the petitioner had remained sincere, committed to his work and had performed his job to the utmost satisfaction of higher authorities and till initiation of disciplinary proceeding, he had never received any adverse comment/remark from the High Court.

(ii) It is the further case of the petitioner that after successful completion of five years in the cadre of District Judge, the petitioner was granted Selection Grade Scale of pay with effect from 15th December, 2015 and on satisfactory performance in the said cadre, he was further granted Super Time Scale of pay with effect from 3rd August, 2017 by this

Court. During the tenure of the petitioner as Addl. District & Sessions Judge in four different districts and as Principal District & Sessions Judge in four districts of Odisha consecutively for around seven years, the petitioner was appreciated by the Administrative Judges of those stations/districts and he truly believed that he must have received CCR grading of high rank from them. Even during his stint in Orissa High Court as Registrar General, the performance of the petitioner was appreciated by the then Hon'ble Chief Justice and other puisne Judges of this Court.

(iii) It is the further case of the petitioner that while he was working as such, on 26th February, 2021, a copy of the order dated 24th February, 2021 of one Division Bench of this Court was received by the Registrar (Judicial) I/C of the Court, namely, Dr. Pabitra Mohan Samal and he endorsed on it and sent to the Deputy Registrar (Judicial), namely, Sri Janmejay Das, an officer assigned with the job of filing and listing of the cases. On very same day, the then Deputy Registrar (Judicial) of the Court placed a note sheet before the petitioner and urged to approve the same in order to comply the said order of the Division Bench of the Court dated 24th February 2021 as it was directed in the said order that the brief along with the copy of the order was to

be supplied to the learned Senior Advocates engaged as Amicus Curiae by 26th February 2021, i.e. on that day itself and unless a case was registered, the same could not be done. On good faith, with an honest intention to comply the judicial order of the Court as well as believing the officers of the Registry, Suo Motu Writ Petition (Civil) No.7943 of 2021 was registered.

(iv) It is the further case of the petitioner that the then Hon'ble Chief Justice took exception of the matter as to why the matter was registered without bringing the same to his notice and as a consequence, the petitioner was immediately removed from Registry and ultimately he was transferred to the District of Rayagada.

(v) It is the further case of the petitioner that a preliminary show cause notice was served on him calling upon him to show cause regarding registration of Suo Motu Writ Petition (Civil) No.7943 of 2021 and to explain as to why and under what circumstances, the said Suo Motu Writ Petition came to be registered. On being supplied with the copy of the dissenting order of the said Division Bench along with the show cause notice, for the first time, the petitioner came to know that the 2nd Judge of the Division Bench of the Court recorded his dissenting view and the matter was directed to be put up before

the third Judge after getting permission from Hon'ble the Chief Justice.

(vi) It is the further case of the petitioner that without disputing the fact of approval of the note sheet leading to the registration of the above mentioned Suo Motu Writ Petition, the petitioner submitted his explanation as to under what circumstances, the same was approved and stated that it was an inadvertent mistake on his part as he was neither vetted by the then Deputy Registrar (Judicial) nor could focus that he was acting upon a copy of the order without the signature of Hon'ble Judges and the petitioner could not know that there was dissenting opinion of one of the Hon'ble Judges of the Bench, as the note sheet was placed before him after two days of the date of the order unaccompanied with that part of dissenting order. It is further stated that on his query from the concerned Presiding Judge of the Division Bench regarding the manner of compliance of the order over phone, it was not even disclosed that the order was unsigned rather the Presiding Judge asked to comply the order and on good faith to give effect the judicial order of the Court with promptitude, the petitioner approved the same.

(vii) It is the further case of the petitioner that on 2nd August, 2022, he was transferred from the post of District &

Sessions Judge, Rayagada to the Government of Odisha, Department of Labour & E.S.I as Presiding Officer, Industrial Tribunal Rourkela on deputation, where the Petitioner joined on 11th August, 2021. For the reasons best known to the opp. parties, the petitioner was debarred from getting the disturbance allowance during such transfer stated to have been done on administrative ground, without even disclosing such ground to the petitioner on which the disturbance allowance was disallowed. According to the petitioner, the disturbance allowance paid to the Judicial Officer on his transfer to a different place could only be debarred on valid grounds, but without intimating the petitioner as to what made the Authority to debar him from such right, the authority disallowed the same, which deemed to be a punishment imposed on him without any proceedings.

(viii) It is the further case of the petitioner that the petitioner received the memorandum of charges from the opp. parties vis-a-vis initiation of departmental proceeding vide memo No.03 of 2021 dated 9th November, 2021 on the ground of (a) gross misconduct (b) dereliction in duty (c) administrative indiscipline while dealing with judicial records and (d) failure to maintain absolute integrity and honesty, under Rule 3 of the

Odisha Government Servants' Conduct Rules, 1959 (hereafter '1959 Rules'). Although the charge memo was containing the memo of evidence proposed to be proved against the delinquent officer, but no such document was supplied with the charge memo as required under sub-rule (3) of Rule 15 of the 1962 Rules though there was a direction to inspect the documents during the working hour of the Court.

(ix) It is the further case of the petitioner that in obedience to the aforesaid direction, the petitioner submitted his written note of defence on 9th December, 2021 taking almost identical stand as was taken by him in his preliminary show cause reply and prayed not to treat the alleged act/omission as a misconduct as the action done on good faith by oversight could at best be termed as an inadvertent mistake or error of judgment for the another reason that there was nothing to gain by him in doing so, at the risk of his career and accordingly, the petitioner prayed to exonerate him from all the charges. It is further stated that since he merely intended to comply the judicial order of the Court and same in any circumstances, cannot be termed as a misconduct but at best an inadvertent mistake or error of judgment for which he may be excused.

(x) It is the further case of the petitioner that the petitioner was neither intimated that his written note of defence was found to be not satisfactory nor that an inquiry committee was constituted to conduct inquiry on the charges leveled against him whereas suddenly on 22nd April, 2022, he received a notice from the Inquiring Authority (the Judge was one of the members in the same Suo Motu Writ Petition (Civil) bearing W.P.(C) No.7943 of 2021, for registration of which the disciplinary proceeding against the petitioner was initiated) to appear on 7th May 2022 in D.P. No.3 of 2021.

(xi) It is the further case of the petitioner that in obedience to the aforesaid direction, the petitioner appeared before the Inquiring Authority on the first date of inquiry i.e. on 7th May, 2022. On that day, petitioner came to know for the first time that besides him, two other officers, namely, Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/C who had first received the copy of the order of said Division Bench and Sri Janmejaya Das, the then Deputy Registrar (Judicial), who had put up the note sheet before the petitioner for registration of Suo Motu Case, were facing the same inquiry with him in respect of the same incident.

(xii) According to the petitioner, though a joint enquiry is contemplated in Rule 17 of the 1962 Rules, where two or more Government servants are concerned in any case and for that an order is required to be passed by the competent Authority, but to the utter dismay, in contravention of such provision, the inquiry was conducted under Rule 15 of the 1962 Rules that too without making the petitioner aware of the fact that other two officers were facing the same proceeding and even without supplying the copy of the defence submitted by those officers in reply to the charges leveled against them thereby making the entire process of enquiry opaque and in gross violation of principle of natural justice and thus, the proceeding is liable to be vitiated.

(xiii) It is the further case of the petitioner that on the first date of inquiry, the petitioner filed a petition to direct the Marshalling Officer to supply the photocopies of the documents as per the schedule of the said petition. At the same time, Inquiring Authority directed the Marshalling officer to supply copy of the petition already filed by the department on 5th April, 2022 before the Inquiring Authority to take around fourteen documents on record for the purpose of the departmental proceeding. The Inquiring Authority directed the

Marshalling officer to supply copies of those documents as mentioned in the petition dated 5th April, 2022 except the copy of the order of the Hon'ble the then Chief Justice dated 4th April, 2021 directing the Registrar General to call upon the delinquent officers to show cause (six pages in three sheets), which they allowed mere inspection by the delinquent officers and also to submit reply on the petition filed by the petitioner on 7th May 2022 although such document was the basis of initiating proceedings against the petitioner and other officers and finds place in the Memo of Evidence under Annexure-III of the Memorandum of Charges, and in view of the mandate of sub-rule (3) of Rule 15 of the 1962 Rules required to be served on the petitioner along with the memorandum of charges in order to defend him properly and having not done so and merely allowing the document consisting of six pages, for only inspection cannot held to be sufficient compliance of the above provision and thus, the proceeding is vitiated for violation of principle of natural justice.

(xiv) It is the further case of the petitioner that on the next date of the inquiry proceeding i.e. on 28th May, 2022, the Marshalling Officer supplied copies of all the documents to the delinquent officers as per the petition dated 5th April, 2022

except the copy of the order of the Hon'ble the then Chief Justice dated 4th April, 2021 directing the Registrar General to call upon the delinquent officers to show cause (six pages in three sheets), which they allowed inspection by the delinquent officers. The Marshalling Officer filed the reply to the petition of the petitioner dated 7th May, 2022 for supply of documents. As some confusion arose about the documents to be supplied by the department to the delinquent officers as per the direction of the Inquiring Authority and the documents sought for in the petition dated 7th May, 2022 filed by the petitioner, the petitioner was allowed to file a fresh petition for supply of documents.

(xv) It is the further case of the petitioner that the petitioner filed a fresh petition to supply the remaining documents which he sought for and which was quintessential for preparation of his statement of defence. It is further submitted that on the very day, even without getting any written response from the Marshalling Officer, the Inquiring Authority outrightly rejected the said petition mostly holding that the documents were not relevant for the purpose of the disciplinary proceeding. To the utter dismay and surprise, the Inquiring Authority failed to appreciate that after the order dated 24th February, 2021 in Suo Motu Writ Petition (Civil) bearing No.7943 of 2021 was

passed, there was an order dated 9th September, 2021 wherein, the said writ petition was disposed of by a three-Judge Bench consisting of Hon'ble the Chief Justice, Hon'ble Judge, who was member of the Division Bench passed order on 24th February, 2021 and the Enquiring Authority as its members.

(xvi) It is the further case of the petitioner that after the evidence of the Department Witness No.1 was closed on 30th July, 2022, the petitioner filed a petition before the Inquiring Authority to supply the copy of the deposition of the Department Witness No.1 and any other witnesses as would be examined in the departmental proceeding soon after their examination, to enable him to make himself ready for final hearing. However, the said petition was rejected by the Inquiring Authority on the ground that there was no such provision in the 1962 Rules to provide copy of the deposition of the witness in the midst of the inquiry which would be supplied to him with the inquiry report by the Disciplinary Authority after conclusion of the inquiry.

(xvii) It is the further case of the petitioner that after such rejection of the petition filed by the petitioner for supplying relevant documents, taking of evidence begun from both the parties and when the turn of the petitioner came, before adducing his evidence, he filed three petitions before the

Inquiring Authority i.e., (i) the petition to recall the Department witness No.1 for further cross-examination; (ii) a petition to direct the Marshaling Officer to produce true copy of the order dated 7th April, 2021 passed in W.P.(C) No.11802 of 2020 (Orissa High Court Employees Association -Vrs.- Orissa High Court, Cuttack & Ors.) and (iii) to issue notice to the co-delinquent officers, Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/c and Shri Janmejay Das, the then Dy. Registrar (Judicial) for their examination/confrontation by the petitioner, but the Inquiring Authority did not find any merit in all those three petitions and instantly on the very day of its filing, rejected those petitions and thereafter, proceeded to take evidence of the petitioner on the same date and finally closed the proceeding and posted the case to 3rd September, 2022 for preparation of inquiry report.

(xviii) It is the further case of the petitioner that on 15th September, 2022, the petitioner received the notice of the Court vide No.13986 dated 9th September, 2022 through its department i.e., L & ESI Department, Govt. of Odisha under sub-rule (10)(i)(a) of the Rule 15 of the 1962 Rules along with the inquiry report dated 3rd September, 2022 of the Inquiring Authority with a direction to submit representation, if any, within

15 days as regards the findings of the Inquiring Authority in the inquiry report dated 3rd September, 2022.

(xix) It is the further case of the petitioner that on perusal of the inquiry report, it is found that the Inquiring Authority held the petitioner and co-delinquent Shri Janmejay Das guilty of three charges i.e. (a) Gross Misconduct; (b) Dereliction of Duty and (c) Administrative indiscipline while dealing with judicial records but at the same time exonerated from the charge of failure to maintain absolute integrity and honesty and the Inquiring Authority pleased to also recommend the punishment of reduction to the lower grade in the pay. However, to the utter dismay and surprise, with the same set of fact and evidence, Inquiring Authority was pleased to exonerate co-delinquent Dr. Pabitra Mohan Samal, who had initially handled the copy of the order dated 24th February, 2021 of the said Division Bench and endorsed the same to the D.R(J), of all the charges.

(xx) It is the further case of the petitioner that although there is no dispute about the fact which gave rise to registration of the Suo Motu Writ Petition, but surprisingly it is seen from the memo of charge issued to the co-delinquent Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/c that the

fact/imputation of statement as against him is completely different and narrated a completely different story. Even though such discrepancy was candidly admitted by the Department Witness No.1 in his evidence, but Inquiring Authority did not take any step to remove such a glaring discrepancy which finally gave way for exoneration of co-delinquent Dr. Pabitra Mohan Samal of all the charges, when the petitioner was held guilty in respect of three head of charges, on self-same fact and incident.

(xxi) It is the further case of the petitioner that in obedience to the aforesaid notice dated 9th September, 2022, the petitioner submitted his representation under sub-rule (10)(i)(a) of the Rule 15 of the 1962 Rules through its department on 26th September 2022 with a prayer to exonerate him of all the charges as suggested against co-delinquent Dr. Pabitra Mohan Samal taking into account all the evidence available in his favour, his past unblemished service career so also the written note of submission dated 30th August, 2022 which was not at all considered by the Inquiring Authority.

(xxii) It is the further case of the petitioner that without taking into consideration the representation dated 26th September, 2022 in its proper prospective and even without giving any findings on the charges, said to have been established

against the petitioner, as required under sub-rule (9) of the Rule 15 of the 1962 Rules, the Disciplinary Authority, inter alia, proposed to award with major penalty to the petitioner of reduction to a lower grade i.e. Selection Grade in the cadre of District Judge as envisaged in sub-rule (vi) of Rule 13 of the 1962 Rules. Further, it was also clarified that upon reduction to the lower grade of Selection Grade, the pay of the petitioner would be fixed at the initial scale of the Selection Grade with entitlement to annual increments in the Selection Grade and that the petitioner's upgradation to the next higher grade of Super Time Scale would be considered after five years. The Court accordingly, by notice No.16840 dated 3rd November, 2022 asked the petitioner to submit representation, if any, in accordance with Rule 15(10)(i)(b) of the 1962 Rules against the proposed penalty within ten days from the date of receipt of the above notice.

(xxiii) It is the further case of the petitioner that vide notification No.2100 dated 21st December, 2022, the Court pleased to observe that the misconduct of the petitioner, a Senior Judicial Officer holding an important position of trust, responsibility and confidence in the organizational hierarchy of the High Court cannot be condoned and accordingly, awarded

the petitioner with major penalty of reduction to a lower grade i.e., Selection Grade in the rank of the District Judge as envisaged in sub-rule(vi) of Rule 13 of the 1962 Rules and further clarified that upon reduction to the lower grade of Selection Grade, the pay of the petitioner would be fixed at the initial scale of Selection Grade with entitlement of annual increments in the Selection Grade with further stipulation that his upgradation to the next higher grade in the Supertime Scale would be considered after five years.

(xxiv) It is the further case of the petitioner that pursuant to the aforesaid order of the Court, the opposite party No.1 in its order No.6950 dated 16.02.2023 re-fixed the revised judicial scale of pay, 2022 at Rs.1,63,030/- in Cell No.1 of Level J-6 (Selection Grade) of the pay Matrix w.e.f. 21st December, 2022 with further stipulation that the upgradation to the next higher grade in the Supertime Scale will be considered after five years from the date 21st December, 2022.

3. In response to the notice issued by this Court as per order dated 12.10.2013, all the opp. parties being represented by the Special Officer (Administration), High Court of Orissa filed their counter affidavit to the writ petition.

(i) In the counter affidavit, the stand has been taken that initiation of disciplinary proceeding, appointment of Inquiring Authority and the consequential action of imposition of punishment were lawful and were done by following the cardinal principles of natural justice and not in violation thereof as alleged. The imposition of major penalty on the petitioner is not disproportionate as alleged. The Court imposed major penalty taking into consideration all the surrounding materials which is quite evident from the notification dated 21.12.2022 itself. It is stated that the copy of the order dated 24.02.2021 of the Division Bench which is discussed is an unsigned one. It is also stated that the contention that the then DR (Judicial) Sri J. Das placed the note sheet before the petitioner on 26.02.2021 and urged to approve the same is against the materials on record. It is further stated that DR (Judicial) Sri J. Das in his written statement of defence in D.P. No.3 of 2021 has rather stated that it was the petitioner who after discussion with the Senior Judge of the Division Bench which passed the order, had instructed him to place the notes before him (petitioner).

(ii) It is further stated that soon after the registration of Suo Motu Writ, the same came to the knowledge of Hon'ble the Chief Justice from other source and thereafter the

petitioner was transferred from the Registry of the Court to the District of Rayagada as the District Judge.

(iii) It is further stated that the petitioner acted carelessly in approving the note sheet without the original order passed by the Hon'ble Division Bench. The petitioner instead of approving the note on the basis of telephonic instruction of the Presiding Judge, should have examined the concerned record. The plea taken by the petitioner that in order to give effect to the judicial order, he acted with promptitude on good faith is an afterthought stand in order to escape from his administrative responsibility.

(iv) It is stated that the contents are matters of record and at the time of transfer of the petitioner from Rayagada to the Industrial Tribunal, Rourkela, D.P. No.3 of 2021 had been initiated which was within his knowledge. As per the Circular No.787/L dated 28.01.2010, as the transfer was made on administrative ground, the disturbance allowance was denied to him. The contention of the petitioner that the "Memo of Evidence" was not supplied to him along with the Memorandum dated 09.12.2021 was denied. The Memorandum itself speaks that the list of documents by which and a list of witnesses by whom the articles of charge were proposed to be sustained. That

apart, while submitting his written statement of defence, the petitioner had never pointed out that he did not receive the "Memo of Evidence". After receipt of the written statement of defence of the petitioner, the Court in its prudence resolved for inquiry into the charges and Inquiring Authority was appointed.

(v) It is further stated that the provision of Joint Inquiry as provided in Rule 17 of the 1962 Rules is not mandatory which would be evident from use of the word "may" therein. There is also nothing in the said Rules prescribing different set of procedure of inquiry under Rule 15 and Rule 17. The provision contained in Rule 17 of the 1962 Rules does not prescribe that failure to adhere to Rule 17 in inquiry of more than one delinquent, will vitiate a proceeding. The petitioner could not explain as to how he was prejudiced due to inquiry under Rule 15 instead of Rule 17. The entire inquiry was lawful and has been conducted giving due regard to the principles of natural justice.

(vi) It is stated that the contents are matters of record and though the contention of the petitioner is that he should have been supplied with the order dated 04.04.2021 of Hon'ble the Chief Justice, but the same is nothing more than a chart of sequence of events which the petitioner had inspected.

The truth is that as per directions, explanations were sought from the petitioner and the other two delinquents, but the same cannot be held to be a vital document which ought to have been supplied to the petitioner. Moreover, the same was not even marked as an exhibit by the Inquiring Authority in the disciplinary proceeding. When the petitioner inspected the order, non-supply thereof cannot be said to have caused any prejudice to him as claimed. Similarly, the order dated 09.09.2021 passed in Suo Motu Writ Petition (Civil) No.7943 of 2021 was never in dispute and also never a document necessary for the purpose of inquiry. The manner of initiation of Suo Motu Writ Petition (Civil) No.7943 of 2021 formed the basis of inquiry not the manner of its disposal. Moreover, it is not the case of the petitioner that the case was not disposed of. Further, he has not challenged the final order passed therein. It is stated that in absence of any specific provision in 1962 Rules for supply of copies of deposition in the midst of inquiry, the petitioner was rightly denied supply of statement of Department Witness No.1 on 30.07.2022. However, after conclusion of the inquiry, he was supplied with the inquiry report along with the statements of the witnesses which he had filed. The entire inquiry and recording of the deposition of the witnesses was carried out by the Inquiring

Authority in the presence of the petitioner and not behind him. The contention of the petitioner that the entire proceeding was in violation of natural justice and that it was not fair and transparent is a myth.

(vii) So far as the rejections of the three petitions of the petitioner are concerned, the same were disposed of by the Inquiring Authority considering their merits. The petition to recall the Department Witness No.1 for further cross-examination was felt to be not required as the petitioner had cross-examined him (Department Witness No.1) at length earlier. The second petition for calling for the original copy of order dated 07.04.2021 in W.P.(C) No. 11802 of 2022 was also felt unnecessary as the petitioner had filed the downloaded copy thereof which was not disputed and he was asked to utilize such downloaded copy in his favour if he so wanted. The other petition to issue notice to the other two delinquent officers did not find favour with the Inquiring Authority as prior thereto, both of them had declined to adduce their respective evidence in the inquiry. That apart, the petitioner had prayed for examining them in order to confront them with the facts asserted in the preliminary show-cause and written statements of defence which were matters of record, were undisputed. Hence, their examination was found to be not

essential. So far as the contention regarding non-supply of copies of order sheets is concerned, the petitioner had never raised such claim at any point of time before the Inquiring Authority. The petitioner has also not mentioned as to in what way he was prejudiced due to non-supply of the copies of orders and thus, the same cannot be said to have violated any principle of natural justice.

(viii) It is stated that in absence of any specific provision in 1962 Rules for fixing a date for summing up of the case by both the parties, the Inquiring Authority in its wisdom preferred to prepare the inquiry report after the conclusion of evidence from both the sides. It is also not the case of the petitioner that the department was allowed to sum up its case and not the petitioner. The procedure which was adopted by the Inquiring Authority was the same for both the department and the delinquents. There is absolutely no violation of principle of natural justice. It is stated that the Inquiring Authority had taken all the materials into consideration and found the petitioner and delinquent Sri Dash guilty of the charges while exonerating another delinquent Sri Samal thereof. The Inquiring Authority has given ample reasons for the conclusion arrived at in the report. There is nothing in the report for the petitioner to be

shocked as Shri Samal unlike the petitioner and Shri Das had a limited role in the entire process.

(ix) It is stated that the petitioner is under the mistaken notion that in a common inquiry, all the delinquents are to be commonly judged irrespective of their degree of involvement and culpability. The Inquiring Authority after due inquiry exonerated Dr. Samal from the charges and the same is no way connected with the petitioner.

(x) It is further stated in the report that since Sri Samal had a limited role in the entire scenario by marking the document to the DR (Judicial) on a day when he was in charge of the Registrar (Judicial), he was exonerated with suggestion that he should be warned to be more cautious in future. Per Contra, the Inquiring Authority taking into consideration the gravity of misconduct recommended the penalty of reduction to lower grade of pay against the petitioner and Sri Das. The imposition of penalty on the petitioner by the Court was also done after taking his representation under Rules 15(10)(i)(a) and 15(10)(i)(b) of 1962 Rules into consideration. It is stated that not only did the findings arrived at the inquiry report were considered and accepted, but also in compliance of Rule 15 (9.A) of the 1962 Rules, the representation under Rule 15(10)(i)(a)

and subsequent representation under Rule 15(10)(i)(b) of 1962 Rules were invited from the petitioner. The petitioner's contention that the entire proceeding was vitiated and natural justice has been violated is baseless and without a grain of truth. The petitioner was granted opportunity at every stage of the inquiry and at all the subsequent stages as per Rules. The disciplinary authority duly considered the representation submitted by the petitioner and thereafter imposed penalty on him.

(xi) The provisions of 1962 Rules have been scrupulously followed while imposing penalty on the petitioner, therefore, impugned order does not require interference of this Court. The surreptitious conduct of the petitioner in the entire sequence of events while heading the Registry as has been highlighted by the Inquiring Authority justifies the penalty imposed on him.

(xii) It is further stated that the contention of the petitioner that his representation has not been considered at all is a wild conjecture and is far from truth. As a matter of fact, his representation was considered in its true perspective and thereafter penalty was imposed on him.

(xiii) It is stated that the Inquiring Authority never travelled beyond the charges during the inquiry and have examined all the aspects meticulously. The Inquiring Authority had never misread the imputations of misconduct as alleged. It rather appears that the petitioner had misread the same and derived his own meaning therefrom. It is stated here that the approval of the note sheet which the petitioner seeks to trivialize was actually the trigger point which unleashed a flurry of consequential events which, if not timely detected, could have been fatal.

(xiv) Furthermore, it was not only approval of a mere note sheet, but also acting on an unsigned order which is very much there in the first limb of the imputations of misconduct. The petitioner has contended that the words 'practice and procedure' are absent in the Articles of Charge and Statement of Imputations of Misconduct whereas it finds place in Para-7 of the inquiry report.

(xv) It is further stated that the practice and procedure which have been violated by the petitioner have been mentioned quite clearly in the initial two limbs of both Articles of Charge and Statement of Imputations of Misconduct. It is stated that the findings arrived at in the inquiry are in accordance to

the charges leveled. The contention of the petitioner that the Inquiring Authority had collected the evidence is against the materials on record. The petitioner has perhaps forgotten the basic tenet of inquiry that it was the Marshalling Officer who tendered the evidence on behalf of the department in presence of the petitioner before the Inquiring Authority. There was never a point in the evidence that the petitioner had raised any objection that the Marshalling Officer had tried to prove extraneous aspect.

(xvi) It is further stated that it was the petitioner who was beating around the bush during the cross-examination highlighting/suggesting about his own so-called past efficiency.

(xvii) It is further stated that all the findings of the Inquiring Authority are spot-on and are in keeping with the Articles of Charge and the imputations of misconduct. It is stated that the contents are matters of record and the evidence adduced by the Department Witness no.1 on whose testimony the petitioner relied upon is exactly the evidence which the Inquiring Authority took into consideration while returning a finding against the petitioner. The inquiry report is a complete document by itself which has adequately dealt with all the aspects and any addition thereto will tantamount to bringing

fresh salvo against the petitioner. The contention of the petitioner that the department had failed to establish any of the charges against him is figment of his own imagination and is far from truth.

(xviii) It is further stated that the petitioner has deduced his own logic out of nowhere that there is no bar to act on an unsigned order of a Division Bench so far relates to only registration of a Suo Motu writ petition more particularly when admittedly one of the Senior Judge presiding the Bench was consulted and confirmed about such order with suitable instruction to carry out the same. It is further stated that there is no codified provision for registration of Suo Motu proceeding or writ, the petitioner seeks to justify his action of approval of the note sheet for registration of the same.

(xix) It is further stated that the petitioner cannot and should not be allowed to blow hot and cold at the same breath. On one hand, he claims that he had no knowledge at the time of approving the note sheet that the order was unsigned which as per his words was an act "done on good faith by oversight", "an inadvertent mistake" and "an error of judgment" and on the other, he tried to justify his action of approval by slating that there was no bar in registration on the basis of an

unsigned order after orally consulting a Senior Judge of the Bench.

(xx) That apart, absence of a codified provision in express words should not be misconstrued as giving a free hand to an officer in the Registry to do and undo things at his own sweet will, to consult or ignore any Judge as per wish and/or to willfully keep the Chief Justice under ignorance. On the other hand, if there is no express provision for something, an officer is put on guard before acting; he/she is to be circumspect before taking a call on something; he/she is to inform the Chief Justice and is required to take orders before acting. Not resorting to any such course and trying to justify his action by boasting of absence of any codified procedure, the petitioner's claim that the department failed to prove that the registration of Suo Motu proceeding was not to be acted upon without approval of the Chief Justice deserves to be rejected.

(xxi) It is stated that the inquiry report dealt with all the concerns raised by the petitioner. The petitioner despite being the erstwhile Registrar General pretends to be blissfully unaware of the allocation of duties amongst the officers of the Registry. The contention of the petitioner as to what he would have done if he knew that the order was unsigned, or that there

was a dissenting view or that he was under an impression that it was a routine compliance, are not matters to be dealt with in this proceeding.

(xxii) It is further stated that there cannot be any direct evidence of motive and proof of motive, in all cases is not mandatory and merely because motive could not be brought out in an administrative inquiry is not a ground to brand an inquiry to be vitiated or to chastise an inquiry report to be perverse. The contents of this paragraph would rather show that the petitioner himself is confused and the inquiry report is not full of surmises and conjectures as he has delved on what he would have done had the circumstances been otherwise.

(xxiii) It is stated that the statement of the Department Witness No.1 has been duly considered by the Inquiring Authority while deriving conclusions in the report. Dissecting the etymological meaning of a word recorded in evidence and to say that the report is based on surmises and conjectures is unwarranted on the part of the petitioner.

(xxiv) It is further stated the then DR (Judicial) in his written statement of defence has stated that the note sheet was put up by him as per the instructions of the petitioner. The Inquiry Report has taken all the submissions of the delinquents

including the petitioner and the department into consideration while arriving at the conclusions, which is never vitiated from any angle.

(xxv) It is stated that the petitioner has tried to justify his own wrong by submitting that Suo Motu proceeding was already initiated by the Bench as is evident from the tenor of the order dated 24.02.2021 and that registration only remained a mere formality. It is further stated that if registration was a mere formality, it should have been registered then and there on 24.02.2021 itself. Further, in such event, what was the need for approval of a Registrar General, who never had any business to meddle in the judicial matters. Despite that the petitioner had chosen to approve a note sheet which had its root on an unsigned order which catapulted the registration of the Suo Motu Writ Petition. The acts of the petitioner was out and out wrong and no amount of justification can come to his rescue. In the Inquiry Report, it has been clearly stated that Ext.5 was a mere scrap of paper containing some purported directions of a Division Bench of the Court. Such categorical words of the report summarize the validity of Ext.5. Any other interpretation of Ext.5 as is made by the petitioner is without any basis.

(xxvi) It is stated that the petitioner cannot equate his own position with that of co-delinquent Shri Samal as Shri Samal was in-charge of Registrar (Judicial) on that fateful day, while the petitioner was heading the Registry then. The reason for exoneration of Shri Samal and the imposition of penalty on the petitioner have been succinctly detailed in the inquiry report, which did not require any supplement by these opp. parties.

(xxvii) It is further stated that at Para-12 and 13 of the report, the Inquiring Authority has mentioned as to how the conduct of the petitioner were characterized as 'misconduct'. The contentions of petitioner about absence of any codified rule have already been dealt with in the preceding paragraphs.

(xxviii) It is stated that the then Chief Justice was a prime member of the Disciplinary Authority who was in a position to influence the decision making process was far from truth. As a matter of fact, the Disciplinary Authority in the matter was the High Court as per the definition available at Rule i.e. The Rules of the High Court of Orissa, 1948 (hereafter "1948 Rules"). The matter of the inquiry in D.P.No.03 of 2021 was not the subject matter of the merits of the Suo Moto writ petition. That apart, merely because the Inquiring Authority happened to be one of the members of the Bench, the same *per se* does not render the

inquiry illegal. No circumstance has been brought out in the writ petition to show bias of the Inquiring Authority and the petitioner at no point of time had expressed his reservations on appointment of the Inquiring Authority. Only after the adverse finding, the petitioner has come up with these kinds of afterthought pleas in desperation to stay afloat.

(xxix) It is further stated that the inquiry report is very clear about the grave nature of acts of the petitioner and the punishment imposed by the Disciplinary Authority was never disproportionate, but was quite appropriate. The punishment as prescribed in the 1962 Rules was never exhaustive to deal with each and every situation. The penalty imposed on the petitioner is just, proper, in proportion with the misconduct and needs no interference by this Court**.**

FINDING IN INQUIRY REPORT Dt.03.09.2022

4. The Inquiring Authority has observed as follows:-

> **"10**. As stated earlier, none of the delinquent officers dispute the note under Ext.4 prepared and placed by Shri Janmejaya Das and approved by Shri Malaya Ranjan Dash. Further, Ext.5 and the endorsement of Dr. Pabitra Mohan Samal under Ext.5/1 on it also remains undisputed by Dr. Pabitra Mohan Samal and other two delinquent officers. The signatures and

endorsement under Exts.4/1 and 4/2 on Ext.4 are admitted by Shri Janmejaya Das and Shri Malaya Ranjan Dash. Similarly the registration of Suo Motu W.P.(C) No.7943 of 2021 and consequent communication and receipt of copy of Ext.5 by the Office of Advocate General through Department Witness No.2 as endorsed under Exts.1/2 & 3/2 are neither doubted nor disputed by any of the parties. In other words, all such documents brought on record under Exts.1 to 5 and the signatures and endorsement appearing on them remains admitted without any sort of doubt.

11. It needs to be mentioned at the outset that none of the delinquent officers have ever whispered anything about intimating the Chief Justice on Ext.5 or such discussions made with Justice.....or the instructions given by her to them till 2nd March, 2021 when he came to know about the same from other source...Usually a Suo Moto Writ Proceeding is initiated by the order of the Chief Justice or a Bench consisting of the Chief Justice as one of the member. Despite all such rules and guidelines, neither Janmejaya Das nor Malaya Ranjan Dash in the capacity of Deputy Registrar (Judicial) and Registrar General respectively did think it proper to bring such an unusual fact of initiation of Suo Motu Proceeding based upon a plain unsigned document under

Ext.5....Department Witness No.1, the present Registrar (Judicial) had worked for a long tenure in the Court in the capacity of Deputy Registrar (Judicial) as well as in his present post, who has specifically said that initiation of a Suo Motu Proceeding; by a Division Bench other than the Chief Justice is itself an unusual fact and therefore it is incumbent upon the officers of the Registry to bring the same to immediate attention of the Chief Justice. Admittedly, none of the delinquent officers being the key Registrars of the Court did even attempt to bring it to the notice of the Chief Justice.

12. With regard to the authenticity of Ext.5 as a valid Judicial Order that prompted the delinquent officers to act upon, it is explained by all the delinquent officers that they acted on good faith and bona fide belief upon Ext.5 as a valid judicial order. It needs to be reiterated here that admittedly Ext.5 is not a signed order nor is it endorsed to be a true copy of the order with authorized signatory. Ext.5 reveals to be a mere scrap of paper containing some purported directions of a Division Bench of the Court. None of the delinquent officers claim to have made any attempt to see or verify the original order or the file, which of course was their first duty....As such, the explanation offered by Shri Malaya Ranjan Dash and Shri Janmejaya Das that they acted bonafidely, is not found convincing

because the circumstances showing their doubtful conduct to ignore the other Judge as well as the Chief Justice is deplorable. They failed to explain this. It casts doubt on their conduct. However, in absence of any conspicuous material to satisfy their dishonest intention, it cannot definitely be opined that they did so dishonestly. So the charge with regard to failure to maintain absolute integrity and honesty is not established.

13. Shri Malaya Ranjan Dash says in his written statement that the approval of the note under Ext.4 by him is an error and inadvertent mistake. He further says that it was an error of judgment not actuated with any mala fide dishonest intention. But in my humble opinion, it is not an error of judgment, rather a deliberate misconduct....As such, the charges of gross misconduct, dereliction of duty and administrative indiscipline are well established against Shri Janmejaya Das and Shri Malaya Ranjan Dash. Accordingly, both of them are found guilty of those three charges.

xx xx xx xx xx

15. In view of the discussions made above and the reasons stated, and considering the entirety of the charges, the imputations thereof as well as the gravity of misconduct, the punishment of reduction to the lower grade in

the pay is recommended against Shri Janmejaya Das and Shri Malaya Ranjan Dash."

Submissions on behalf of the petitioner:

5. Mr. Budhadev Routray, learned Senior Advocate appearing for the petitioner contended that the order dated 24.02.2021 was passed in open Court when Bench assembled and it was not varied till the date of registration of the Suo Motu Writ Petition which would be evident from the order dated 07.04.2021 passed by same Division Bench in W.P.(C) No.11802 of 2020 under Annexure-17 which has been marked as Ext.A from the side of the petitioner in the departmental inquiry. Therefore, such an order becomes operative even without the signatures of the Hon'ble Judges. In support of his submission, he relied upon the decisions of the Hon'ble Supreme Court in the cases of **Surendra Singh & Ors. -Vrs.- The State of U.P. reported in (1953) 2 Supreme Court Cases 468** and **Vinod Kumar Singh -Vrs.- Banaras Hindu University reported in (1988) 1 Supreme Court Cases 80**.

He further contended that admittedly the copy of the order was sent after dictation in open Court, unaccompanied with the dissenting order which was penned subsequently. The note sheet was approved for registration of Suo Motu Writ Petition, on

last hour of the day of its stipulated date of compliance on good faith and there is no malafide intention or without violating any definite Rule or law. Merely basing on the claim of the department that there was a convention/practice to act upon an original order only in case of registration of Suo Motu Writ Petition, otherwise it should have been brought to the notice of Hon'ble Chief Justice, the charges of gross misconduct, dereliction of duty and administrative indiscipline could not have been said to be well established against the petitioner. The act of approval by the petitioner can at best be termed as an error of judgment, but certainly not 'misconduct' when it was merely for registration of a case for hearing of the matter by the Division Bench of the Court and no party was going to be prejudiced or harmed by such registration or notice. According to him, misconduct arises from wrongful intention and ill motive, but an act of negligence, errors of judgment, or innocent mistake do not constitute misconduct. In support of his submission, he relied upon the decisions of the Hon'ble Supreme Court in the cases of **Union of India and Others -Vrs.- J. Ahmed reported in (1979) 2 Supreme Court Cases 286**, **Insp. Prem Chand -Vrs.- Govt. of NCT of Delhi reported in (2007) 4 Supreme Court Cases 566** and **Abhay Jain -Vrs.- High Court of**

Judicature for Rajasthan reported in (2022) 13 Supreme Court Cases 1.

He argued that the order was valid in the eyes of law being dictated in open Court and communicated through proper channel. There was no scope for the Registry either to see the order of the Court in distrust or verify its authenticity and if at all it was an error but to err is human and cannot be termed as grave misconduct particularly when there is no violation of definite Rule/Law/Procedure. Acts of misconduct must be precisely and specifically stated in the rules or standing orders and cannot be interpreted ex-post facto by the department. He relied upon the decisions of the Hon'ble Supreme Court in the cases of **A.L. Kalra -Vrs.- Project & Equipment Corporation reported in (1984) 3 Supreme Court Cases 316** and **Vijay Singh -Vrs.- State of Uttar Pradesh and others reported in (2012) 5 Supreme Court Cases 242**.

Learned counsel for the petitioner further argued that without quoting any specific provision or guideline and contrary to the evidence of the Department witnesses, the Hon'ble Inquiring Authority held that the guidelines for functioning of each Officer of the Registry have been issued from time to time prescribing their duties and despite all such guidelines, the

petitioner in the capacity of Registrar General, did not think it proper to bring such unusual fact of initiation of Suo Motu Proceeding based upon a plain unsigned document under Ext.5. According to him, if there is no such guidelines to show that the order passed by a Bench in open Court for initiation of Suo Motu Proceeding is to be brought to the notice of the Hon'ble Chief Justice or it is to get approval of the Hon'ble Chief Justice before its registration in spite of the order passed by a Bench, the finding of the Hon'ble Inquiring Authority is perverse and not legally sustainable.

Learned counsel further contended highlighting discrimination that the co-delinquent Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/C was exonerated though he was implicated basing on the same incident and had a pivotal role to play. In fact, the unsigned order was first received by him, who endorsed it to the Deputy Registrar (Judicial) and he was exonerated on the plea that he was in the charge of Registrar (Judicial) on that day only.

The learned Senior Counsel emphasised that the imposition of punishment under Annexure-22 is shockingly disproportionate and even past unblemished service record of the petitioner was not considered. In support of his submission,

he placed reliance upon a decision of this Court in the case of **Subash Chandra Panda -Vrs.- State of Odisha and others reported in 2013 (I) ILR-CUT 750**.

While concluding his argument, learned Senior Counsel urged that in the factual scenario and in the interest of justice, the impugned notification no.2100 dated 21st December 2022 under Annexure-22 and the consequential office order no.6950 dated 16th February, 2023 under Annexure-23 be quashed and the writ petition be allowed granting all consequential service benefits to the petitioner as per law.

Submissions on behalf of the opposite parties:

6. Mr. Pitambar Acharya, learned Advocate General, being ably assisted by Mr. Aurobinda Mohanty, learned Addl. Standing Counsel on the other hand, fairly submitted that if in a Division Bench, an order was dictated in open Court by one of the Hon'ble Judge and the other Hon'ble Judge has not dissented from it in open Court, it is to be accepted that the order was passed on consensus. Such an order becomes operative even without signature of the learned Judges and cannot be altered thereafter and if any dissenting view is given thereafter, it is unsustainable. Signing is a formality to follow when judgment/order is pronounced in open Court and such

judgment/order to be operative does not await signing thereof by the Court. He emphasised that it is nobody's case that the order was not dictated in open Court and that after one of the Hon'ble Judges dictated the order in open Court, the other Judge gave his dissent in open Court or dictated the dissenting order in open Court and therefore, such order becomes operative even without signature of both the Hon'ble Judges. He further argued that since the order was not varied till the date of registration of the Suo Motu Writ Petition and admittedly, there is no rule or guidelines that the permission of Hon'ble Chief Justice is required to be taken for registration of the Suo Motu Writ Petition even in spite of the open Court order, therefore, no fault can be found with the petitioner in approving the note placed before him relating to registration of the case. He fairly stated that in the factual scenario, there is nothing about any wrongful intention or ill motive on the part of the petitioner, but it may be an act of negligence or errors of judgment which is difficult to be said to be gross misconduct, dereliction of duty and administrative indiscipline. He endorsed the submission made by the learned Senior Counsel for the petitioner that in view of the past unblemished service record of the petitioner, punishment imposed on the petitioner is shockingly disproportionate.

Our observation on perusal of original records:

7. When the matter was taken up for hearing on 31.01.2025, we summoned the entire original records. Subsequently, again on 07.02.2025, we directed Registry of this Court to produce the original records in a sealed cover. We had the advantage of perusing the entire file of the departmental proceeding as well as the proceeding pertaining to the *Suo Moto* case.

Perusal of the original records produced before us in the sealed cover shockingly revealed certain aspects, which was confronted to the Registry Officials present in the Court and also to the learned Advocate General, however, none could satisfactorily answer to the query of the Court. We refrain ourselves from delving upon those aspects, rather would confine ourselves to the limited issues prominently highlighted before us. It appears from the records that the whole case hinges upon the two documents, which we felt it appropriate to reproduce.

A. On 24.02.2021 open Court hearing took place and the Division Bench pronounced the order in the open Court directing registration of a *suo motu* case. The Court after taking consent from the learned Senior Counsel present in the Court, appointed them as Amicus Curiae. There was no dissent

expressed in the Court by any of the Hon'ble Judges to the proceeding. The order No 1, dated 24.02.2021 dictated in the open Court is reproduced hereunder:

1. ***24.2.2021*** *The Odisha Reservation of Posts and Services (For Socially and Educationally Backward Classes) Act, 2008 regarding reservation of SEBC category has already been quashed by this Court in the Judgment dated 29.6.2017. After quashing of the said Act, the Reservation in respect of SEBC category is still going on in respect of the advertisement issued by the State Government, Public Sector Undertakings and even by this Court. In the meantime, four years have already passed and no further legislation was made by the State Government as stated above and it is a continuous cause of action and the above State functionaries are violating the Court's order.*

   Since it came to the knowledge of the Court that the said Reservation is still continuing without taking further step by the Government, this Court initiates a Suo Motu proceeding impleading the State Government as well as the Registrar (Judicial) of this Court as Opposite Parties and engage Mr. Buddhadev Routray, learned Senior Advocate, Mr. Manoranjan Mohahty, learned Senior Advocate and Mr. Ashok Kumar Mohanty, learned Senior Advocate as Amicus Curiae to argue the matter. The name of the learned Amicus Curiae be reflected in the brief as well as in the cause list.

Issue notice to the Opposite Parties i.e. Chief Secretary, Government of Odisa, Bhubaneswar, Principal Secretary, General Administration Department, Government of Odisha, Bhubaneswar and Registrar (Judicial), Orissa High Court.

Learned Additional Government Advocate shall accept notice on behalf of the Registrar (Judicial), Orissa High Court, Cuttack and shall file counter on his behalf. Counter be filed by the opposite parties by 15th March, 2021.

Copy of this order be supplied to the learned Senior Advocates engaged as Amicus Curiae by 25.2.2021.

List this matter on 15.3.2021.

Sd-

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B. On 26.02.2021 the Deputy Register (Judicial) put up a note before the petitioner for necessary orders by verbatim reproducing the order dated 24.02.2021. The petitioner approved the note routinely which according to the petitioner was done in good faith and consequentially the *Suo Motu* proceeding was registered. It is borne out of the record that the copy of the said order dated 24.02.2021 was also dispatched to the appointed Amicus Curiae, which was received by one of the

learned Amicus Curie on the same day. It is also apparent on record that the original proceeding signed by one of the Hon'ble Judges was not placed before the petitioner on 26.02.2021. At least nothing contrary is coming to the fore on record to suggest otherwise. The note sheet dated 26.02.2021 which was put up before the petitioner for approval on 26.02.2021 was approved on the same day.

C. The same Division Bench had the occasion to hear another allied matter on 07.04.2021 in W.P.(C) No.11802 of 2020. In that proceeding, the Division Bench recorded that the Second Judge to the Bench had written a separate order dissenting the First Judge's order dated 24.02.2021 only on 02.03.2021 and thus following order was passed:

W.P.(C) No. 11802 of 2020

07. **07.04.2021**

This matter is taken up by video conferencing mode.

Heard Mr.B. Routrai, learned Senior Counsel appearing for the petitioner.

Pursuant to the earlier order dated 15.3.2021, Mr. Routrai, learned Senior Counsel submitted that Court can consider the matter as one of the issue involved in the present writ petition i.e. the High Court of Orissa (Appointment of Staff and Conditions

of Service) Rules, 2019 which was notified on 18th October, 2019 wherein Rule-3(2) also stipulates regarding Reservation of vacancies (S.E.B.C.). Even if the said provision has not been challenged, the Court can consider the same in view of the decision of this Apex Court reported in ***2016 (9) SCC 749*** *in the case of* ***State of Uttar Pradesh Vrs. Dr. Dinesh Singh Chauhan (Para 18)****.*

A Suo Motu proceeding i.e. Suo Motu W.P.(C) No. 7943 of 2021 was initiated on 24.2.2021 involving the issue regarding S.E.B.C. reservation where the Orissa Reservation of Posts and Services (For Socially and Educationally Backward Classes) Act, 2008 was quashed by this Court since June, 2017. However, the said reservation is still continuing.

In the suo motu proceeding the order which was passed in the Court on 24.2.2021 was served on the learned counsel who were engaged as Amicus Curiae on 26.2.2021 with the signature of one of the Hon'ble Judge. However, on 2nd March, 2021 the Hon'ble second Judge of the Bench has passed another order dissenting the views of the Presiding Judge and put his signature. The said order came to the light of the day on the aforesaid date i.e.(2.3.2021).

In view of the above fact and circumstances, it will be better to place the matter before the Hon'ble Chief Justice to list this matter before the appropriate Bench.

As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with the certified copy in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020.

Sd-

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It is apparent from the above proceeding that the dissenting view of one of the Hon'ble Judges to the proceeding dated 24.02.2021 only came to be recorded on 02.03.2021. Thus, on 26.02.2021 when the note was put up before the petitioner, there was no dissent existed on record, rather the proceeding was conducted in the open Court on 24.02.2021 and the order that was dictated had been holding field till the one of the Hon'ble Judge dissented subsequently.

On the conspectus of the aforementioned factual scenario germinates from original record, we venture into analyzing the pleadings and arguments advanced by the learned counsel for both the parties.

Scope of interference or judicial review with the findings of disciplinary authority:

8. Before adverting to the contentions raised by the learned counsel for the respective parties, it would be apt to discuss here the scope of interference or judicial review with the findings of disciplinary authority in service matters.

In the case of **United Bank of India -Vrs.- Biswanath Bhattacharjee reported in (2022) 13 Supreme Court Cases 329**, it is held as follows:-

> "21. The Bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under Article 226 of the Constitution. Yet, from ***Union of India -Vrs.- H.C. Goel (AIR 1964 SC 364)*** onwards, this Court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 of the Constitution are available, and intervention, warranted. For any Court to ascertain if any findings were beyond the record (i.e. no evidence) or based on any irrelevant or

> extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of "no evidence" or perversity, cannot be rendered sans such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the Court under Article 226 of the Constitution would be different; it is not the appellate in character."

Thus, interference by this Court under Article 226 of the Constitution is warranted when there is no evidence to establish the misconduct of a public servant after a departmental enquiry is conducted. This Court in its power of judicial review does not act as an appellate authority; it does not reappreciate the evidence adduced in departmental enquiry. The technical rules of the Evidence Act and the proof of fact or evidence as defined therein, do not apply to disciplinary proceeding. In other words, the strict proof of legal evidence and finding on that evidence or adherence to the provisions of the Evidence Act are not essential. Question of adequacy of the evidence or reliable nature of the evidence will not be the grounds for interfering with the findings in departmental enquiry.

Availability of rule/law/procedure/standing order for registration of Suo Motu case:

9. In pursuant to the order dated 21.03.2025 as to whether there is any rule/law/procedure/standing order regarding permission of the Hon'ble Chief Justice for registration of Suo Motu case basing on an order passed by the Hon'ble Court, the Special Officer (Administration), High Court of Orissa filed an affidavit on 04.04.2025 indicating therein, inter alia, that he verified the Rules of the High Court of Orissa, 1948 regarding the existence of any rule/law/procedure/standing order requiring permission of the Hon'ble Chief Justice for registration of a suo motu case basing on an order passed by the Hon'ble Court but could not trace the same. Thereafter, a request has been made to the Registrar (Judicial) of the Court for furnishing such rule/law/procedure/standing order and as per his instruction, the Superintendents, Rules Section, List Section and Computerized Filing Section of the Court were requested to furnish the rule/law/procedure/standing order, if any, requiring permission of the Hon'ble Chief Justice for registration of suo motu case basing on an order passed by the Hon'ble Court. It is further indicated in the affidavit that the Superintendent, Rules Section of the Court enclosed the copy of judgment dated 05.04.2022 of

Madurai Bench of the Madras High Court in Suo-Motu W.P. (MD) No.5273 of 2022 and submitted that no rule/standing order of this Court is available with regard to taking permission of the Hon'ble Chief Justice for registration of suo motu case basing on an order passed by the Hon'ble Court. It is further indicated that the Superintendent, List Section of the Court has submitted that as per usual practice, any order passed by the Hon'ble Court in this regard are sent to concerned branch and the branch places the matter before the Registrar (Judicial) for further course of action regarding registration of a suo motu case. List Section has no role regarding registration of suo motu case and also no such instruction is available in the List Section for registration of suo motu case. It is further indicated that the Superintendent, Computerized Filing Section of the Court has submitted that as per previous practice, the Section receives the Suo Motu Writ proceedings from the Registrar (Judicial) for the purpose of registration, as such with approval of the Hon'ble the Chief Justice. The procedure is being followed by the concerned section. Hence, such rule/law/procedure/standing order has not been encountered by the Section. It is further indicated therein that no such rule/law/procedure/standing order regarding obtaining permission of the Hon'ble the Chief Justice for

registration of suo motu case basing on an order passed by the Hon'ble Court is available.

Articles of Charge:

10. The first charge relates to gross misconduct, which is based on approval of a note of the then Deputy Registrar (Judicial) and thereby instructing for registration of a Suo Motu proceeding on the basis of an unsigned order bearing the date 24th February 2021 purported to be of a Division Bench though the petitioner had no authority to issue such instruction under Orissa High Court Rules, 1948.

The second charge relates to dereliction of duty, which is based registration of the Suo Motu proceeding on his instruction and approval as if he had acted on a validly signed judicial order passed by the Division Bench of the Court, though no such signed order was available on record and that an unsigned order carrying direction for registration of Suo Motu proceeding was not to be acted upon without the approval of the Chief Justice.

The third charge relates to administrative indiscipline while dealing with judicial records, which is based on his instruction and approval, the Registry of the High Court registered Suo Motu Writ Petition (Civil) No.7943 of 2021

"Registrar (Administration), Orissa High Court -versus- Chief Secretary, Govt. of Odisha and Others' and sent notices to the opposite parties enclosing copies of the unsigned order. Office of the Advocate General, Odisha received the notice and a copy of such notice was also received by the office of one of the Amicus Curiae, Mr. Manoranjan Mohanty.

The fourth charge was the failure to maintain absolute integrity and honesty. The Inquiring Authority held the charge to be not established.

Whether an order pronounced in the open Court becomes operative without signature:

11. We have given our thoughtful consideration to the submissions advanced at the Bar and the materials available on record.

Adverting to the contentions raised, if we go to the root of the matter, we find that it is nobody's case that the order was not dictated in open Court in the Division Bench on 24th February 2021 and that after one of the Hon'ble Judges (in this case the Senior Judge) dictated the order in open Court, the other Judge gave his dissent in open Court or dictated the dissenting order in open Court on that day.

In the case of **Surendra Singh** (supra), it is held as follows:

> "14. As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out, it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication."

In the case of **Vinod Kumar Singh** (supra), it is held as follows:

> "6. The above observations were made, as already mentioned, in a case where the judgment had been signed but not pronounced in the open court. In the present case, we are concerned with a judgment that had been pronounced but not signed. The provision in Order 20, Rule 3 of the Code of Civil Procedure indicates the position in such cases. It permits alterations or additions to a judgment so long as it is not signed. This is also apparently what has

been referred to in the last paragraph of the extract from the judgment of Bose, J. quoted above, where it has been pointed out that a judgment which has been delivered "can be freely altered or amended or even changed completely without further formality, except notice to the parties and re-hearing on the point of change, should that be necessary, provided it has not been signed". It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except under the provisions of Section 152 or Section 114 of the Code of Civil Procedure or, in very exceptional cases, under Section 151 of the Code of Civil Procedure.

7. But, while the court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open court, parties act on the basis that it is the judgment of the court and that the signing is a formality to follow.

8. We have extensively extracted from what Bose J. spoke in this judgment to impress upon everyone that pronouncement of a judgment in court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act

of the court with reference to the case. Bose J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does not await signing thereof by the court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel of any of the parties or the court discovers some new facts from the record. In such a case the court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases, though their number would be few and far between- where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation, the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given."

If a judgment/order is dictated in the open Court by one of the Hon'ble Judge in a Division Bench and if the other Judge does not agree with the view expressed (dictated) in open Court, he would have to pronounce his view/dissent immediately

in the Court itself. When the judgment/order is pronounced, parties present in the Court know the conclusion in the matter and often on the basis of such pronouncement, proceed to conduct their affairs. Even if the parties are not present when the order is dictated in open Court, the counsels for the respective parties use to inform their parties. Now-a-days when the court proceedings are live streamed, the chance of the party knowing the order instantly and likely to proceed to conduct himself accordingly is more certain. If what is pronounced in the Court is not acted upon, certainly litigants would be prejudiced. A judgment/order pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such cause, the same should appear from the record of the case. Once the judgment/order is pronounced (dictated) in the open Court on conclusion of arguments, the companion Judge on the Bench, if he does not agree with the view expressed in the dictated/pronounced judgment/order, he should express his dissent either by dictating his opinion/view immediately thereafter in the open Court itself or should at least inform counsel appearing for the parties and the parties, if they are present in the Court, that he does not agree with the view expressed by the Senior (other) member of the Bench and that

he would be delivering his judgment/order recording dissent soon. If he fails to do so, the decision which is so pronounced (dictated) becomes a declaration of the mind of the Bench (Court) and becomes the operative pronouncement of the Court. After the judgment/order becomes the operative pronouncement of the Court, it can be altered or amended and even changed completely, only with notice to the parties and a re-hearing on the point of change should that be necessary, provided it has not been signed.

12. The public trust and confidence in the judiciary should not go in vain. If confidence in the Judiciary goes, the due administration of justice definitely suffers. The judiciary is the guardian of the Rule of law and is the central pillar of the democratic State. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. In a Division Bench, when the judgment/order is dictated in open Court by one Judge and the other Judge does not express his dissent either by dictating his opinion/view and remains silent instantly and subsequently passes a dissenting judgment/order, the public will be confused and there will have no sanctity in the dictation of an order or judgment in open court

and they have to wait till they verify the order or judgment after it is signed by both the Hon'ble Judges.

13. Ext.A marked on behalf of the petitioner in the departmental inquiry, which is a downloaded copy of the order dated 07.04.2021 passed in W.P.(C) No.11802 of 2020 by the same Division Bench which has got nexus with the matter in which the order dated 24.02.2021 was passed, on the basis of which Suo Motu Proceeding was registered. In Ext.A, it is stated as follows:-

> "In the suo motu proceeding, the order which was passed in the Court on 24.2.2021 was served on the learned counsel who were engaged as Amicus Curiae on 26.2.2021 with the signature of one of the Hon'ble Judge. However, on 2nd March, 2021 the Hon'ble second Judge of the Bench has passed another order dissenting the views of the Presiding Judge and put his signature. The said order came to the light of the day on the aforesaid date i.e. (2.3.2021)."

Thus from such order, it is apparent that the order was passed in the open Court on 24.2.2021 and dissenting view to the order dated 24.2.2021 came only on 02.03.2021.

In such a scenario, in our humble view, when the order dated 24.02.2021 was dictated in open Court by the

Hon'ble Senior Member of the Division Bench and the other Judge did not express his dissent either by dictating his opinion/view immediately in the Court itself on that day nor there is anything on record that he informed the counsel appearing for the parties and the parties, if any present in the Court, that he did not agree with the view expressed by the Senior member of the Bench and that he would be delivering his judgment/order recording dissent soon, such an order becomes operative even without signature of the learned Judges.

Thus, we are of the humble view that the order dated 24.02.2021 which was pronounced in the open Court by the Senior member of the Bench, became operative and such order to be operative does not await signing thereof by the Court as signing is a formality to follow after such pronouncement.

14. In the case in hand, as appears from the records that the copy of the order 24.02.2021 after its dictation in open Court, unaccompanied with the dissenting order (which came only on 02.03.2021), was placed with the note sheet before the petitioner on 26.02.2021 by the Deputy Registrar (Judicial).

In the said order, it was directed that the brief along with copy of the order was to be supplied to the learned Senior Advocates engaged as Amicus Curie by 26th February 2021 i.e.,

on that day itself. Since there was a stipulated date of compliance, obviously, it could not have been unless a case is registered. The petitioner approved the note sheet for registration of Suo Motu Writ Petition, on the last day of its stipulated date of compliance.

The learned Inquiring Authority has not found any malafide intention on the part of the petitioner in approving the note sheet placed before him by the Deputy Registrar (Judicial). However, it has been held that it was not an error of judgment, rather a deliberate misconduct.

Basing on the decisions of the Hon'ble Supreme Court, as we have already held that the order dated 24.02.2021 was pronounced in open Court became operative and such order to be operative does not await signing thereof by the Court, therefore terming such order as a 'plain unsigned piece of paper' by the learned Inquiring Authority is not proper and justified. The learned Inquiring Authority has not kept in view the ratio laid down by the Hon'ble Supreme Court in the aforesaid two decisions regarding the effect of an unsigned order which was dictated in open Court by one of the Hon'ble Judge and the other Hon'ble Judge has not dissented from it in open Court.

15. From the affidavit filed by the Special Officer (Administration), High Court of Orissa on 04.04.2025, it is apparent that no such rule/law/procedure/standing order is there regarding obtaining permission of the Hon'ble Chief Justice for registration of Suo Motu case basing on an order passed by the Hon'ble Court. Therefore, in approving the note sheet placed by Deputy Registrar (Judicial), the question of violation of any definite rule or law by the petitioner does not arise.

The claim of the department that there was a convention/practice to act upon an original order only in case of registration of Suo Motu Writ Petition otherwise it should have been brought to the notice of Hon'ble Chief Justice cannot be accepted when the same is not mentioned in the article of charges that any such established practice of the Court has been violated. There was no material or instances of such practice placed before the Inquiring Authority by the Department Witness. It should have at least brought on record the numbers of suo motu proceedings registered during the tenure of the petitioner as Registrar General of this Court or even prior to that and the procedure adopted in such proceedings. Without the same, the vague statement given by the Department Witness no.1 that the fact of initiation of a Suo Motu writ petition by a

Bench constituting Judges other than the Hon'ble Chief Justice is itself an unusual act, ought not to have been accepted by the Inquiring Authority when the witness himself states that no codified procedure or rule is there requiring prior intimation to the Hon'ble Chief Justice before approving the note of D.R. (Judicial) by the petitioner and no written practice or direction is there.

Law is well settled that mere practice is insufficient. The fact that an authority has always behaved in a certain way is no warrant for saying that it ought to behave in that way, but if the authority itself and those connected with it believe that they ought to do so, then the convention does exist. Practice alone is not enough. It must be normative. The practices and function of a Court are evolved by time looking to particular background and set of facts. The practice of a Court ripens into a convention by passage of time and rich heritage of conventions are time tested. Whether a practice or precedent has become convention, Sir W. Ivor Jennings in 'The Law and the Constitution' lays down following tests:

> "...We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason

for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it. And then, as we have seen, the convention may be broken with impunity."

If there is no codified procedure or rule and no written practice or direction and the petitioner just approved the note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in open Court and as we have held that such order can be legally operative, it cannot be said it was an act of deliberate misconduct on the part of the petitioner as held by the Inquiring Authority.

We are of the view that the approval of such note sheet by the petitioner can at best be termed as an error of judgment, but certainly not 'misconduct' when it is merely for registration of a case for hearing of the matter by the Division Bench of the Court and no party was going to be prejudiced or harmed by such registration.

The term 'misconduct' implies a wrongful intention, and not a mere error of judgment resulting in doing of negligent act. 'Misconduct' means, misconduct arising from ill motive. An

act of negligence, errors of judgment, or innocent mistake, does not constitute 'misconduct'.

In the case of **J. Ahmed** (supra), it is held as follows:

> "10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.
>
> 11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see ***Pierce v. Foster : 17 QB 536, 542***). A disregard of an essential condition of the contract of service may constitute misconduct [see ***Laws Vs. London Chronicle (Indicator Newspapers : (1959) 1 WLR 698)***]. This view was adopted in ***Shardaprasad Onkarprasad Tiwari Vs. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur : 61 Bom LR 1596*** and ***Satubha K. Vaghela Vs. Moosa Raza : 10 Guj LR 23***. The High Court has noted the

definition of misconduct in Stroud's Judicial Dictionary which runs as under:

> "Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in ***Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik : AIR 1966 SC 1051*** in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In ***S. Govinda Menon Vs. Union of India : AIR 1967 SC 1274***, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct as was held by this Court in ***P.H. Kalyani Vs. Air France, Calcutta : AIR 1963 SC 1756***, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts

would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument

showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see ***Navinchandra Shakerchand Shah Vs. Manager, Ahmedabad Co-op. Department Stores Ltd. : (1978) 19 Guj LR 108, 120***). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

In the case of **Insp. Prem Chand** (supra), it is held as follows:

"10. In ***State of Punjab v. Ram Singh, Ex-Constable : (1992) 4 SCC 54***, it was stated: (SCC pp. 57-58, para 5)

"5. Misconduct has been defined in Black's Law Dictionary, 6th Edn. at p. 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.'

Misconduct in office has been defined as:

> 'Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'

11. In ***R Ramanatha Aiyar's Law Lexicon, 3rd Edn., at p. 3027***, the term "misconduct" has been defined as under:

> "The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.
>
> * * *
>
> Misconduct is not necessarily the same thing as conduct involving moral turpitude.
>
> The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct."

(See also ***Bharat Petroleum Corpn. Ltd. Vs. T.K. Raju : (2006) 3 SCC 143***)

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In ***Union of India Vs. J. Ahmed : (1979) 2 SCC 286*** whereupon Mr. Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)

> "11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see ***Pierce Vs. Foster : (1886) 17 QBD 536***). A disregard of an essential condition of the contract of

service may constitute misconduct [see ***Laws Vs. London Chronicle (Indicator Newspapers) : (1959) 1 WLR 698***]. This view was adopted in ***Shardaprasad Onkarprasad Tiwari Vs. Divisional Supdt., Central Rly., Nagpur Division, Nagpur : (1959) 61 Bom LR 1596*** and ***Satubha K. Vaghela Vs. Moosa Raza : 10 Guj LR 23***. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

'Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct'."

(emphasis supplied)

In the case of **Abhay Jain** (supra), it is held as follows:

"71. This Court in ***Krishna Prasad Verma Vs. State of Bihar : (2019) 10 SCC 640***, while setting aside the High Court's order, quashed the charges against the officer therein and granted him consequential benefits while holding that: (SCC pp. 643, 646 & 648, paras 4, 11 & 16)

"4. No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming of a judicial officer, these must be dealt with strictly. However, if wrong orders are passed, that should not lead to disciplinary action unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file.

* * *

11. The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26.11.2001. It would be pertinent to mention that the High Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the lower court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case and file and did not take notice of the order of the High Court which was on his file. This negligence cannot be

treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail.

* * *

16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc. and in case there is a continuous flow of

wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect."

(emphasis supplied)

* * *

73. In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. Moreover, the enquiry officer virtually sat as a court of appeal picking holes in the order granting bail, even when he could not find any extraneous reason for the grant of the bail order. Notably, in the present case, there was not a string of continuous illegal orders that have been alleged to be passed for extraneous considerations. The present case revolves only around a single bail order, and that too was passed with competent

jurisdiction. As has been rightly held by this Court in ***Sadhna Chaudhary : (2020) 11 SCC 760***, mere suspicion cannot constitute "misconduct". Any "probability" of misconduct needs to be supported with oral or documentary material, and this requirement has not been fulfilled in the present case. These observations assume importance in light of the specific fact that there was no allegation of illegal gratification against the present appellant. As has been rightly held by this Court, such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer."

In the case of **A.L. Kalra** (supra), it is held as follows:-

22. Rule 4 bears the heading 'General'. Rule 5 bears the heading 'Misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope

Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in ***Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut : (1984) 1 SCC 1*** where this Court held that "everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct

in the relevant standing order but yet a misconduct for the purpose of imposing a penalty". Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

In the case of **Vijay Singh** (supra), it is held as follows:-

"14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide **Bachhittar Singh Vs. State of**

Punjab : AIR 1963 SC 395, Union of India Vs. H.C. Goel : AIR 1964 SC 364, Mohd. Yunus Khan Vs. State of U.P : (2010) 10 SCC 539 and **Coal India Ltd. Vs. Ananta Saha : (2011) 5 SCC 142**)

* * *

20. Unfortunately, a too trivial matter had been dragged disproportionately which has caused so much problem to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that (*sic* it cannot be left to) the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct."

16. An important aspect to be kept in mind is that the order as was placed before the petitioner was valid in the eyes of law being dictated in open Court and communicated through proper channel and there was no scope for the petitioner at that stage to see the order of the Court in distrust. There is no allegation of any extraneous influences on the petitioner leading him to approve the note sheet placed by Deputy Registrar (Judicial). The petitioner has taken a specific stand that after the

order was placed before him, he sought instructions over phone from the learned Senior Judge of the Division Bench regarding the matter and then approved the note. The Inquiring Authority has not disbelieved such stand taken by the petitioner rather observed that the petitioner and Deputy Registrar (Judicial) though thought it proper to discuss with the learned Senior Judge of the Division Bench but did not feel it appropriate to bring it to the kind notice of the Hon'ble Chief Justice who came to know all such facts from other source. It was further observed by the Inquiring Authority that the actions taken on the part of the petitioner in taking instructions and approving the note keeping the Hon'ble Chief Justice in dark was certainly deliberate and amounting to administrative indiscipline, dereliction of duty as well as gross misconduct.

We are of the humble view that even if the action taken by the petitioner in approving the note sheet can be stated to be an error but to err is human. Making mistakes is a natural and expected part of being human and cannot be termed as gross misconduct, when there is no violation of definite Rule/Law/Procedure and there was nothing to gain by the petitioner by putting his career at risk at the displeasure of the

Hon'ble Chief Justice. In the case of **Krishna Prasad Verma** (supra), it is held as follows:-

> "3. Article 235 of the Constitution of India vests control of the subordinate courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate courts. In a series of judgments, this Court has held that the High Courts are also the protectors and guardians of the Judges falling within their administrative control. Time and time again, this Court has laid down the criteria on which actions should be taken against judicial officers. Repeatedly, this Court has cautioned the High Courts that action should not be taken against judicial officers only because wrong orders are passed. To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order."

Law is well settled that the acts of misconduct must be precisely and specifically stated in rules or standing orders and cannot be interpreted ex-post facto by the authority. We are of the view that the manner in which the note sheet was placed by Deputy Registrar (Judicial) before the petitioner, the action taken by the petitioner seeking for instructions from the learned Senior Judge of the Division Bench regarding the matter and then approving the note cannot be said to be deliberate and

amounting to administrative indiscipline, dereliction of duty as well as gross misconduct as held by the Inquiring Authority.

Law is well settled that the finding should not be perverse or unreasonable, nor should the same be based on conjectures and surmises. There is a distinction in 'proof' and 'suspicion'. The authority must record reasons for arriving at the findings of fact in the context of the statute defining the misconduct.

The Inquiring Authority has held that the guidelines for functioning of each Officer of the Registry have been issued from time to time prescribing their duties and despite all such guidelines, the petitioner in the capacity of Registrar General, did not think it proper to bring such unusual fact of initiation of Suo Motu proceeding based upon a plain unsigned document to the notice of the Hon'ble Chief Justice. Admittedly, there are no such guidelines to show that the order passed by a Bench in open Court for initiation of Suo Motu proceeding is to be brought to the notice of the Hon'ble Chief Justice or it is to get approval of the Hon'ble Chief Justice before its registration in spite of the order passed by a Bench.

The Inquiring Authority held that usually a Suo Motu Writ proceeding is initiated by the order of the Chief Justice or a

Bench consisting of the Chief Justice as one of the members and based its entire findings on such alleged 'unusual fact' whereas the facts on which the articles of charge based under Annexure-I and the statement of imputation of misconduct under Annexure-II of the Memorandum of Charges dated 9th November, 2021 even never remotely whispered about any such fact/allegation and that such precedent has been violated by the delinquent officer. Either in the Certified Standing Order or in the service Regulations, an act or omission is to be prescribed as misconduct. It is not open to the Authority to fish out some conduct as misconduct and punish a delinquent even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. The Hon'ble Supreme Court in the case of **Rasaiklal Vaghajibhai Patel -Vrs.- Ahmedabad Municipal Corporation and another reported in (1985) 2 Supreme Court Cases 35** has held as follows:-

> "4….It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts."

It is the case of the petitioner that on good faith, with an honest intention to comply the judicial order of the Court as well as believing the officers of the Registry, he approved the note sheet placed before him by the Deputy Registrar (Judicial) of the Court. In a legal context, 'good faith' generally means acting honestly and fairly, without intent to deceive or defraud. It implies a lack of malice or bad intent, and a willingness to fulfill obligations and promises. Section 3(22) of the General Clauses Act defines 'good faith' as an act performed honestly, regardless of whether it is done negligently or not. As per Law.Com Legal Dictionary, the term 'good faith' means honest intent to act without taking an unfair advantage over another person or to fulfill a promise to act, even when some legal technicality is not fulfilled. The term is applied to all kinds of transactions. In the popular sense, the phrase 'in good faith' simply means "honestly, without fraud, collusion or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme". (See: Words and Phrases, Permanent Edition, Vol. 18A, page 91).

Obedience of the orders of the Courts is foremost and sacred for maintenance of rule of law. Disobedience of the

orders strikes at the very roots of rule of law and shakes the foundation on which the judicial system rests. Tolerance to disobedience is not in the interest of the judicial system because it will lose the confidence of those who have succeeded in the Courts. An order passed by a Court is sacrosanct and should be implemented. Implementation of an order cannot be refused under any pretext, so long as it remains in force and is not eclipsed or set aside in the hierarchy of remedies.

It cannot be lost sight of the fact that the co-delinquent Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/C was exonerated though he was implicated basing on the same incident and had a pivotal role to play. In fact, the unsigned order was first received by him, who endorsed it to the Deputy Registrar (Judicial) and he was exonerated on the plea that he was in the charge of Registrar (Judicial) on that day only. In that sense, the petitioner's case was dealt with tough hands though he dealt with such type of the matter for the first time.

Whether the imposition of punishment is shockingly disproportionate:

17. Mr. Budhadev Routray, learned Senior Advocate urged that the imposition of punishment is shockingly disproportionate, even past unblemished service record of the

petitioner was not considered. The learned Advocate General also endorsed the submission made by the learned Senior Counsel for the petitioner that in view of the past unblemished service record of the petitioner, punishment imposed on him is shockingly disproportionate.

In the case of **Subash Chandra Panda** (supra), it is held as follows:-

> "7....That apart the past service record of the petitioner was not taken into consideration. Therefore, the major punishment imposed on the petitioner is shockingly disproportionate to the charges proved and violative of the principles of natural justice. On this ground the impugned order of removal of the petitioner from service is liable to be quashed."

Learned counsel for the petitioner argued that Sub-Rule (vi) of Rule 13 of OCS (CCA) Rule, which only prescribed penalty of reduction to a lower service, grade or post or to a lower time scale or to a lower stage in a time scale and it does not prescribe penalty i.e., reduction to a lower grade in initial scale of pay. The penalty which is not prescribed could not be granted and imposition of such penalty is against mandates of law. He further argued that the awarded punishment that 'the upgradation to the next higher grade in the Super Time Scale will

be considered after five years is against the spirit of Rule 13 of the O.C.S. (C.C.A) Rules, 1962 read with Rule 5 of the Odisha Superior Judicial Service Rules, 2007 (as amended).

We are of the humble view that ordinarily a person in service cannot be visited with a punishment not specified in the contract of service or the law governing such service. Punishments may be specified either in the contract of service or in the Act or the Rules governing such service. While imposing the punishment, the Disciplinary Authority cannot override the provision as envisaged in Rule 5 of the Odisha Superior Judicial Service Rules, 2007 (as amended) which mandates as to when the upgradation to the higher time scale of super time scale shall be considered.

In the case of **State of Bihar and Anr. -Vs.- P.P. Sharma, IAS and Anr. reported in 1992 Supp (1) SCC 222**, it is held that the administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by

law, or improperly exercised discretion to achieve some ulterior purpose.

We are of the view that the action of the petitioner approving the note sheet placed by Deputy Registrar (Judicial) for registration of Suo Motu proceeding as per the order passed by the Division Bench in open Court, cannot be said to be gross misconduct, dereliction of duty and administrative indiscipline and the error of judgment or laches or inadvertent mistake, if any on the part of the petitioner in the background of surrounding circumstances which seems to have been done in good faith and especially in the light of his past service record, there is no escape from the conclusion that the punishment imposed on the petitioner is grossly and shockingly disproportionate.

Conclusion:

18. In view of the foregoing discussions, we are of the humble view that the findings of the Inquiring Authority that charges of gross misconduct, dereliction of duty and administrative indiscipline are well established against the petitioner, are perverse and untenable in the eyes of law and therefore, the same are hereby set aside. The petitioner thus stands exonerated of all the charges levelled against him. The

impugned notification no.2100 dated 21st December 2022 of this Court under Annexure-22 and the consequential office order no.6950 dated 16th February 2023 of the Govt. of Odisha, Home Department under Annexure-23, stands quashed. Consequently, the opposite parties nos.1 and 2 are directed to extend all the service benefits attached to the post of a District Judge (Super Time Scale) w.e.f. 21st December, 2022 to the petitioner forthwith.

Accordingly, the writ petition is allowed. No costs.

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(S. K. Sahoo, J.)

S. S. Mishra, J I agree.

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(S. S. Mishra, J.)

Orissa High Court, Cuttack
The 2nd May 2025/RKM/SIPUN