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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 283 of 2017**

1. State of Chhattisgarh, through : the Secretary, Government Of Chhattisgarh, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Director General of Police, Police Headquarter, Indrawati Bhawan Naya Raipur, Chhattisgarh.
3. The Superintendent of Police, District Rajnandgaon, Chhattisgarh.

---- Appellants**Versus**

1. Loman Lakara S/o Lalu Lakra, Aged About 57 Years Ex- Constable No. 792, Police Station Chhuria, Kuurgaon, Tahsil Pathalgaon, District Jashpur, Chhattisgarh.
2. State Of Madhya Pradesh, Through The Principal Secretary, Government Of Madhya Pradesh, Vallabh Bhawan, Mantralaya, Bhopal, Madhya Pradesh.
3. The Inspector General Of Police And Director General Of Police, Police Headquarter, Bhopal, Madhya Pradesh.
4. The Inspector General Of Police Balaghat Range, Balaghat, Madhya Pradesh.

---- Respondents**Writ Appeal No. 284 of 2017**

1. State of Chhattisgarh, through : the Secretary, Government Of Chhattisgarh, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Director General of Police, Police Headquarter, Indrawati Bhawan Naya Raipur, Chhattisgarh.
3. The Superintendent of Police, District Rajnandgaon, Chhattisgarh.

---- Appellants**Versus**

1. Bharatlal Kaushik S/o Devilal Kaushik Aged About 49 Years Ex- Constable No 47, Police Station Chhuria Tahsil And District Rajnandgaon, Chhattisgarh, R/o Village Parikhurd, Police Station Lalbag, District Rajnandgaon, Chhattisgarh.
2. State Of Madhya Pradesh, Through The Principal Secretary, Government Of Madhya Pradesh, Vallabh Bhawan, Mantralaya, Bhopal, Madhya Pradesh.
3. The Inspector General Of Police And Director General Of Police, Police Headquarter, Bhopal, Madhya Pradesh.
4. The Inspector General Of Police Balaghat Range, Balaghat, Madhya Pradesh.

---- Respondents

Writ Appeal No. 287 of 2017

1. State of Chhattisgarh, through : the Secretary, Government Of Chhattisgarh, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Director General of Police, Police Headquarter, Indrawati Bhawan Naya Raipur, Chhattisgarh.
3. The Superintendent of Police, District Rajnandgaon, Chhattisgarh.

---- Appellants

Versus

1. Narayan Singh Lange S/o Durjan Singh Aged About 55 Years Ex- Constable No. 384, Police Station Chhuria, District Rajnandgaon R/o Village Katuwahi, Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
2. State Of Madhya Pradesh, Through The Principal Secretary, Government Of Madhya Pradesh, Vallabh Bhawan, Mantralaya, Bhopal, Madhya Pradesh.
3. The Inspector General of Police and Director General Of Police, Police Headquarter, Bhopal, Madhya Pradesh.

---- Respondents

Writ Appeal No. 301 of 2017

1. State of Chhattisgarh, through : the Secretary, Government Of Chhattisgarh, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Director General of Police, Police Headquarter, Indrawati Bhawan Naya Raipur, Chhattisgarh.
3. The Superintendent of Police, District Rajnandgaon, Chhattisgarh.

---- Appellants

Versus

1. Kailash Sharma S/o Thakur Prasad Sharma, Aged About 49 Years Ex Constable No. 605, P.S. Chhuria, R/o Village Rengakhutera (Bakhat) Tahsil And District Rajnandgaon, Chhattisgarh
2. State Of Madhya Pradesh, Through The Principal Secretary, Government Of Madhya Pradesh, Vallabh Bhawan, Mantralaya, Bhopal Madhya Pradesh
3. The Inspector General Of Police And Director General Of Police, Police Headquarter, Bhopal, Madhya Pradesh
4. The Inspector General Of Police, Balaghat Range, Balaghat, Madhya Pradesh

---- Respondents

For Appellants/State : Shri UNS Deo, Government Advocate.
For Private Respondents : Shri PKC Tiwari, Senior Advocate
with Shri Shashi Bhushan Tiwari, Advocate.

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

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

09/04/2018

1. We have heard the learned Government Advocate and the learned senior counsel appearing for the private Respondents in these writ appeals which arise from a common judgment.
2. Proceedings on account of alleged indiscipline were initiated and carried as if all the Respondents were concerned in one case. Act of cowardice is also attributed to them. The learned Single Judge found that Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966; hereinafter called as 'Rules', has not been followed in a common proceeding against them and therefore, the common proceeding should fall on that jurisdictional issue. This is under challenge by the State.
3. Sub-rule (1) of Rule 18 of the Rules provides that where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding. The Note to that sub-Rule provides that if the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.
4. Learned Government Advocate argued that when common proceeding is held against two or more Government servants under Rule 18(1) of the Rules,

such action is in accordance with law. He argued that it is not obligatory to make a separate order to carry out such common proceeding. Learned Senior counsel appearing for the private Respondents (delinquents) argued that disciplinary proceeding against each Government servant is an independent proceeding and the authority to have common proceeding can be only in strict conformity with the statutory provisions contained in Rule 18(1) of the Rules. He argued that in the absence of an order directing common proceeding, disciplinary action against different Government servants cannot be taken in a common proceeding and that the requirement to issue an order containing the decision to direct common proceeding against different Government servants is a mandatory requirement under Rule 18(1) of the Rules.

5. Under Rule 18(1) of the Rules, the Governor or the authority competent to impose the penalty of dismissal on the Government servants concerned in any case may reach at the conclusion that common proceeding has to be held. Once such conclusion is arrived at by that authority, it “may make an order” directing that disciplinary action against all those Government servants may be taken in a common proceeding. The administrative wisdom at that level has to firstly conclude on the feasibility or requirement to have common proceeding. If discretion is exercised to order common proceeding, an order to that effect will have to issued under sub-Rule (1) of Rule 18 of the Rules. Once that is done, common proceeding can be carried. The phrase “may make an order” occurring in Rule 18(1) only means that it is not mandatory to order common proceeding. The use of the phrase “may make an order” does not mean than the making and issuing of an order for common proceeding is not mandatory in cases where common proceeding is decided to be held. If common proceeding has to be held, that has to be directed by making and issuing a definite order to that effect. Therefore, it is crystal clear that without making a specific order directing that disciplinary action against two or more Government servants may be taken in a common proceeding, there cannot be a common proceeding in terms of Rule 18

of the Rules. Issuance of order for joint proceedings as enjoined by sub-rule (1) of Rule 18 of the Rules is mandatory; be it as a decision by the Governor, or of any other authority competent to make such an order, directing that disciplinary action against two or more Government servants be taken in a common proceeding.

6. Note to Rule 18(1) of the Rules only authorises and delineates the manner in which the procedure of deciding as to whether common proceeding should be carried, is to be taken where the different Government servants do not have a common superior authority who may be competent to impose the penalty of dismissal from service. The contents of that Note do not have any impact on the issue for decision in this case.

7. In the aforesaid view of the matter, we do not find any legal infirmity or error in the judgment of the learned Single Judge, rendered holding that the proceeding impugned in the writ petitions were illegal and had infringed Rule 18 of the Rules. The learned Single Judge was therefore justified in setting aside the disciplinary proceeding and ordering reinstatement without prejudice to the establishment to proceed in accordance with law.

8. As regards the question of back wages, having considered the totality of the facts and circumstances of each case, we are of the view that the order for payment of 50% back wages as directed the learned Single Judge does not result in any illegality or jurisdictional infirmity. That direction also therefore stands.

9. In the result, these writ appeals are dismissed preserving what is stated by the learned Single Judge in the last sentence of the impugned judgment.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sharad Kumar Gupta)
JUDGE