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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 274 of 2017**

1. State of Madhya Pradesh, Through Home Department, Mantralaya, Vallabh Bhawan, Bhopal, Madhya Pradesh.

(Now State of Chhattisgarh, Through the Secretary, Department of Home, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh)
2. The Director General of Police, Madhya Pradesh, Police Head Quarters, Bhopal (M.P) [Now Chhattisgarh Police Head Quarters, Raipur, Chhattisgarh]
3. The Deputy Inspector General of Police, Raipur (MP) (Now Chhattisgarh)
4. The Superintendent of Police, Durg (MP) (Now Chhattisgarh)

---- Appellants**Versus**

Cons. No. 658 Jhumuklal S/o Milan Ram, aged about 30 years, Ex Constable, R/o Village Mahukhurd, Tahsil Patan, District Durg, Madhya Pradesh, Now Chhattisgarh.

---- Respondents

For Appellant/State	: Shri Y.S.Thakur, Additional Advocate General.
For Respondent	: Shri Praveen Dhurandhar, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****03/08/2017**

1. This appeal is by the State against an order of the learned Single Judge interfering with the disciplinary proceedings which was initially challenged in the year 2000 before the State Administrative Tribunal. The

proceedings stood transferred to this High Court on the abolition of the Tribunal.

2. We have heard the learned Additional Advocate General for the Appellants/State and the learned counsel for the Respondent-delinquent.
3. The Respondent-Jhumuklal and Bhagwan Singh were two Constables in the State Police. They were entrusted with the duty to escort two accused persons, Rajkumar Mallah and N. Harish from Durg, for production before the Court at Jabalpur. It is alleged that while proceeding to the Railway Station at Durg, the accused persons were taken by the escorting Constables to a local hotel where all of them consumed alcohol. Disciplinary proceedings were carried. Since the same set of facts provided the allegations and charges against both the Constables, composite proceedings were held resulting in dismissal of both the Constables. The other Constable, namely Bhagwan Singh, left the matter there. He did not challenge it.
4. The Respondent-Jhumuklal challenged his removal from service before the Tribunal. In the transferred proceedings, the learned Single Judge, quite rightly, held that Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 which applied, did not authorise any disciplinary action by way of a common proceedings unless such common proceedings are duly authorised through an order by the Governor or any other authority competent to impose a penalty of dismissal from service, directing that disciplinary action shall be taken against the delinquents through a common proceeding. Having regard to the different judicial precedents referred to by the learned Single Judge in paragraph 8, 9 and 10 of the impugned order and the manner in which the

ratio of those decisions have been applied to the facts of the case, we do not find any illegality or infirmity in the learned Single Judge having interfered with the common proceedings. The aforesaid facts situation would obviously result in the setting aside of the common proceedings in which the Respondent was also involved. By that time, Bhagwan Singh had deserted further challenge to the proceedings. Thus, the only person left in the picture was the Respondent-Jhumuklal. However, the learned Single Judge instead of remitting the matter for reconsideration by the Disciplinary Authority from the appropriate stage, directed that the Respondent be reinstated in service. This is challenged by the State through this appeal.

5. In the light of the arguments and the impugned judgment, we see that the reasons stated by the learned Single Judge to order reinstatement on a ground referable to the long pendency of the litigation and passage of time are available in paragraph 15 of the impugned order. Reliance was also placed by the learned Single Judge to the decisions of the Apex Court in **G.Vallikumari v. Andhra Education Society; (2010) 2 SCC 497**, **Bhagwan Lal Arya v. Commissioner of Police; (2004) 4 SCC 560** and **Suptd. (Tech I) Central Excise v. Pratap Rai; (1978) 3 SCC 113**. We have considered the ratio and the facts which led to those precedents.
6. However, we think that the case in hand stands on a totally different footing. Though it could be said that the disciplinary proceedings and the punishment imposed may have to fall on a technical ground of the common proceedings which were held *in re* the Respondent-Jhumuklal and Bhagwan Singh, the allegations made against the delinquent Constables who belong to the uniformed service of the State Police

appears to be of such nature which ought not have been let off merely on a reason referable to passage of time. Escorting accused persons to Court is a duty which is not only attached to the functions of a Constable as a public servant in service, but also one which involves bounden duty built on confidence reposed by the Sovereign on the Police Constable, who is ordained and duty bound to escort the accused persons and make such persons available to the judicial process in the Court to which the accused person was being escorted. In this view of the matter, we are inclined to take the view that the facts of the case in hand could not be put at par with those situations dealt with by Their Lordships of the Apex Court in the decisions referred to by the learned Single Judge commencing from **G.Vallikumari (supra)**.

7. There is one more crucial factor which we see here. Going by the records, the Respondent was 30 years old when he moved the Tribunal in 2000. Now, in 2017, he would be around 47 years of age. The retirement age of a Constable in Chhattisgarh is 62 years. Are we giving the Respondent a fertile existence covered with the uniform and emblem for Police service for at least a decade and a half more, without purging himself of the misconduct attributed to him? Scales of justice ought to tilt, taking into consideration such aspects of the larger public interest involved as well. On the totality of the facts and circumstances, we are inclined to take the view that this is not a fit case which should end merely on the length of time through which the proceedings have run before the departmental authorities or the Courts. We are therefore inclined to vacate the directions given through the impugned judgment and adopt the procedure which is a natural consequence as indicated by the learned Single Judge in paragraph 14 of the impugned judgment; that is to say, to remit the matter to the authority concerned to hold proceedings *de novo*, from the

relevant stage.

8. In the result, while sustaining the impugned judgment insofar it vacates the dismissal of the Respondent, this writ appeal is ordered directing that the disciplinary proceedings will stand remitted to the authority concerned for *de novo* proceedings from the stage at which the memo of charges were issued to the Respondent-delinquent. It is clarified that in view of the fact that the punishment imposed on Bhagwan Singh has become final, separate proceedings shall be held as against the Respondent-delinquent, who is directed hereby, to mark appearance in the office of the 4th Respondent-Superintendent of Police, Durg, at 11 am on 21.08.2017.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE