

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7163 OF 2018

Ramesh Baburao Firode,
Age About 50 Years, Occu. At present nil,
R/o: Bhukkarwadi, Bingardive Mala,
Savadi Road, Ahmadnagar,
Tal. & Dist. Ahmadnagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai-32
2. The Registrar General,
High Court of Judicature of Bombay,
Mumbai-32
3. Disciplinary Authority &
Principal District & Sessions Judge,
District and Sessions Court at
Ahmadnagar,
Tal. & Dist. Ahmadnagar

...RESPONDENTS

Shri S.S. Kulkarni, Advocate for Petitioner
Shri V.M. Kagne, Government Pleader for Respondent No. 1
Shri R.S. Deshmukh, Advocate for Respondent Nos. 2 and 3

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

JUDGMENT RESERVED ON : 17.10.2019

JUDGMENT DELIVERED ON : 13.12.2019

JUDGMENT (PER ANIL S. KILOR, J.) :

1. Rule. Rule is made returnable forthwith. With the consent of the parties, the matter is taken up for final disposal at admission stage.

2. The petitioner who worked as a driver in the District Court at Shrirampur, District Ahmednagar, having found his conduct unbecoming of a Government servant, in a departmental enquiry, was terminated on 23.04.2013. Unsuccessful in departmental appeal, legality of order of rejection of Appeal is questioned by the present petition.

3. Heard Shri Sanket S. Kulkarni, the learned counsel for the petitioner, Shri V.M. Kagne, learned Assistant Government Pleader for respondent No.1-State and Shri Rajendra S. Deshmukh, learned Counsel for respondent Nos. 2 and 3.

4. The brief facts, leading to the present petition are mentioned herein below :-

The petitioner was serving as a driver in the District Court at Shrirampur, Dist. Ahmednagar, under the Principal District and Sessions Judge, Ahmednagar, who is also a disciplinary authority.

On 28.11.2011, one Smt. Vandana Suresh Kamble lodged a complaint against the petitioner and one Bhausahab Bansi Markand, who was also serving as a driver in the District Court at Ahmednagar, alleging that since one and half year, the petitioner assuming her as sister, gained her confidence. In summer vacation, she had been to Pune Bus Stand in Ahmednagar City. The appellant met her and told that he was also going to the same side, he will drop her at the intended spot on his bike. She reposed faith

and sat on his bike. The appellant took her to a hotel at Supa for dinner. He pretended that if any staff of the Court saw him with her, it will make him difficult to serve in the Court, therefore, he took her in the family room. He latched the door of room inside, then he slammed his hand around her neck, she was helpless and unable to escape from his clutch. Appellant ravished her, thereafter dragged her and clicked his mobile for photo, then gave her threat to kill her, her husband and children. The complainant woman further stated in her complaint that after a period of one-two months, the appellant gave her threat in the Court campus that he will show the photo to her husband and will expose her if she refuses to keep illicit relations with him. Appellant also gave threat that he will ruin her family life. Appellant started sending SMS from his mobile to her mobile. There were 22 nasty, obscene SMS which are in the nature of threat to her life and life of her husband and children.

5. In pursuance to the said complaint, the articles of charges and statement of imputations, served upon the petitioner for the departmental inquiry against him.

6. In defence, the petitioner submitted his written statement after considering which the disciplinary authority appointed learned Shri D.S. Shinde, District and Additional Judge, Ahmednagar as an Enquiry Officer on 10th April, 2012. The Enquiry Officer accordingly conducted inquiry by framing the points for consideration which are reproduced hereunder :-

- (i) Whether it is proved that in summer vacation of 2010 the delinquent Ramesh Firode took the complainant woman in a family room in the hotel at Supa in the pretext of dinner and coerced her with tyranny ?
- (ii) Whether it is proved that during 17 September 2011 to 10 November 2011 the delinquent Ramesh Firode from his mobile no. 8888725357 sent obscene and horrific SMS to the complainant woman on her mobile no. 9922176045 not befitting to government servant ?
- (iii) Whether it is absolutely proved that both the delinquents were often sitting in the District Information Centre whilst under influence of liquor and were cutting nonsensical talks, intending to annoy the complainant woman ?
- (iv) Whether it is proved that both the delinquents committed non befitting misbehavior or misconduct to government servant likely to malign or wanton the image of the Court ?

7. The Enquiry Officer on conclusion of the inquiry, had reached to the conclusion that the points No. 1 and 2 were proved against the petitioner and behaviour of the petitioner and his act of ravishing a woman, further sending dirty, nasty and horrific SMS in order to satisfy his desire of illicit relation and loose the moderate conduct, attract the provisions of Rule 3 (i), (ii) and (iii) of the Maharashtra Civil Services (Conduct) Rules, 1979 for disciplinary action to control the wilderness of the Government servant like the petitioner.

8. The Enquiry Officer accordingly, recommended imposition of suitable penalty against the petitioner as provided under the provisions of Rule 5 of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979.

9. The disciplinary authority on considering the findings recorded by the Enquiry Officer on the basis of oral as well as documentary evidence and after considering the recommendation of the Enquiry Officer, removed the petitioner from service as a driver vide order dated 23rd April, 2013, against which an Administrative Appeal No. A-49/2013, was preferred by the petitioner under Rule 17 of the Rules, 1979, which came to be rejected on 11.01.2018, the same is assailed in the present writ petition.

10. Shri Kulkarni, learned Counsel for the petitioner submits that the complainant-lady is outsider and the alleged misconduct was committed outside the premises of the Court and not within the premises of the Court. Therefore, according to him, the punishment imposed is not sustainable in the eyes of law.

11. He submits that the department cannot construe alleged objectionable conduct which was not committed in course of employment, as misconduct. He further points out that there is no allegation that the alleged act or omission is committed in the course of the discharge of his duties as Government employee, and therefore, failed the test that the misconduct of charged employee has a reasonable nexus with the nature and condition of his service. Thus, according to him, it cannot be said that his alleged behaviour was unbecoming of a Government servant under Rule 3 of the Rules, 1979. Shri Kulkarni, the learned Counsel for the petitioner

further argues that no adequate opportunity was given to the petitioner to defend his case and the Enquiry Officer has failed to consider the defence raised by the petitioner and the material produced by him in support of his contention.

12. The learned Counsel for the petitioner to fortify his submissions, has placed reliance upon the judgments in case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Ors. (2013) 10 SCC 324, Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and Ors. decided by the Supreme Court of India on 21.08.2019, Rajnaraian Vs. Union of India and Ors. (2019) 5 SCC 809, unreported judgment of this Court in Sachin Charlus Mirpagar Vs. Divisional Controller, 19Maharashtra State Road Transport Corporation, Ahmednagar in writ petition No. 4418 of 2018 and judgment of Gujrat High Court in the case of Bodu Tarmamad Vs. Deputy Superintendent of Police, Jamnagar and Anr. decided on 17th July, 1987.***

13. Shri Rajendra S. Deshmukh, the learned Counsel for respondent Nos. 2 and 3 supports the impugned order passed on administrative appeal and pointed out that there is ample material available on record as evidence which shows implications of the petitioner in the alleged misconduct, and therefore, in view of the findings recorded by the Enquiry Officer which is based on the evidence, the disciplinary authority rightly removed the petitioner

from service and the Administrative Appeal was rightly rejected as no merit was found in the Administrative Appeal of the petitioner. Accordingly, the learned Counsel for respondent Nos. 2 and 3 prays for dismissal of the present writ petition.

14. The learned Assistant Government Pleader Shri Kagne echoed the stand taken by the learned Counsel for respondent Nos. 2 and 3 and supports the impugned order passed by the High Court on Administrative Appeal of the petitioner.

15. To consider the rival contentions and to appreciate the same, we have gone through the record available and various judgments.

All the Governments in theory believe in the concept of Sovereign employer in which the Government servants are required to conduct themselves under a framework of Rules, Regulations and enjoy certain privileges and facilities more than the ordinary citizens. When we are speaking of Government servant, then the public trust doctrine comes into play and no Government servant can act in a manner by which the trust reposed in him is breached. It is not as if the Government servant has no freedom and independence even when acting at the behest or command of his superior. Thus, while ensuring his freedom and independence, Government servant must discharge his duty as a Government servant with absolute integrity and devotion. The conduct should not be contrary to law, justice, honesty, modesty, good character in official and private life.

16. The conduct rules in general is to identify the conduct which is made punishable and then to provide for the various penalties which may be imposed for the acts which are inconsistent with such conduct.

17. In the present matter, the relevant rule is - Rule 3 (1) (i), (ii) and (iii) of Rules, 1979 which reads thus -

(1) Every Government servant shall at all times -

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant.

Clause Nos. (iv) to (xxi) of Sub Rule 1 of Rule 3 of Rules, 1979, were subsequently inserted in by Notification dated 23.10.2005.

18. The Hon'ble Supreme Court in the case of ***M/s. Glaxo Laboratories (I.) Ltd. v. Presiding Officer, Labour Court, Meerut and others***, reported in ***AIR 1984 SUPREME COURT 505***, had an occasion to consider the issue relating to vagueness in enumerating the acts which amount to misconduct, and has observed thus -

Lastly, we may refer to *Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd.*, (1970) 20 FAC LR 243. This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in *Rohtak and Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh*, (AIR

1966 SC 1471), the 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.

After the said judgment as pointed out above by way of notification dated 23rd October, 2015, clauses Nos. (iv) to (xxi) were inserted and added in the list of misconduct enumerated under Sub Rule (1) of Rule 3.

19. The expression misconduct is analogous to “conduct unbecoming of a Government servant” which has not been defined. According to Webster's International Dictionary, the word “unbecoming” means unsuitable; indecorous; improper. In the light of the ordinary dictionary meaning of the word a conduct which is indecent, reprehensible or abominable involving moral.

Whereas the expression “misconduct” is a generic term which means unlawful behaviour, misfeasance, wrong conduct misdemeanor etc.

20. In the case of **ZUNJARRAO BHIKAJI NAGARKAR VS. UNION OF INDIA AND ORS. (1997) 7 SCC 409**, the Hon'ble Supreme Court of India has observed thus :

29. In *State of Punjab v. Ex-Constable Ram Singh* this Court referred to the definition of "misconduct" as given in *Black's Law Dictionary* and *Aiyar's Law Lexicon* and said as under: (SCC p. para 6)

"6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

21. The Hon'ble Supreme Court in the case of ***M.M. Malhotra Vs. Union of India and Others*** reported in **(2005) 8 Supreme Court Cases 351**, has observed thus -

17. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

22. The clauses of Rule 3(1) of Rules 1979 appear to us to be an integrated scheme to enunciate a general rule of conduct and

behaviour followed by specific prohibitions and restrictions. Thus the conduct rules are specifically dealing with the conduct of the Government servant and provides for several aspects of it. The Government servant has to all times maintain absolute integrity, devotion to duty and take all possible steps to protect the interests of the employer and discharge his duties with utmost honesty and diligence and do nothing which will be unbecoming of a Government servant.

23. Apart from above provision Rules 4 to 28 of Rules 1979 expressly prevent the Government servant from committing any of acts mentioned. In our view there are well understood and well recognized norms of conduct of morality, decency, decorum and propriety becoming of Government servant and they do not depend on the subjective inhibition of the disciplinary authority.

24. As observed by Hon'ble Supreme Court of India in a case of M.M. Malhotra, that the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts, in our opinion, the rule 3(1)(iii) which provides that every Government servant shall at all times do nothing which is unbecoming of Government servant, manifest that the object of the rule is to cover act of misconduct, not specifically covered by the other provisions of the conduct Rules.

25. Every government servant is expected to observe certain standards of decency and decorum in his behaviour and conduct. Whether an act of a Government servant was unbecoming of him has to be determined according to the facts circumstances and exigencies of a given case. The expression “unbecoming” is a relative term and the question will have to be resolved on an assessment adopting a reasonable stand.

26. In the case of ***Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*** reported in ***(2003) 4 Supreme Court Cases 579***, the Hon’ble Supreme Court held thus –

If an act or omission of an employee reflects upon his character, reputation integrity or devotion to duty or is an unbecoming act, certainly the employer can take action against him. In this context, reference may be made to the following observations of Lopes, C.J., in *Pearce v. Forster* (QBD p. 542)

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.”

This view was reiterated by a three-Judge Bench of this Court in *Union of India v. K.K. Dhawan*.

27. In a Judgment of Andhra Pradesh High Court in a case of **P. KHAJA KHAN VS. THE POSTMASTER-GENERAL, ANDHRA**

CIRCLE, HYDERABAD AND ORS. 1975 (2) S.L.R. 417, the Court

has observed thus :

In the judgment, reliance was placed upon the judgment of Banerjee, J. In *Sripati Rajan Biswas v. Collector of Customs* (17), which considered the identical rule:

“ Integrity is uprightness, honesty or purity. Devotion to duty is faithful service. Modern approaches to life have changed many ideals, which used to be held sacred. Such approaches have also worked a change in our sense of the sublime. But even then the idea of right and wrong has not been forgotten and the difference between honesty and dishonesty, fidelity and faithlessness wholly lost. It is sometimes argued with sophistry that it is difficult to prescribe the outside limits, of integrity in a complex system of modern administration in which considerations or expediency occasionally outweigh other considerations. Considerations of expediency may be irresistible at times but their evils are merely to be put up with and not to be extolled or prescribed as standards of life and work. If public officer is required to maintain integrity and to be devoted to duty, he is merely asked to keep within the bounds of that administrative decency, which goes by the name of civilized administration. In my opinion no vagueness or indefiniteness attaches to the language used in rule 3 above quoted. A public officer is not at liberty to amass fortune by taking illegal gratifications, even though willingly given. In the view taken by me, rule 3 does not offend against Article 14 or 19 of the Constitution.”

Applying what is stated in the above decision to Rule 3(1)(iii), we may say that the reasoning of Banerjee, J, can be applied to rule 3(i)(iii). Here, if the Government servant is asked to do nothing which is unbecoming of a Government servant, he is merely asked to keep within the bounds of administrative decency. Given commonsense and a sense of decency, it will not be difficult to judge whether what conduct amounts to unbecoming conduct. What is unbecoming can always be ascertained, having regard to the entirety of the conduct. We do not think the rule suffers from the vices of vagueness.

28. Similarly, *Andhra Pradesh High Court in the case of*

Union of India and Ors. Vs. Mahendra Kumar in W.A. 9190 of 1983 decided on 13.12.1984, has observed thus :

8. The learned Counsel for the respondent submits that clause (iii) of the Rule 3(1) of the CCS (Conduct) Rules is vague it is difficult to say in a precise manner as to what amounts to 'unbecoming' of a Government servant' and that writing letter either anonymous or pseudonymous highlighting certain irregularities and bringing the same to the notice of the authorities does not under any circumstances amount to an act which is unbecoming of a Government servant. Rule 3(1) (iii) of the CCS (Conduct) Rules came up for consideration before a Division Bench of this Court in Khaja Khan v. Postmaster-General (1975 1 An. W.R. 64). The learned Judge after referring to various authoritative pronouncements considered the rights protected under Article 19 of the Constitution of India and also the arguments that Rule 3(1) (iii) of the CCS (Conduct) Rules is vague and arbitrary. The Division Bench observed :"

Regarding this impugned Rule 3(1) (iii) there is no direct authority of any Court. We may point out that the words "do nothing which is unbecoming of a Government servant" may be either in relation to his duties of office as well as to his private life. Thus rule enjoins a Government servant at all times whether in office or outside to do nothing which is improper or inappropriate or unsuited to his position as a Government Servant".

29. In the present matter the petitioner has been charged with act of misbehaviour with complainant woman and a conduct unbecoming of a Government servant. Indeed the conduct of the petitioner in committing forcible intercourse with complainant woman, can nothing but an act subversive of discipline and conduct unbecoming of a Government servant , therefore, this is a case where facts alleged are covered by Rule 3(1)(i)(ii)(iii) of Rules 1979.

30. On perusal of inquiry report and more particularly from the

findings recorded by inquiry officer, it can be revealed that the charges leveled and proved are serious. The relevant findings are reproduced herein below:

In her cross-examination the delinquent gave the specific reply and more details of the incident came on record (page nos. 254 to 263). The complainant woman denied of taking money from the delinquent for the major operation of her husband and clarified that some senior advocates viz. Kothari, K.M. Deshpande, Athare Patil, Darvekar, Naresh Gugale, Patwa, Kataria, Bhapkar etc. helped her by paying money. The photocopies produced by the delinquent Firode are before of the incident. While she had been to the Bus Stand to go her sister, Firode came and told her, that he is going to the side of Shirur. There was cot, table, chair and mirror in the family room in the hotel at Supa. Both of them sat on the cot for dine before the table. The delinquent only pulled out her nicker in scuffling. She kicked her legs to resist but she was helpless and feeble. Firode laid her on the cot and ravished her.

She did not shouted to invite attention of waiters and owner of the hotel or lodged complaint with the police after the incident. She denied that she tried to become close to Firode or his wife. Firode did not credited the amount of Rs.50/- while at Mandardevi, the amount was Rs.100/- given by the Registrar Sou. Nekte and she credited to the Devasthan. She further denied that Firode was with her, when she had gone to Akolner, to bring the school leaving certificate for admissions of her children in the residency School at Ahmednagar.

After the event of physical intercourse, Firode dragged her before mirror and clicked photo from shoulder to head of the reflected image.

31. The Hon'ble Supreme Court of India in a case of **Union of India and others V.P.Gunasekaran AIR 2015 SC 545**, had occasion to consider the powers of High Court under Article 226/227 of the Constitution of India in the matter of inquiry proceedings. The Hon'ble Supreme court lays down the guidelines which are as

follows :

The High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

32. We are satisfied that not only is there sufficient material on record on the basis of which the charges can be sustained, but even if we were to assess the evidence for the first time, it is difficult to escape the conclusion that the petitioner is guilty of misconduct. As long as there is material on record to indicate that the petitioner acted in a manner which would demonstrate his conduct is unbecoming of a Government servant, it is enough to conclude that the petitioner is guilty of alleged misconduct. Ultimately, departmental inquiry is not akin to proceedings before a criminal Court. The standard is not proof beyond reasonable doubt but preponderance of probabilities.

33. Thus the petitioner is answerable to the authorities for misconduct committed in his private life so long as he continued as Government servant. The term misconduct implies a wrongful intention which render a man unfit to hold his office. The improper and unbecoming conduct in public life may also become misconduct and may render a Government servant liable to disciplinary action therefore, the contention of the petitioner that the alleged misconduct was committed outside the premises of the Court and not within the premises of the Court cannot be accepted.

34. In the present case, the petitioner was charged for misconduct. The Inquiry officer has given finding that there is enough evidence against the delinquent petitioner of committing

misbehavior or misconduct with the complainant woman the wife of the tea seller in the court campus. The disciplinary authority in its order of removal has observed that on account of the action of the petitioner the image of the court likely to malign. In our view the petitioner is guilty of committing alleged misconduct. The charges have been of a kind of a conduct which violates the mandate given in Rule 3(1)(i)(ii)(iii), which indicates, that a Government servant shall all times maintain absolute integrity and devotion of duty and shall conduct himself at all times in accordance with the specific or implied orders of the Government, relating the behaviour and conduct of a Government servant. In our opinion the petitioner has not maintained absolute propriety or integrity or discipline. The alleged conduct of the petitioner was unbecoming of a Government servant and had brought embarrassment and lower the image of court. Thus, the contention of the petitioner that department cannot construe alleged objectionable conduct which was not committed in the course of employment, as misconduct and further the alleged act or omission is not committed in the course of the discharge of his duties as Government servant or it has no nexus with the nature and condition of service, said contention is rejected for the observations made hereinabove.

35. The next contention of the petitioner that no adequate opportunity was given to the petitioner to defend his case, is contrary to the record. The record shows that the petitioner was

given sufficient opportunity to defend himself. The petitioner was served with articles of charges and statement of imputation. The petitioner submitted his written statement to the same, and thereafter, he participated in the enquiry. He was given every opportunity to defend himself and to produce sufficient evidence in support of his defence. Thus, we do not find any irregularity or any error in the enquiry. In the circumstances, we reject the contention of the petitioner that no sufficient opportunity was given to the petitioner to defend himself during the enquiry.

36. The judgments cited by the petitioner in case of Sachin Mirpagar (*supra*) is not applicable to the present case and the same is distinguishable for the reason that the said case was under the industrial law and based on the provisions of Standing Orders in which the language used is different than the language used in Rule 3. The provision of Standing Order, says "commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment." The expression "within the premises or precincts of the establishment" is missing in Rule 3, and therefore, the said judgment is not applicable. More so, the judgments relied by this Court in the said case, namely, ***M/s Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Ors. AIR 1984 SC 505, Mulchandani Electrical & Radio Industries Ltd. Vs. The workmen - AIR 1975 SC 2125, Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Ltd. Vs.***

Ramchandra Shankar Shinde and Anr. 1990 2 CLR 803, Palghat BPL & PSP Thozhilali Union Vs. BPL (I) Ltd. And Anr. 1995 (6) SCC 237, Bajaj Auto Limited Vs. Kalidas Devram Patil, 1999 Vol.III Mh. L.J. 857, in all these cases, the provision was not *pari materia* with the provision involved in the present matter.

37. Similarly, though the case of *Bodu Tarmamad (supra)*, the learned Single Judge of Gujrat High Court interpreted the phrase "unbecoming of a Government servant" occurring in Gujrat Civil Services (Conduct) Rules, 1971, the same is not binding on this Court and we are not in agreement with the view taken by the learned Single Judge of the Gujrat High Court in view of the finding recorded by this Court hereinabove about the interpretation and applicability of the Rule 3 of Rules, 1979.

38. In the light of the above observations and findings recorded by this Court, we do not find any merit in the present writ petition, and therefore, petition deserves to be dismissed. Accordingly, the writ petition is dismissed with no order as to costs.

39. Rule discharged.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

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