

**Neutral Citation No. - 2024:AHC-LKO:38569-DB**  
**Reserved**

**Chief Justice Court**

**Case :-** SPECIAL APPEAL No. - 390 of 2022

**Appellant :-** Deepak Yadav

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy.Home Confidential And  
Vigilance Govt.U.P.Civil Sectr. Lko And Ors

**Counsel for Appellant :-** Lalita Prasad Misra,Ghaus Beg

**Counsel for Respondent :-** C.S.C.

**Hon'ble Arun Bhansali,Chief Justice**

**Hon'ble Jaspreet Singh,J.**

**(Per : Jaspreet Singh, J.)**

1. The appellant herein is the unsuccessful writ petitioner whose challenge to the order dated 27.04.2022, issued by the Under Secretary, Vigilance Department, Anubhag-1, Government of Uttar Pradesh, Lucknow initiating open inquiry against him, has been turned down by the learned Single Judge by means of the judgment and order dated 05.08.2022, which is under challenge in this intra-court appeal.

2. Briefly, the facts giving rise to the instant appeal is being noted hereinafter first:-

3. The appellant belongs to Uttar Pradesh Palika Engineering (superior) Services and is an employee in the cadre of Centralized Service created under Rule 3 of the Uttar Pradesh Palika Cetralized Service Rules, 1963.

4. While the appellant was posted at Nagar Nigam, Lucknow on the post of Chief Engineer, a complaint was received from one Sri Vinod Kumar Pandey, Advocate alleging misappropriation of government money by the appellant who is alleged to have acquired properties from the income generated through corruption and far beyond the known sources of

his income.

5. The State Government initiated an inquiry vide letter dated 15.11.2017 to be conducted through the Economic Offence Wing. An open inquiry was conducted on the aforesaid charge regarding the appellant having amassed properties which in value were much beyond the all known sources of income of the appellant. A final inquiry report dated 14.06.2019 was submitted before the State Government. The final report dated 14.06.2019 received the recommendation of the Superintendent of Police, Lucknow Sector, Economic Offence Wing on 18.06.2019. Thereafter the Additional Director General of Police, Economic Offence Wing vide its letter dated 21.06.2019 submitted the aforesaid final report before the State Government for necessary approval and action.

6. In furtherance of the letter dated 21.06.2019, as referred to hereinabove, the Under Secretary, Home (Confidential), Anubhag-VIII , Government of U.P. issued a letter dated 18.07.2019 to the Principal Secretary, Nagar Vikas recommending initiation of departmental proceedings against the petitioner. Since the State Government recommended departmental proceedings against the appellant, in contemplation thereof, the appellant was attached to the Uttar Pradesh Board of Development of Municipal Financial Resources at Lucknow.

7. In furtherance of the recommendation dated 21.06.2019, the Principal Secretary, Department of Nagar Vikas, Government of U.P. issued a show cause notice to the appellant dated 09.10.2019 asking him to submit an explanation within a period of 15 days as per the provisions of Rule 10 (2) of U.P. Government Service (Disciplines and Appeals) Rules, 1999. The

appellant submitted his reply denying the allegations levelled against him and also disclosed in details the sources of his income. Taking note of the aforesaid, a minor penalty of censure entry was awarded to the appellant which concluded the inquiry by the Department. The said order awarding the censure entry was approved by His Excellency, the Governor of Uttar Pradesh.

8. While the aforesaid proceedings were going on, another complaint of almost identical nature was made by one Dr. S.K. Sharma, Advocate dated 09.08.2019 addressed to the Hon'ble Chief Minister of the State of U.P. However, on this second complaint, the Vigilance Department of State Government vide order dated 20.08.2019 called for a report. In furtherance thereof, a report dated 05.11.2019 was submitted to the State Government recommending an open inquiry against the appellant. The Superintendent of Police, U.P. Vigilance Establishment sent a letter dated 05.05.2020 to the Additional Chief Secretary, Vigilance Department, Government of U.P. recommending that there was no need for an open inquiry against the appellant as the charges were already inquired and investigated and they were not found substantiated in the inquiry conducted by the Economic Offence Wing. Nevertheless, the second complainant repeatedly insisted for re-investigating the charges and accordingly another letter dated 15.06.2020 was issued by the State Government calling for a report on the allegations made in the second complaint of Dr. S.K. Sharma, Advocate dated 09.08.2019.

9. Vide letter dated 03.03.2021, the Superintendent of Police, U.P. Vigilance Establishment was required to furnish its detailed report. In

furtherance thereof, the Superintendent of Police, U.P. Vigilance Establishment vide its letter dated 03.06.2021 submitted a detailed inquiry report recommending that the charge against the appellant relating accumulation of assets disproportionate to all his known sources of income was not proved.

10. In spite of two inquiry reports dated 05.05.2020 and 03.06.2021 wherein the charges were not found substantiated against the appellant, yet the impugned order dated 27<sup>th</sup> April, 2022 was passed by the State-Government through its Additional Chief Secretary, Department of Home, Confidential and Vigilance initiating open inquiry against the petitioner, which was challenged before the learned Single Judge.

11. The learned Single Judge by means of its judgment and order dated 05.08.2022 dismissed the writ petition on the ground that no prejudice was caused to the writ petitioner as it is always open for the Government to hold an open inquiry which is in the nature of a preliminary inquiry. Even though, two earlier inquiries were held but nevertheless, they were on two different charges. It was held that in the first complaint, there was a charge regarding amassing of 10 properties and the other complaint indicated accumulation of 14 properties. It is always open for the State Government to get an inquiry done which is for the purposes of satisfying itself and unless there is any specific action on the said inquiry till then the writ petitioner cannot be said to have suffered any prejudice.

12. The learned Single Judge also noticed that even though a minor punishment of censure entry was awarded to the petitioner but that was in a different context as it was found that the writ petitioner had not sought

timely permissions nor communicated the acquisition of properties timely which was a misconduct in terms of Government Service Rules and that cannot be taken as an umbrage to stall or to extinguish any further inquiry.

13. The learned Single Judge also opined that since the vigilance inquiry is merely a preliminary fact finding inquiry for the purposes to test the veracity of the allegations in the complaint and only if such allegations are found to have some substance, can the regular inquiry proceedings be initiated and thus at this stage, the writ petitioner cannot be said to be prejudiced, hence, with the aforesaid findings, the writ petition was dismissed.

14. Dr. L.P. Mishra, along with Sri Gaus Beg, learned counsel for the appellant have challenged the order dated 05.08.2022 passed by the learned Single Judge on the premise that once an inquiry on identical charges had already been conducted through the Economic Offence Wing of the Government of U.P. and the said charges were not found substantiated then the impugned order directing another inquiry to be held by a Senior Police Officer not below the rank of Inspector General of Police was not fair and was violate of Article 14, 16 and 21 of the Constitution of India especially without any new material being before the Authorities.

15. It was further submitted that once the complaint was initiated at the behest of one Sri Vinod Kumar Pandey in the year 2017 and was investigated through a specialized agency of the State itself which opined that the charges levelled were not substantiated then on identical charges a subsequent inquiry by another specialized wing of the Government was nothing but pure harassment especially without any new material being

before the Authorities.

16. Upon the inquiry made, all that could be ascertained was certain minor lapses on the part of the appellant and in furtherance thereof the Department had awarded a minor punishment of censure entry. The Department also did not find any embezzlement or misappropriation of funds by the appellant and the department had accepted the report which led to awarding of a censure entry then again on identical charges made by a different person (in about same proximity of time) which was not even substantiated by filing of an affidavit in support thereto, though, it was also investigated but again it was not found substantiated. Thus, as the third step, the instant order passed by the State through its Vigilance Department to hold a fresh inquiry by a senior police officer not below the rank of Inspector General of Police was a colourable exercise of power and as such the learned Single Judge by ignoring this aspect and without considering, the in depth inquiry already made on the aforesaid charges which was not found proved and in absence of any new material subjecting the appellant to repeated enquiries, was a crucial issue but not appreciated by the learned Single Judge which has resulted in miscarriage of justice.

17. The learned counsel for the appellant also submitted that in the writ petition apart from the challenge made to the order dated 27.04.2022 passed by the State of U.P., the appellant had also sought an additional relief seeking a direction for the Principal Secretary, Department of Nagar Vikas to post the petitioner on the post of Chief Engineer, Nagar Nigam as the appellant belonged to Centralized Services created under Rule 3 of U.P. Palika (Centralized) Service Rules, 1966 and he could not have been

attached to the Uttar Pradesh Board of Development of Municipal Resources at Lucknow but there is no consideration or adjudication on this issue by the learned Single Judge. Thus for all the aforesaid reasons the appeal deserves to be allowed.

18. Sri Tushar Verma, learned Additional Chief Standing Counsel refuting the aforesaid submissions has urged that the State had received a complaint against the appellant and in order to verify it an inquiry was got done from the Economic Offence Wing. It has further been submitted that even though a censure entry was awarded to the appellant but the fact remains that it was not in consequence of the charge of amassing properties disproportionate to the known sources of income rather it was for the lapse on the part of the appellant in informing the department regarding acquisition of properties, in time.

19. It is further submitted that on the other complaint received by Dr. S.K. Sharma, Advocate, a report was submitted by the Vigilance Establishment that the matter required proper investigation through an open inquiry. Taking his submissions forward, it is urged that though the report has been placed on record as Annexure CA-15 with the counter affidavit filed by the State dated 18.03.2024 but certain portion which was confidential has been redacted. Once, such material was available before the State Government, it was justified in passing the order dated 27.04.2022. This aspect has been taken note of by the learned Single Judge and thus it cannot be said that merely because an inquiry had been held earlier then a subsequent inquiry cannot be held especially when additional material had come to the notice and knowledge of the State.

20. The learned Additional Chief Standing Counsel for the State has also submitted that there is a jurisdictional difference between an inquiry done through the Economic Offence Wing and an inquiry done through the Vigilance Department. It is elaborated that an inquiry conducted by the Economic Offence Wing is in respect of issues which affects the revenue and economic structure of the State Government, whereas, the investigations and inquiries done by the Vigilance Department is on a different footing and it is for the purposes of collecting information for the Government relating to cases of corruption, bribery, misconduct and misbehavior of public servants including relating to corruption by any individual public servant or in any department, class or category. Thus, it is urged that the earlier inquiry done by the Economic Offence Wing was not within the framework and could not be taken as an embargo for the inquiry to be conducted through the Vigilance Establishment especially noticing the new material which came to light and is part of the original report dated 25.03.2022 placed on record (redacting the confidential portion) as Annexure CA-15.

21. The learned counsel for the State has further pointed out that in so far as attaching the appellant with the Uttar Pradesh Board of Development of Municipal Financial Resources at Lucknow is concerned, that was also on the request made by the appellant through his wife, who was, suffering from terminal illness and she was undergoing treatment in the SGPGI at Lucknow and the parents of the appellant were also aged, hence, considering the request made sympathetically, the State had attached the appellant with the Uttar Pradesh Board of Development of Municipal

Financial Resources at Lucknow as there was no vacant post of Chief Engineer available at Nagar Nigam, Lucknow. For the said reason, the payment of salary made to the appellant was from Nagar Nigam, Kanpur, hence, for the aforesaid reasons, the writ petition was rightly dismissed and the instant intra-court appeal also deserves to meet the same fate, as it has no merit.

22. The Court had heard the learned counsel for the respective parties on 18.04.2024 and in order to satisfy its conscious, the Court had called upon the learned Additional Chief Standing Counsel to produce the document dated 25.03.2022 in a sealed cover, the same was inspected by the Court and was retained in a sealed cover. Time was granted to the learned Standing Counsel to file an affidavit to indicate the stand of the State with regard to the jurisdiction of the economic offences pertaining to the subject matter especially in light of the submissions which were made by the learned Additional Chief Standing Counsel and in context with paragraphs 35 to 39 of the counter affidavit of the State dated 18.03.2024.

23. Unfortunately, despite the direction given by the Court, the State did not file any such affidavit and this Court is constrained to consider the matter in absence of the said affidavit.

24. Having considered the rival submissions and from perusal of the material on record, the facts are not much in dispute, inasmuch as, it is admitted to the parties that a complaint was made by one Sri Vinod Kumar Pandey dated 25.04.2017 alleging that the appellant had amassed properties disproportionate to all his known sources of income.

25. It is also not disputed that the State Government had acted upon the said complaint and got the matter investigated through the Economic Offences Wing. The final progress report dated 18.06.2019, a copy of which has been brought on record as Annexure No. 4 with the writ petition clearly delineates that the charge against the appellant was in context with generating income by corrupt means by misappropriating the government funds. A recommendation was submitted by the Economic Offences Wing dated 21<sup>st</sup> June, 2019 that the allegations against the appellant for misappropriation of funds while he was the Chief Engineer, Nagar Palika at Lucknow were not substantiated but as the appellant had not informed its Department regarding the properties acquired by him within time and prior permission was not sought, hence, it recommended a domestic enquiry where a minor, censure entry was awarded to the appellant.

26. Another complaint was made by Dr. S.K. Sharma, Advocate, a copy of which has been brought on record as Annexure No. 11, with the writ petition dated 09.08.2019 addressed to Hon'ble Chief Minister of the State wherein it has been alleged that the appellant had procured properties much beyond his known sources of income. Upon the said complaint, again a report was called for by means of letter dated 20<sup>th</sup> August, 2019, a copy of which is already on record as Annexure CA-5 along with the counter affidavit of the State dated 18.03.2024.

27. In furtherance thereof by means of letter dated 05.05.2020, which has been brought on record as Annexure No. 14 with the writ petition, a recommendation was given that no fruitful purpose will be served by getting an open inquiry done as the issue raised has already been inquired

into by the Economic Offences Wing dated 21.06.2019 and the charges were unsubstantiated.

28. At this stage, it will be relevant to notice that once the inquiry against the appellant was conducted in pursuance of the complaint of Sri Vinod Kumar Pandey, Advocate, the second complaint was initiated on the alleged complaint dated 09.08.2019 of Dr. S.K. Sharma, Advocate which is in almost same proximity of time. Even while the initial complaint of Dr. Sharma dated 09.08.2019 was not accompanied by an affidavit in support of the allegations, yet the report had been called for and it is in furtherance thereof that the recommendation dated 05.05.2020 was furnished stating that the alleged charges had already been investigated by the Economic Offences Wing and fresh inquiry was not required. It is only subsequent thereto that Dr. S.K. Sharma, Advocate is said to have reiterated his complaint on 11.06.2020 and this complaint is said to be accompanied by an affidavit which has been brought on record as Annexure CA-10 with the counter affidavit filed by the State dated 18.03.2024, however, upon perusal of the same, this Court finds that the affidavit has been filed by '*Dr. A.K. Sharma*' and not '*Dr. S.K. Sharma*' who was the complainant.

29. Be that as it may, the fact still remains that the content, tenor and texture of the complaint was almost the same as made by Sri V.K. Pandey, Advocate, alleging that the appellant had indulged in corruption and had amassed properties and wealth disproportionate to his all known sources of income and it is in furtherance thereof that further investigations have been sought for which a recommendation dated 25.03.2022 was submitted based upon which the impugned order dated 27.04.2022 initiating an open inquiry

against the appellant has been passed.

30. At this stage, it will be worthwhile to mention that the submission of the learned Standing Counsel regarding jurisdictional difference between the inquiry conducted by the Economic Offences Wing and the Vigilance Department does not impress this Court for the reason that there is nothing to support the aforesaid submissions. When the Court had called upon the learned Additional Chief Standing Counsel to file an affidavit to state the stand of the State on the aforesaid subject matter vide order dated 19.04.2024 yet no such affidavit was filed. Thus, the said submission is without any cogent foundation nor could be substantiated by the State.

31. Even otherwise, it is quite strange that the State is in control of both Wings i.e. the Vigilance Establishment and the Economic Offences Wing. The record indicates that the State itself had issued an order for getting the complaint verified from the Economic Offences Wing which is an arm of the State itself. The detailed inquiry report is on record and the alleged allegations against the appellant could not be substantiated. This very same report from the Economic Offences Wing was accepted by the State and in furtherance thereof, the State took a decision to refer the matter for a departmental inquiry and in furtherance thereof, the Department awarded a minor punishment which was approved by His Excellency, the Governor of U.P.

32. Moreover, it would be quite late in the day to state or to make a suggestive argument that the Economic Offences Wing or its report was not binding or suffered from any jurisdictional error especially when the State already accepted the same, awarded a minor penalty on the appellant. It

was always open for the State to have not accepted the recommendations of the report submitted by the Economic Offences Wing or even to order for a fresh enquiry. However, once it accepted it and acted upon it then in absence of any new material, it is not open for the State to discredit it or make a submission regarding the difference in jurisdiction of the Economic Offences Wing and the Vigilance Establishment to discredit the report without proper material and basis, hence, for the said reason, the same is turned down.

33. Having said that, the Court has also examined the complaint made by Dr. S.K. Sharma and noticing that the affidavit filed is of A.K. Sharma but even ignoring the aforesaid discrepancy, the said complaint is primarily a copy of the charges, which was earlier in point of time, made by Sri Vinod Kumar Pandey on 25.04.2017. Apparently, the complaint of Dr. S.K. Sharma was nothing but an old wine in a new bottle.

34. From the perusal of the material on record including the letter dated 25.03.2022 which has been provided to the Court in a sealed cover and was perused, this Court finds that there is no such new substantive material upon which it could be said that the matter required absolutely fresh consideration necessitating an open inquiry. More so, when the alleged new material as per the letter dated 25.03.2022 is not of such strength and character that it could overshadow the material and earlier report of the Economic Offences Wing, requiring a fresh inquiry altogether by eclipsing the earlier one.

35. The record further indicates that the appellant had submitted all his statements of account including that of his wife, the details of properties

created in his name, in name of his wife and children including his parents. It was also pointed out that the appellant's father was a retired officer from the Indian Administrative Services and the appellant was residing in the house which was owned by his father. The brother-in-law of the appellant (brother of his wife) was based in United Kingdom and from his earnings in the United Kingdom, he repatriated his income and gifted it to his sister (wife of the appellant) who had acquired the properties in her name. It is in this context that upon inquiry, it was found that the properties procured by the appellant and his family were from sources of income which were accounted for.

36. A discrepancy to the effect that earlier inquiry was done in respect of 10 properties while the subsequent inquiry is in respect of 14 properties also does not have any major impact as the said properties have been acquired from the sources disclosed and apparently there is no new verified material to indicate that the persons who had gifted the money or had provided the source of fund to the appellant were not competent of giving the gift either in terms of quantum or in terms of financial capability.

37. In absence of such new verified material, merely keeping an inquiry going on against an employee is also not conducive. However, this Court may not be misconstrued, to mean, that an inquiry cannot be done but at the same time what needs to be seen and evaluated is whether on an issue which has been inquired into and the report acted upon then whether another inquiry in respect of the same issue with minor deviations, without having fresh/verified input or material, would be justiciable. Lamentably, this aspect of the matter has not been taken note of by the learned Single

Judge in the correct perspective.

38. At this stage, it will be relevant to refer to a decision of the Apex Court in ***Charan Singh Vs. State of Maharashtra and Others; 2021 (5) SCC 469*** wherein the petitioner Charan Singh had challenged the order of the High Court passed in writ petition wherein he had assailed the notice issued by the Police Inspector, Anti Corruption Bureau, Nagpur and his writ petition was dismissed and while escalating the matter before the Apex Court the issue raised was whether an inquiry at pre-FIR stage was legal and to what extent, an inquiry is permissible.

While answering the aforesaid issue, the Apex Court relied upon its earlier decision in ***Lalita Kumari Vs. State of U.P.; 2014 (2) SCC 1*** and ***P. Sirajuddin Vs. State of Madras; 1970 (1) SCC 595*** and in para 10.1, 11.1, 13, 15, 18.13, 19, 20 and 21, it held as under:-

*“10.1. At that stage and while considering the veracity of the allegation of accumulating the assets disproportionate to his known sources of income, the investigating agency has thought it fit to hold an “open enquiry” and during the course of such “open enquiry” the appellant has been called upon to make his statement along with the information on the points, referred to hereinabove. Whether, such an enquiry, which can be said to be a preliminary enquiry, is permissible under the Maharashtra State Anti-Corruption Manual shall be dealt with and considered hereinbelow.*

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*11.1. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case.*

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*13. In para 120, this Court concluded and issued directions as under :*

(Lalita Kumari case, SCC p. 61)  
120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.  
120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.  
120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.  
120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

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15. it is observed in P. Sirajuddin that : (SCC p. 601, para 17)

“before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this Department.

It is further observed that : (P. Sirajuddin case, SCC p. 601, para 17)  
“when such an enquiry is to be held for the purpose of finding out whether criminal proceedings are to be initiated and the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the person against whom the allegations are made and documents bearing on the same to find out whether there is a prima facie evidence of guilt of the officer; thereafter, the ordinary law of the land must take its course and further enquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.”

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18.13. However, as observed hereinabove, such an enquiry would be conducted to ascertain whether a cognizable offence is disclosed or not. As observed hereinabove, even at the stage of registering the first information report, the police officer is not required to be satisfied or convinced that a cognizable offence has been committed. It is enough if the information discloses the commission of a cognizable offence as the information only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. Therefore, as such, holding such an enquiry, may be discrete/open enquiry, at pre-registration of FIR stage in the case of allegation of corrupt practice of accumulating assets disproportionate to his known sources of income,

cannot be said to be per se illegal.

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19. However, the next question posed for the consideration of this Court is,

*whether to what extent such an enquiry is permissible and what would be the scope and ambit of such an enquiry.*

*However, such a notice, while conducting the “open enquiry”, shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income. The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under Section 160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure. Such a statement even cannot be used against the appellant during the course of trial. Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under Section 13(1)(e) of the PC Act, 1988 is disclosed. Such a statement cannot be said to be confessional in character; and as and when and/or if such a statement is considered to be confessional, in that case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law.*

*20. However, as observed hereinabove, such a statement/enquiry would be restricted only to ascertain whether a cognizable offence is disclosed or not.*

*21. 21. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed [Charansingh v. State of Maharashtra, 2020 SCC OnLine Bom 7882] by the High Court and we dismiss the appeal with the above observations and clarifications that the statement of the appellant on the points mentioned in the impugned notice would be only to satisfy whether a cognizable offence is disclosed or not and so as to enable the appellant to clarify the allegations made against him with respect to accumulation of assets disproportionate to his known sources of income and the same shall not be treated as a confessional statement.”*

39. Apparently, in the instant fact situation, the authority of the State to inquire into an issue cannot be doubted, however, the manner in which it is to be done and the purpose of the inquiry must be clear. The State had already taken note of the complaint and ordered an inquiry from the Economic Offences Wing and while acting upon it, took it, to its logical conclusion. Then, in order to get another enquiry on similar charge done, the State ought to have seen whether it had any fresh inputs of such credible character that it could create and eclipse over the earlier inputs and enquiry allegedly done, then it definitely can get the same investigated and inquired. Subject to the aforesaid discreet inquiry, if the result is revealing then it will always be open for the State to take appropriate action as is permissible in law and as explained in the aforesaid decision in Charan

Singh (supra). Without adherence to scrupulous principles as noticed above, it may not be conducive for the State to keep an inquiry going on, one after the other, as that would run contrary to the principles of natural justice and would be in violation of Article 14 of the Constitution of India and it would amount to arbitrariness and would also have a deleterious effect on the morale of the employee. The State has to behave as an ideal employer and thus it is necessary that it functions and conducts its actions in accordance with the settled legal principles of law.

40. Hence, this Court is of the view that it was open for the State to have initiated an open inquiry but before it could, it ought to have noticed the earlier reports and the inquiries made by the Economic Offences Wing of the State itself as well as the report dated 05.05.2020 which did not recommend for an open inquiry as the matter already stood inquired and investigated and nothing could be brought on record to establish that any fresh material was available upon which a subjective satisfaction could be formed for initiating an open new inquiry.

41. Accordingly, we are of the considered opinion that the impugned order dated 27.04.2022 passed by the Under Secretary, Vigilance Department, Anubhag-I, Government of Uttar Pradesh cannot be sustained and is accordingly quashed.

42. We further hold that it would be open for the State to inquire into any complaint against the appellant provided there is sufficient and verified new substantive material before it. Needless to say, in case if such material is available then the State is at liberty of adopting the course as has been laid down by the Apex Court in Charan Singh (supra).

43. In so far as the prayer made by the appellant regarding his appointment in the Uttar Pradesh Palika Centralized Services Rules is concerned, it reveals that the wife of the appellant had sought the transfer of the appellant on medical grounds which was granted by the State and in absence of vacant post, the appellant was attached with the Uttar Pradesh Board of Development of Municipal Financial Resources at Lucknow.

44. Be that as it may, this issue has not been decided by the learned Single Judge, however, this Court does not deem appropriate to enter into this controversy as the decision has to be taken in the first instance by the Department, accordingly, this Court permits the appellant to file a fresh representation before the Competent Authority raising his grievances in respect of this issue and in case if the same is filed by the appellant within two weeks from today, it is expected that the Competent Authority shall consider and pass appropriate orders thereon within a period of four weeks thereafter and decide the representation by a reasoned and speaking order in accordance with law.

45. The sealed cover containing the confidential report which was retained by this Court shall be handed over to the learned Additional Chief Standing Counsel forthwith.

46. Subject to the aforesaid observations, the instant intra court appeal is *partly allowed* and the judgment of the learned Single Judge dated 05.08.2022 shall stand modified to the above extent. Costs are made easy.

**Order Date : 22 May, 2024**

Asheesh

**(Jaspreet Singh, J.)**

**(Arun Bhansali, C.J.)**