(2009) 05 AHC CK 0464

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 3589 of 2008

Mansa Ram Yadav & Ors.	APPELLANT
Vs	
State of U.P. & Ors.	RESPONDENT

Date of Decision: May 7, 2009

Acts Referred:

- Constitution of India, 1950 - Article 311
- Criminal Procedure Code, 1973 (CrPC) - Section 195, 340
- Evidence Act, 1872 - Section 132, 155
- Uttar Pradesh Government Servants (Conduct) Rules, 1956 - Rule 3, 8

Hon'ble Judges: Devi Prasad Singh, J

Final Decision: Allowed

Judgement

1. While admitting the present writ petition the following questions were framed for adjudication:

(i) Whether filing of affidavit by a person in a court of law shall constitute a case of misconduct and the Government employee concerned can be charged for misconduct under Service Rules?

(ii) Whether the State Government or district authority has got right to take disciplinary action relating to conduct of filing of affidavit in this court by the Government employee more so, when no proceeding has been initiated by this Court in pursuance of provisions contained under Sections 195 IPC, 340 and 341 Cr.P.C. or any law time being in force?

(iii) Whether in the present case, where a different view was taken by the punishing authority with regard to the incident then what was taken by the inquiry officer without serving show cause notice or recording reasons therefor, is sustainable under law?

(iv) Whether citizen including Government employees or the members of Police Force have right to file affidavit in a court under judicial proceedings, and in case filed then whether only because of such action, such person can be permitted to face disciplinary action or may be punished for that action under Law time being in Force?

Brief Facts

2. Petitioners, who are Head Constables and Constables of U.P. Police Department were deputed for guard duties in the year 2002 at the residence of one Shri Akhilesh Singh Member of Legislative Assembly. On 372002 an incident of murder of one Shri Rakesh Pandey in district Raebareily took place. In consequence thereto a case crime No. 311/02 under Sections 302/395/120B I.P.C. was lodged in Police Station Kotwali, District Raebareli. Shri Akhilesh Singh was named as an accused. Shri Akhilesh Singh in the year 2002 had filed a Writ Petition No. 5045 (MB) of 2002 in the Lucknow Bench of High Court for quashing of FIR and staying of arrest. The writ petition was dismissed almost after lapse of five years on 2682007. In the aforesaid writ petition affidavits (Annexure5,6,7 and 8 to the writ petition) were filed by the petitioners with the statement of fact that on the alleged date of incident of murder of Shri Rakesh Pandey, Shri Akhilesh Singh was available at his Lucknow Residence. The petitioners had filed the affidavits with regard to availability of Shri Akhilesh Singh at his residence keeping in view the fact that they were posted as guard at the Lucknow residence of the accused.

3. Feeling aggrieved with the affidavit filed by the petitioner Shri Anurag Kumar Pandey brother of deceased Rakesh Pandey had submitted a complaint (Annexure9) in November, 2007 to the Senior Superintendent of Police, Lucknow with the prayer that the petitioners have filed false affidavit in the writ petition decided by the High Court with intention to save Shri Akhilesh Singh, hence, necessary action may be taken against the petitioners by holding appropriate enquiry. After receipt of complaint of Shri Anurag Pandey, Senior Superintendent of Police, Lucknow, had appointed Shri S.C.Pandey Assistant Superintendent of Police, Lucknow, to hold a preliminary enquiry. Shri Subhash Chand Pandey Assistant Superintendent of Police, had submitted his report on 112008 (Annexure10) holding the petitioners prima facie guilty of misconduct.

4. On the basis of preliminary report submitted by the Assistant Superintendent of Police, a chargesheet dated 332008 was served on the petitioners inviting their reply. Copy of one of such chargesheet with regard to petitioner No. 1 is annexed as Annexure11 to the writ petition. The petitioner No. 1 had submitted a reply to the chargesheet with submission that he has not committed any misconduct. A copy of the reply submitted by the petitioner No. 1 has been filed as Annexure12 to the writ petition. Identical reply was submitted by the other petitioners. The enquiry officer filed his report dated 652008 and exonerated the petitioners with regard to allegation of misconduct in filing of affidavit in the High Court for personal gain but

held that because of filing of affidavit the reputation of police force in public eye has been tarnished, hence, recommended for reduction to lowest stage of time scale for the period of one year. A copy of enquiry report has been filed as Annexure13 to the writ petition.

5. After receipt of enquiry report the disciplinary authority i.e. Senior Superintendent of Police Lucknow had served the show cause notice dated 2652008 (Annexure14 to the writ petition) on the petitioners. In response to which the petitioners had submitted their reply (Annexure15).

6. After receipt of reply submitted by the petitioners, the Senior Superintendent of Police Lucknow, while disagreeing with the report of enquiry officer, recorded a finding that affidavit filed by the petitioners in the High Court was for personal gain and it tarnishes the image of police department, hence, deserves major penalty. The Senior Superintendent of Police observed that it was incumbent upon the petitioners to ensure the arrest of the accused who absconded after murder but instead of arresting, affidavit was filed in the High Court for personal gain. The disciplinary authority while passing the impugned order of punishment dated 1862008 had awarded major penalty of dismissal from service.

7. Shri Amit Bose, learned counsel for the petitioners while assailing the impugned order stated that the petitioners are entitled for immunity being a witness in a case which was decided by this High Court under writ jurisdiction. According to learned counsel for the petitioner the filing of affidavit narrating correct fact does not constitute misconduct unless the court itself records adverse finding. It has also been submitted that in case, affidavit filed by the petitioners was false or was for personal gain, then appropriate remedy was to move appropriate application in the High Court itself with an allegation to prosecute for purgery. Only High Court was competent to take action under the Code of Criminal Procedure to charge the petitioners for purgery or test the credibility. Because of filing of an affidavit or appearing as a witness in the Court, a Government employee cannot be charged for misconduct. It has been submitted that in any case because of filing of affidavit in this Court, it was not open to the respondents to initiate disciplinary action against the petitioners. It is the privilege of every citizen including the Government employee to assist the courts in dispensation of justice and complete immunity is available to such person from departmental proceeding or criminal prosecution unless the court itself proceeds at its end. It has been further submitted that since disciplinary authority was not agreed with the report of enquiry officer to some extent, the Senior Superintendent of Police was not correct while awarding major penalty without serving afresh show cause notice precisely indicating therein the factum of disagreement. It has been brought into notice of this Court by Shri Amit Bose, learned counsel for the petitioner that Shri Akhilesh Singh has been acquitted in the criminal case after due trial by Sessions Court, Raebareily.

8.On the other hand, learned Standing counsel Shri Ashwani Kumar Agnihotri defended the impugned order with the statement that the petitioners had tried to defend the accused Akhilesh Singh by filing false affidavit for personal gain in this court and the filing of the affidavit had tarnished the image of the police department, hence, rightly they have been awarded major penalty of dismissal from service.

Statutory Provisions

9. U.P. Government Servant Conduct Rule 1956 (in short hereinafter referred as 1956 Rules) regulate the conduct of Government servant employed in connection with the affair of the State of U.P. Rules 3 (1) and 3 (2) provides that every Government servant shall at all times maintain absolute integrity and devotion to duty. The Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force.

For convenience Rule 3(1) and 3(2) is reproduced as under :

"3. General (1) Every Government servant shall at all times maintain absolute integrity and devotion to duty.

(2) Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force."

10. Rule 8 of the 1956 Rules further provides that no Government servant except with the previous sanction of the Government give evidence in connection with any enquiry conducted by any person, committee or authority. While giving such evidence Government servant shall also not give any statement which amount to criticize the policy of the State Government or the Central Government.

For convenience Rule 8 is reproduce as under :

"8. Evidence before committee or any other authority(1) Ave as provided in subrule (3) no Government shall, except with the previous sanction of the Government, the Central Government, or any other State Government.

(3) Nothing in the rule shall apply to

(a) evidence given at any inquiry before an authority appointed by the Government, by the Central Government by the Legislature of Uttar Pradesh or by Parliament, or

(b) evidence given in any judicial inquiry."

11. Section 191 of the IPC deals with giving of false evidence and Section 192 deals with fabricating false evidence. The offence committed under sections 191 and 192 I.P.C. is punishable under Section 193 of the IPC. For convenience Section 191 and Section 192 of the I.P.C. are reproduced as under:

"Giving false evidence Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

192. Fabricating false evidence Whoever causes any circumstance to exist or makes any false entry in any book or record, (or electronic record) or makes any document (or electronic record) containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence."

12. Sections 193 to 196 of the IPC deals with the cases where a person is charged for filing of false affidavit or leading a false evidence in the Court. Section 195 of the Cr.P.C. specifically provides that no court shall take cognizance except on the complaint in writing of that court or of some other court to which that court is subordinate. Court has been defined as Civil, Revenue and Criminal Court which includes Tribunal constituted under Central or State Act.

For convenience, Section 195 of the Cr.P.C. is reproduced as under:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No court shall take cognizance

(a) (i) If any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) Of any abetment of, attempt to commit, such offence, or

(iii) Of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) Of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) Of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) Of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in subclause (i) or subclause (ii), except on the complaint in writing of that court, or of some other court to which that court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the court; and upon its receipt by the court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the court of first instance has been concluded.

(3) In clause (b) of subsection (1), the term "court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a court for the purposes of this section.

(4) For the purposes of clause (b) of subsection (1), a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from appeal able decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies, to the principal court having ordinary original civil jurisdiction within whose local jurisdiction such civil court is situate:

Provided that

(a) Where appeals lie to more than one court, the Appellate Court of inferior jurisdiction shall be the court to which such court shall be deemed subordinate;

(b) Where appeals lie to a Civil and to Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

13. Sections 340 and 341 of the Cr.P.C. also empowers the Court concerned to take action for purgery in the event of filing of false affidavit.

14. Apart from above statutory provisions with regard to fabricating or leading false affidavit, it shall be appropriate to take into notice certain other statutory provisions contained in the Code of Criminal Procedure. Chapter IV of the Cr.P.C contains statutory provision for the public at large to assist a Magistrate and Police whenever a commission of offence comes to knowledge of the citizen. Section 37 of the Cr.P.C. provides that every person is bound to assist a Magistrate or police officer reasonably demanding his aid. Section 38 of the Cr.P.C. further commands that citizen shall aid to person other than police officer who is directed to execute warrant. Section 39 of the Cr.P.C. provides that every person, aware of commission of, or of the intention of any other person to commit, any offence punishable under specified sections of I.P.C shall communicate information with regard to commission

or intention of any person to commit offence to nearest Magistrate or Police Officer.

For convenience Section 39 of the Cr.P.C. is reproduced as under:

"Section 39 Public to give information of certain offences.(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:

(i) Sections 121 to 126, both inclusive, and Section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);

(ii) Sections 143,144,145,147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) Sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) Sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.)

(v) Sections 302, 303 and 304 (that is to say, offences affecting life);

[(va) Section 364 (that is to say, offence relating to kidnapping for ransom, etc.);]

(vi) Section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) Sections 392 to 399, both inclusive, and Section 402 (that is to say, offences of robbery and dacoity);

(viii) Section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.)

(ix) Section 431 to 439, both inclusive (that is to say, offences of mischief against property);

(x) Sections 449 and 450 (That is to say, offence of housetrespass);

(xi) Sections 456 to 460, both inclusive (that is to say, offence of lurking housetrespass); and

(xii) Sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes).,

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purpose of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India."

15. Section 118 of the Evidence Act empowers every person to testify as witness by the Court unless prevented by the Court itself on justifiable ground.

Section 132 of the Evidence Act further provides that a witness shall not be excused from answering any question as to any matter relevant to the matter in issue before the Court in civil or criminal proceeding on the ground that answer to such question will criminate.

Section 136 of the Evidence Act further provides that it is for the Judge to decide the admissibility of evidence and Section 155 of the Evidence Act provides the manner in which a witness may be impeached.

For convenience Sections 118, 132, 136 and 155 of the Evidence Act are reproduced as under:

Section 118. Who may testify? All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.

Explanation A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the question put to him and giving rational answers to him.

Section 132. Witness not excused from answering on ground that answer will criminateA witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate or may tend directly or indirectly to criminate such witness or that it will expose or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind;

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Section 136. Judge to decide as to admissibility of evidence When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such lastmentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of the alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be

given before the second fact is proved or acquire evidence to be given of the second fact before evidence is given of the first fact.

Section 155. Impeaching credit of witnessThe credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bride or has received any other corrupt inducement to give his evidence;

(3) by proof of former statement inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character."

16. A plain reading of aforesaid provisions contained in the Evidence Act indicates that as a matter of public policy Legislature to their Wisdom had provided reasonable protection to the witnesses. A person who appears as a witness to testify a question of fact with oral statement of fact on oath or files an affidavit in support of version of a party shall deem to be a witness under the Evidence Act. Statutory protection provided by the Evidence Act shall be available to such person. The credibility of the witnesses may be impeached only in the manner provided by Section 155 of the Evidence Act that too with the consent of Court. Thus the power to impeach the credibility of a witness vest in the court. Filing of affidavit for personal gain corelates to credibility and conduct of witness.

17. Accordingly, whether the petitioners had filed affidavits for alleged personal gain or facts narrated in the affidavits were incorrect are the questions for which the action should have been taken in pursuance to provisions contained under Section 195 of the Cr.P.C. or Section 155 of the Evidence Act and other statutory provisions.

18.Hon''ble Supreme Court in a case reported in AIR 1971 Supreme Court 44, Hira H. Advani etc. v. State of Maharashtra held that the Evidence Act is a complete Code in itself repealing all the rules of evidence not to be found therein. There is no scope for introduction of a rule of evidence in criminal cases unless it is within the four corners of Section 132 or some other statutory provision.

19. It is settled law that a thing should be done in the manner provided by the Act or Statute and not otherwise vide Nazir Ahmed v. King Emperor, AIR 1936 PC 253; Deep Chand v. State of Rajasthan, AIR 1961 SC 1527, Patna Improvement Trust v. Smt. Lakshmi Devi and others, AIR 1963 SC 1077; State of U.P. v. Singhara Singh and other, AIR 1964 SC 358; Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295, (Para 34).

20. It is the statutory duty of citizen to communicate information with regard to commission or intention to commit an offence to the nearest Magistrate or police officer. Corollary to circumstances given in Section 39 of the Cr.P.C. it shall be the duty of every citizen to communicate the nearest Magistrate or Police Officer with regard to false implication of a person in a criminal case. On the one hand, it is necessary to assist the Court and police to put the guilty behind bar, on the other hand, it is also necessary for the citizen to ensure that no innocent person is prosecuted for an offence which he or she had not committed. The principle/duty to assist Court is equally applicable to Government servants.

Misconduct

Whether filing of affidavit constitute misconduct?

21. A plain reading of subrule (1) and (2) of Rule 3 of 1956 Rules indicates that every Government servant shall maintain at all time integrity and devotion to duty. He or she shall be abide by specific or implied order of the Government regulating behaviour and conduct which may be in force.

22. Attention has been invited towards Rule 8 of 1956 Rules which provides that except with the prior approval of the State Government, no Government servant shall give evidence in connection with any enquiry conducted by any person, committee or authority. The subrule 1 of Rule 8 has been further explained by SubRule 2 which provides that while appearing as witness no Government servant shall criticize the State or Central Government. However, a rider has been imposed by subrule 3 of Rule 8 which provides the embargo of subrule 1 shall not apply in case a Government servant gives evidence before an enquiry officer appointed by the State Government or by the Central Government or by the legislature of the state of parliament. Clause B of subrule 3 further provides that the embargo of subrule 2 shall not apply in a case where a Government servant gives evidence in judicial enquiry.

23. Now it is trite in law that while construing an Act, Rule or Regulation each and every word, every line, para should be given meaning and considered in its totality and not in piecemeal vide 2002 (4) SCC 297 : (AIR 2002 SC 1706) Grasim Industries Limited v. Collector of Customs; 2003 SCC (1) 410 Easland Combines v. CCE; 2006 (5) SCC 745: (AIR 2006 SC 2677) A.N.Roy v. Suresh Sham Singh and 2007 (10) SCC 528 : (AIR 2007 SC 767) Deewan Singh v. Rajendra Prasad Ardevi.

According to Maxwell, any construction which may leave without affecting any part of the language of a statute should ordinarily be rejected. Relevant portion from Maxwell on the Interpretation of Statutes (12th edition page 36) is reproduced as under:

"A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from

one quarter sessions to another, it was observed that such a provision, through extraordinary and perhaps an oversight, could not be eliminated."

24. In AIR 2005 SC 1090, Manik Lal Majumdar and others v. Gouranga Chandra Dey and others, Hon''ble Supreme Court reiterated that legislative intent must be found by reading the statute as a whole.

25. In 2006 (2) SCC 670 : (AIR 2006 SC 3517) Vemareddy Kumaraswami Reddy and another v. State of Andhra Pradesh, their Lordship of Hon''ble Supreme Court affirmed the principle of construction and when the language of the statute is clear and unambiguous Court cannot make any addition or subtraction of words.

26. In AIR 2007 SC 2742, M.C.D. v. Keemat Rai Gupta and AIR 2007 SC 2625, Mohan v. State of Maharashtra, their Lordship of Hon''ble Supreme Court ruled that Court should not add or delete the words in statute. Casus Omisus should not be supplied when the language of the statute is clear and unambiguous.

27. In AIR 2008 SC 1797, Karnataka State Financial Corporation v. N. Narasimahaiah and others, Hon''ble Supreme Court held that while construing a statute it cannot be extended to a situation not contemplated thereby. Entire statue must be first read as a whole then section by section, phrase by phrase and word by word. While discharging statutory obligation with regard to take action against a person in a particular manner that should be done in the same manner. Interpretation of statute should not depend upon contingency but it should be interpreted from its own word and language used. Relevant portion from the judgment of Karnataka State Financial Corporation (supra) is reproduced as under:

"Para 21.....In Mamal Uddin Ahmad v. Abu Saleh Najmuddin and another (2003) 4 SCC 257): (AIR 2003 SC 1917) this Court stated the law, thus:

"11. Dealing with "statutes conferring power; implied conditions, judicial review", Justice G.P.Singh states in the Principles of Statutory Interpretation (8th Edn., 2001, at pp. 333,334) that a power conferred by a statute often contains express conditions for its exercise and in the absence of or in addition to the express conditions there are also implied conditions for exercise of the power. An affirmative statute introductive of a new law directing a thing to be done in a certain way mandates, even if there be no negative words. That the thing shall not be done in any other way. This rule of impled prohibition is subservient to the basic principle that the Court must, as far as possible, attach a construction which effectuates the legislative intent and purpose. Further, the rule of implied prohibition does not negate the principle that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. To illustrate, an Act of Parliament conferring jurisdiction over an offence implies a power in that jurisdiction to make out a warrant and secure production of the person charged with the offence; power conferred on the Magistrate to grant maintenance under Section 125 of the Code of Criminal Procedure, 1973 to prevent

vagrancy implies a power to allow interim maintenance; power conferred on a local authority to issue licences for holding ''hats'' or fairs implies incidental power to fix days therefor; power conferred to compel canegrowers to supply cane to sugar factories implies an incidental power to ensure payment of price....."

A statutory authority, thus, may have an implied power to effectuate exercise of substantive power, but the same never means that if a remedy is provided to take action against one in a particular manner, it may not only be exercised against him but also against the other in the same manner.

It is a trite law that the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word. [See Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, (1987) 1 SCC 424: (AIR 1987 SC 1023) Deewan Singh and Ors. v. Rajendra Pd. Ardevi and Ors., 2007 (1) SCALE 32 : (AIR 2007 SC 767) and Sarabjit Rick Singh v. Union of India, 2007 (14) SCALE 263] : (2008 AIR SCW 390).

Para 26. While interpreting the provisions of a statute, the Court employs different principles or canons. To interpret a statute in a reasonable manner, the Court must place itself in the chair of a reasonable legislator/author. [See. New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr. [JT 2008 (1) SC 31]. Attempt on the part of the Court while interpreting the provisions of a statute should, therefore, be to pose a questionas to why one provision has been amended and the other was not? Why one terminology has been used while inserting a statutory provision and a different clause another? It is wellknown that casus omissus cannot be supplied. [See Ashok Lanka v. Rishi Dixit (2005) 5 SCC 598: (AIR 2005 SC 2821) and J. Srinivasa Rao v. Govt. of A.P. and another 2006 (13) SCALE 27 : (2006 AIR SCW 6460) and Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and others (2007) 5 SCC 447 : (AIR 2007 SC 1984).

Para 32. Interpretation of a statute would not depend upon a contingency. It has to be interpreted on its won. It is a trite law that the court would ordinarily take recourse to the golden rule of literal interpretation. It is not a case where we are dealing with a defect in the legislative drafting. We cannot presume any. In a case where a Court has to weigh between a right of recovery and protection of a right, it would also lean in favour of the person who is going to be deprived therefrom. It would not be the other way round. Only because a speedy remedy is provided for that would itself lead to the conclusion that the provisions of the Act have to be extended although the statudete does not say so. The object of the Act would be a relevant factor for interprtation only when the language is not clear and when two meanings are possible and not in a case where the plain language leads to only one conclusion."

28. In view of settled proposition of law while considering the present controversy with regard to right of State to launch disciplinary proceeding against the

petitioners, the provision contained in 1956 Regulation, the Code of Criminal Procedure and the Evidence Act coupled with other statutory provisions, if any, must be considered collectively, as a whole. It is not open to charge the petitioners for misconduct by considering statutory provisions in a piecemeal.

29. A plain reading of Rule 8 indicates that it does not cover the Courts which includes subordinate Courts as well as High Court or Supreme Court. High Court while discharging its constitutional obligation under writ jurisdiction of Article 226 or 227 of the Constitution of India is a court and is not covered by rule 8 of 1956 Rules. Accordingly filing of affidavit in a writ petition supporting or opposing the case set up by parties does not seem to cover by 1956 Rule.

30. House of Lord in the case of Johnson v. Marshall, Sons and Co. Ltd. reported in (1906) AC 409 (HL) where the issue was whether the workmen was guilty of serious and wilful misconduct their Lordships held that burden of proving guilt was on employer. Misconduct is reduced to the breach of rule, from which breach injuries actionable or otherwise could reasonably be anticipated is depend upon each case.

31. In the case of Ranjit Singh v. State of Pepsu, reported in AIR 1959 SC 843: Hon''ble Supreme Court has held that Section 4 of the Oaths Act lays down the authority to administer oaths and affirmations and it prescribes the Courts and persons authorized to administer by themselves or by their officers empowered in that behalf oaths and affirmations in discharge of the duties or in exercise of the powers imposed upon them and they are, all Courts and persons having by law the authority to receive evidence. Section 5 of the Oath Act prescribes the persons by whom oaths or affirmations must be made and they include all witnesses i.e. all persons before may lawfully be required to give evidence by or before any Court. These two sections show that the High Courts or its officers are authorized to administer the oath. While taking the oath or affirmation a person is bound to state the truth.

32. In the case of Rasik Lal Vaghaji Bhai Patel v. Ahmedabad Municipal Corporation reported in (1985) 2 SCC 35: (AIR 1985 SC 504) (Para 5) Hon''ble Supreme Court has held 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 would not be comprehended in any of the enumerated misconduct.

33.In the case of Dhananjay Sharma v. State of Haryana reported in (1995) 3 SCC 757 : (AIR 1995 SC 1795) (Para 38) Hon''ble Supreme Court has held that any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstructions in the due process of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice.

However, for the filing of the false affidavit only Court is competent to proceed in accordance to law.

34. In the case of Prem Chand v. Govt. of NCT of Delhi reported in (2007) 4 SCC 566 : (2007 AIR SCW 2532) Hon''ble Supreme Court has held that it is 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 wilful in character. An error of Judgment per se is not misconduct. A negligence simplicitor also would not be misconduct.

35. In the case of Union of India v. J. Ahmed (1979) 2 SCC 286 : (AIR 1979 SC 1022) Hon''ble Supreme Court has held that, deficiency in personal character or personal ability do not constitute misconduct for taking disciplinary proceedings.

36. In the case of A.L. Kalara v. Project & Equipment Corporation (1984) 3 SCC 316: (AIR 1984 SC 1361) Hon''ble Supreme Court has held that acts of misconduct must be precisely and specifically stated in rules or standing orders and cannot be left to be interpreted expost facto by the management.

37. In the case of Rasik Lal Vaghaji Bhai Patel v. Ahmedabad Municipal Corporation, (1985) 2 SCC 35 : (AIR 1985 SC 504) the Apex Court has held that it is 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 would not be comprehended in any of the enumerated misconduct. (Para 5)

38. In the case of State of Punjab v. ExConstable Ram Singh (1992) 4 SCC 54: (AIR 1992 SC 2188). It was decided by the Apex Court that the word misconduct though not capable of precise definition as reflection receives its connotation from the context, the delinquency in its effect on the discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful 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 context where in the terms occurs; regard being had to the scope of the statute and public purpose it seeks to serve.

39. In the case of G.M. Appellate Authority, Bank of India v. Mohd. Nizamuddin (2006) 7 SCC 410: (AIR 2006 SC 3290) Hon''ble Supreme Court has held that, it is well settled law that gravity of misconduct has to be measured in terms of the nature of misconduct. (Para 9)

40. In view of above, merely because the petitioner had filed an affidavit narrating the facts as he thought correct does not constitute misconduct under service rule. In case the affidavit was false then that could have been looked into only by the High

Court keeping in view the provision contained in Section 195 of the Cr.P.C. or Section 155 of the Evidence Act. The disciplinary authority was not correct to record a finding that affidavit filed by the petitioners was false or was for personal gain and thereafter awarded major penalty of dismissal from service. The disciplinary authority could have approach High Court but the same has not been done.

Immunity from departmental proceeding or prosecution

41. While filing affidavit virtually petitioners stand as a witness narrating the alleged fact with regard to presence of accused. Whether affidavit contains the correct fact or not is the question which could have been adjudicated by the Court itself and not by the disciplinary authority (supra).

42. In a democratic setup it is the duty of citizen to assist the Courts whether it is Government employee or a common citizen. Everyone has got right to appear and assist the court in dispensation of justice.

43. Article 51A of the Constitution proclaims that it shall be fundamental duty of the citizen to uphold the Constitution. Accordingly whether it is Government employee or a common citizen everyone has got right to appear and assist the Court in dispensation of justice subject to permissibility under law. Since the High Court while dismissing had not recorded any finding against the petitioners then they seems to be immune from the departmental proceeding or criminal prosecution at the behest of police department or the State Government.

44. In the case of R.V. Skinner (1772) Lofft 55, Lord Mansfield observed that :

"neither party, neither witness, counsel jury or Judge can be put to answer, orally or criminally, for words spoken in office". In respect of witnesses, in office, can only refer to giving evidence. The only qualification to this is a prosecution for perjury or possibly an attempt to pervert the court of justice."

45. In Waston V. M'' Etven [1905] AC 480, 486, the Earl of Halsbury L C observed as under:

"The broad proposition I entertain no doubt about and it seems to me to be the only question that properly arises here; as to the immunity of a witness or evidence given in a Court of justice. It is too late to argue that as if it were doubtful. By complete authority including the authority of this House it has been decided that the privilege of a witness, the immunity from the responsibility in an action where evidence has been given by in a Court of justice, it is too well established now to be shaken."

46.Sallmon J. observed in Marrinan v. Vibart [1963 1 QB 234; 237 that this immunity exists for the benefit of the public since the administration of justice would be greatly impeded if witnesses were to be fair, that any disgruntled and possibly impecunious persons against whom they gave evidence might subsequently involved them in costly litigation.

47. In Roy v. Prior [1971] AC, 470, 480, Lord Wilberforce, observed that "immunities conferred by the law in respect of legal proceedings needs always to be checked against a broad view of the public interest.

48. In Rees v. Sinclair [1974] 1 NZLR 180, 187, Lord Clyde dealt with the matter more extensively. It is temptingly easy to talk of the application of immunities from civil liability in general terms but since the immunity may cut across the rights of others to a legal remedy and so runs counter to the policy that no wrong should be without a remedy, it should only be allowed where it is necessary to do so. The protection should not be given any wider application than it is absolutely necessary in the interest of justice. The idea of universal immunity attaching a person in performance of some particular function requires to be entertained with some caution.

49. In Roylance v. General Medical Council [2000] 1 AC 311, Lord Clyde, giving the judgment of Privy Council, observed that misconduct involved acts or omissions which fell short of what was proper in the circumstances and that the standard of propriety might often be found by reference to the rules and standards normally required to be followed.

50. In a case reported in AIR 1965 SC 328 Darya Singh v. State of Punjab, Hon''ble Supreme Court held that it is quite true that it is a duty of the citizen to assist the prosecution by giving evidence and helping the Criminal Law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witness to the Court because they are afraid to give evidence that itself should be treated an infirmity and the prosecution case so as to justice the defence contention that the evidence adduced should be disbelieved on the ground alone without examining its merit.

51. In a case reported in (1997) 6 SCC 514: (AIR 1997 SC 2780) State of Gujarat v. Anirudh Singh, the Hon''ble Supreme Court observed that every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the Investigating Officer who is enjoined to collect the evidence and if necessary, summon the witness to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the chargesheet before the Court competent to take cognizance of the offence.

52. In a case reported in (2001) 1 AC 435 Darker v. Chief Constable, it has been held by House of Lord that when a police officer comes to a Court to give an evidence he has the benefit of absolute immunity which is regarded necessary in the interest of administration of justice and is granted to him as a matter of public policy, is shared by all witnesses in regard to the evidence they gave when they are in the witness box. It extends to anything said or done by them when they are in the court of justice the same immunities is given to the parties, their advocates, juniors and the

Judge. They are all immune from any action that may be brought against them on the ground that things said or done by them in the ordinary course of proceedings were said or done falsely and maliciously and without reasonable and probable cause.

53. In the Earl of Halsbury LC said in Wantson v. M'' Etvan, Watson v. Johns [1905] AC 480, 487, it has been held that the public policy which renders the protection of witnesses necessary for administration of justice must as a necessary consequence extend to the preliminary examination of witnesses to find out what they can prove. In Evans v. London Hospital Medical College (1981) 1 WLR 184, it was held that the immunity was available to the potential witness in criminal proceedings at the time when such proceedings were merely in the contemplation but had not yet commence.

54. In Taylor v. Director of Serious Fraud Office (1999) 2 AC 177 it was held that the immunity extend also to the statements made out of Court which could fairly be said to be part of the process of investigating a crime or possible crime with a view to prosecution.

55. In Evans v. London Hospital Medical College (1981) 1 WLR 184, it was held that the immunity must extend not only to the giving of evidence in Court and formal statements made in preparation for the giving of evidence in Court but also to the acts of witness in collecting or considering material on which he may later be called to give evidence.

55A. In the case reported in 2006 (1) WLR 1452, Meadow v. General Medical Council (QBD), the Queens Bench had followed the Darkar''s case (supra) and observed as under:

"I would emphasise the sentence, at p 457:" In the interest of the judicial process a witness should not be exposed to the risk of having his or her evidence challenged in another process." While all the authorities have concerned immunity from suit, the rationale behind the rule which is recognized by that observation leads me to the view that not only is there no reason in principle why it should not apply to disciplinary proceedings such as those with which this appeal is concerned but every reason why it should so apply. There can be no doubt that the administration of justice has been seriously damaged by the decision of the FPP in this case and the damage will continue unless it is made clear that such proceedings need not be feared by the expert witness.

56. This Court is not concerned with the allegation that Shri Akhilesh Singh is a habitual offender and involved in several criminal cases but the Court is concerned with the general proposition of law to secure the public interest at large as to whether a witness may be permitted to be persecuted or permitted to face departmental proceeding in case he or she is a Government servant? Only because he or she appeared in the court files an affidavit or stand as a witness to make oral

testimony may be charged for misconduct? It shall be in public interest to give immunity to the witnesses who appear in the Court during dispensation of justice, makes a statement of fact or files an affidavit. It is for the Court to decide whether statement is correct or incorrect or the affidavit is false or was for personal gain. It is not permissible for the disciplinary authority or the Government or its authorities to usurp the power of judicial body to test the credibility of witness with regard to evidence led during the course of judicial proceeding. Of course, in case, false statement is given or affidavit filed is not correct or person concern stood as witness for extraneous consideration then State Government or its authorities may approach the Court by moving appropriate application keeping in view the provision contained in Section 195 of the Cr.P.C. read with Sections 132 and 155 of the Evidence Act or other law time being in force and not otherwise.

57. Virtually, the provision contained in Section 195 of the Cr.P.C. read with Sections 118,132,136 and 155 of the Evidence Act secures the public interest. It is meant to ensure the public confidence in the administration of justice. Witness appeared in Court during the course of judicial process should not be exposed to the risk of having his or her evidence challenged in other process.

58. The immunity provided by Section 195 of Cr.P.C. read with Section 340 of the Cr.P.C. is complete and cover all the cases where a person appears as a witness or in any other manner during judicial proceeding. Filing of affidavit or appearance of the witness for testimony stands on same platform and is protected by Section 195 of the Cr.P.C. read with Sections 132 and 155 of the Evidence Act.

59. In the present case disciplinary authority was not correct in recording the finding that affidavit filed by the petitioner in the writ petition was false or was for personal gain. Such finding could have been recorded only by this Court.

Disagreement of disciplinary authority with the enquiry officer

60. In the present case, enquiry officer had recorded a finding that the petitioner had not filed an affidavit for personal gain. However, the disciplinary authority recorded a finding that filing of affidavit by petitioner was for personal gain. The submission of the learned counsel for the petitioner is that before recording such finding fresh notice should have been given by disciplinary authority indicating therein the difference of opinion with the enquiry officer but the same has not been done. Accordingly the submission is impugned order suffers from noncompliance of principle of natural justice.

61. Hon''ble Supreme Court in the case of Punjab National Bank v. Kunj Behari Misra reported in 1998 (7) SCC 84 : (1998 All LJ 2009) held that whenever disciplinary authority disagree with the enquiry officer on any article of charge then before it record its own findings on such charge it must record its tentative reasons for such disagreement and give the delinquent officer an opportunity to represent before recording the final verdict. The principles of natural justice requires the disciplinary

authority to give an opportunity to the officer charged of misconduct to file a representation before recording conclusive finding containing disagreement with the enquiry officer.

For convenience, paras 17, 18, 19 of the case of Kunj Behari Misra (supra) is reproduced as under:

17. These observations are clearly in tune with the observations in Bimal Kumar Pandit''s case (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar''s case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.
18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer''s report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on

the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar''s case(supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

62. In a case reported in 1999 (5) SCC 762: (AIR 1999 SC 2407) Bank of India and another v. Degala Suryanaryana, Hon''ble Supreme Court held that the disciplinary authority on receiving the report of the enquiry officer may or may not agree with the finding recorded by the latter. In case of disagreement, the disciplinary authority has to record the reasons for disagreement and then to record its own findings if the evidence available on record is sufficient for such exercise or remit the case to the enquiry officer for further enquiry and report, (para 10)

63. In a case reported in 1999 (7) SCC 739: (AIR 1999 SC 3734) Yoginath D. Bagde v. State of Maharashtra and others, Hon''ble Supreme Court held that it is open to the disciplinary authority either agree with the findings recorded by the enquiring authority or disagree with these findings. If it does not agree with the findings of the enquiry authority, it may record its own finding. A delinquent employeed has the right of hearing not only during the enquiry proceeding conducted by the enquiry officer into the charges levelled against him but also at the stage of which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer, (paras 28, 29, 31)

64. In a case reported in 2003 (2) SCC 449: (AIR 2003 SC 1100) State Bank of India v. K.P. Narayan Kutty, Hon''ble Supreme Court held that the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, (paras 5 and 6)

65. In a case reported in 2006 (4) SCC 153: (AIR 2006 SC 3685) Ranjit Singh v. Union of India, Hon''ble Supreme Court held that it is now well settled that the principles of natural justice were required to be complied with, by the disciplinary authority. He was also required to apply his mind to the materials on record. (para 22)

66. In a case reported in 2006 (9) SCC 440, Lal Nigam v. Chairman 7, MD, ITI Ltd., Hon''ble Supreme Court held that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice stating his tentative conclusion to the appellant. It is only after hearing the appellant the disciplinary authority would arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

67. In a case reported in 2007 (1) SCC 437: (AIR 2007 SC 381) Mathura Prasad v. Union of India, Hon''ble Supreme Court held that when an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the subrules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of accord. If statutory authority uses its power in a manner not provided for in the statute or passes any order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principle of Judicial Review.

68. In view of above, since disciplinary authority has not served any notice on the petitioners indicating therein the difference of opinion with regard to finding relating to filing of affidavit for personal gain impugned order seems to be violative of principle of natural justice, hence not sustainable.

Rival submission and finding

69. The two fold argument advanced by the learned counsel for the petitioner is that the Service Rule does not contain a provision defining misconduct. Under Service Rule it has not been provided that the Government employee shall have no right to appear as witness or file an affidavit in a judicial proceeding. In the absence of any specific provision which may cover the present controversy the petitioner could not have been charged for misconduct because of filing of affidavit in the court.

70. Article 51A cast upon a duty to be abided by a constitutional mandate and respect its ideals. Constitutional ideals means to do all things necessary to uphold the supremacy of law. Courts are bastion of social justice and meant to uphold the fundamental rights of the citizen. On the one hand, it is duty of courts to punish an offender on the other hand, it is also obligatory for the courts to see that innocent persons are not persecuted or prosecuted by the Government machinery or others. While discharging constitutional or statutory obligations the courts may take into account the evidence led by the parties. Thus filing of affidavit or making statement before the courts in dispensation of justice is immune from disciplinary proceeding or criminal prosecution unless under the statutory provisions the action is initiated by the court itself or on the basis of application moved by aggrieved party.

71. So far as difference of opinion between disciplinary authority and enquiry officer is concerned, now it is very well settled proposition of law (supra) that it shall be incumbent upon the disciplinary authority to serve a notice on delinquent employee

indicating therein the points of difference with the enquiry officer. Nonissuance of such notice on the part of disciplinary authority shall be violative of principle of natural justice and the consequential order passed in such circumstances shall be illegal being violative of Article 14 of the Constitution of India.

72. Learned Standing counsel has invited attention towards the judgment of Gujarat High Court in the case of N.G. Kotle v. Ahmedabad Municipal Corporation and another decided on 1471987. Hon''ble Single Judge of Gujarat High Court had held that appearance of a Government servant as expert witness may be misconduct in case the evidence given is false and incorrect. The Court observed that since during the course of trial a finding has been recorded by the Court concerned that the statement given by the witness was deliberately false and improper with a view to destroy the prosecution filed by the employer against the accused, certainly it is a misconduct.

73. The finding recorded by Gujarat High Court in N.G. Kotle''s case seems to be based on different facts and circumstances of the case. In the case of N.G. Kotle, the Court while convicting the accused had recorded a finding that the witness who was a corporation employee has deliberately given a false statement to save the accused. In the present case, while dismissing the writ petition no finding of fact has been recorded by the High Court to the fact that the petitioners have filed false affidavit or acted for personal gain.

74. One other judgment relied upon by the learned Standing counsel Shri Ashwani Kumar Agnihotri is P. Loppas Samuel and D. Mohanasundaram v. Madras Christian College Association of Chennai High Court decided on 2582006. The judgment of Gujarat High Court in N.G. Kotle''s case (supra) has been considered by the Chennai High Court. Hon''ble single Judge of Chennai High Court had distinguished the judgment of Gujarat High Court and observed that there is no absolute privilege to witness and an action may be taken only in case it is found that statement given is false and improper by the court concerned. For convenience relevant portion (para 7) from the Chennai High Court judgment in P. Loppas Samuel (supra) is reproduced as under:

"7. Though we have rejected the theory of ''absolute privilege'' propounded by the learned counsel for the appellants, it does not automatically follow that every statement made by every witness in every proceeding, can form the basis for disciplinary action. From the law laid down by the Apex Court in the above mentioned case, it could be deduced that the evidence tendered by a witness, can form the subject matter of departmental proceedings only if

(a) it was found to be false and improper, by the court before which such evidence was tendered and

(b) it was given in a case in which the employer was involved."

75. The Chennai High Court had referred the judgment of Hon''ble Supreme Court but it appears to be inadvertent mistake. Learned Standing counsel also admits that the judgment of Gujarat High Court and not of Supreme Court has been referred by Chennai High Court.

76.Learned Standing counsel had relied upon the judgment reported in 2006 SCC (L&S) 503: (AIR 2006 SC 1246) Commissioner of Police and others v. Syed Hussain and submitted that filing of affidavit tarnished the image of police department hence constitute misconduct. In the case of Syed Hussain (supra) the police constables stood surety for accused in 32 criminal cases involving snatching of goods or ornaments. Inference was drawn that the constable was indulged in malpractices by staying surety in almost all the criminal cases of the accused. Hon''ble Supreme Court observed that it was the duty of police constables to aid the prosecution in getting the guilty punished. It is not the duty of constable to aid and abet the accused in fleeing from justice. Facts and circumstances of the case of Syed Hussain (supra) is entirely different and seems to be not applicable in the present controversy.

77. From the various pronouncement of foreign and Indian cases discussed hereinabove, immunity has been provided to the witnesses by statutory provisions (supra) as a matter of public policy based on experience of ages by human race. Adjudication of an issue as to whether a statement given before a court by oral testimony or through an affidavit, is correct or not falls within the exclusive domain of court itself. Credibility of witness is also a question which should be adjudicated by the court itself and not by the authorities. Government authorities have no jurisdiction to usurp the power of judiciary and determine the veracity or credibility of a witness. The citizens including the Government servants are free to appear in the courts to defend or oppose a cause in case they possess relevant information with regard to issue involved unless prohibited by law, shall not amount to misconduct.

78. There is one more important aspect which requires to be taken into account. From the evidence on record it is apparent that the complainant Shri Anurag Pandey failed to appear before the enquiry officer in spite of repeated notice sent by the enquiry officer. The factum of complaint was not proved by the prosecution by recording the statement of complainant Shri Anurag Pandey. Since contents of the complaint has not been proved by recording the statement of complainant or other witnesses, impugned order seems to be based on unfounded facts. No evidence has been recorded as to under on what ground and for what reasons the filing of affidavit by the petitioners in this court may be termed as a step taken for wrongful gain. Solitary charge framed against the petitioners was that they have filed affidavit for some extraneous considerations or for personal gain which seems to have not been proved.

79. Whether filing of affidavit had tarnished the image of police department? Courts are the temple of justice. Every person who comes to this court expects that the controversy should be adjudicated justly and fairly. While adjudicating the controversy it is expected that every person who had got knowledge of the facts in issue pending for adjudication before the court shall appear and assist the court in dispensation of justice. Merely filing of affidavit does not seem to make out a case of misconduct. In any manner it shall not tarnish the image of Government or the police department. Of course, in case an affidavit is filed narrating incorrect or false fact for extraneous reasons or considerations the court record such finding, then it may be treated as misconduct on the part of Government servant and may tarnish the image of department/employer, where the person concerned is appointed as a Government servant.

80. In any manner filing of affidavit narrating correct facts or making statement before the court apprising correct facts with regard to facts in issue shall not tarnish the image of the department where person is employed.

81. Saying of truth as a witness in the courts is the part and parcel of men''s duty. Telling the truth as a witness in court in any case cannot be termed as misconduct or shall make out a case to prosecute or persecute a person. Father of nation Mahatma Gandhi once said:

"For me, Truth is the sovereign principle, which includes numerous other principles. This truth is not only truthfulness in word, but truthfulness in thought also, and not only the relative truth of our conception, but the Absolute Truth, the Eternal Principle, that is God. There are innumerable definitions of God, because His manifestations are innumerable. They overwhelm me with wonder and awe and for a moment stun me. But I worship God as Truth only. I have not yet found Him, but I am seeking after Him. I am prepared to sacrifice the things dearest to me in pursuit of this quest. Even if the sacrifice demanded be my very life, I hope I may be prepared to give it.

.....The word Satya (Truth) is derived from Sat, which means ''being''. Nothing is or exists in reality except Truth. That is why Sat or Truth is perhaps the most important name of God. In fact it is more correct to say that Truth is God, than to say that God is Truth. But as we cannot do without a ruler or a general, such names of God as "King of Kings" or "The Almighty" are and will remain generally current. On deeper thinking however, it will be realized, that Sat or Satya is the only correct and fully significant name for God.

And where there is Truth, there also is knowledge which is true. Where there is no Truth, there can be no true knowledge. That is why the word Chit or knowledge is associated with the name of God. And where there is true knowledge, there is always bliss (Ananda). There sorrow has no place. And even as Truth is eternal, so is the bliss derived from it. Hence we know God as Satchitananda, one who combines

in himself truth, knowledge and bliss."

82. Since nothing has been brought on record which may indicate that affidavit filed by the petitioners was for wrongful gain or false, allegation for which petitioners were charged does not constitute misconduct.

83. Any statutory provision, Rules and Regulations which may create hurdle in placing the truth before the courts or quasi judicial authorities shall arbitrary, unjust and improper being violative of fundamental rights enshrined under Part III of the Constitution of India. It is for the preservation, protection, exploration and unearthing of the truth, courts have been created and in case, citizens or the Government servants are prosecuted because of placing the correct fact before the court then it shall be antithesis of Rule of law.

84. To sum up:

(1). Courts discharge divine duty and to assist the Court is the constitutional as well as pious obligation. Telling the truth or placing of correct fact before the courts or before quasi judicial authorities is the pious obligation of citizens as well as Government servant and for such action neither the citizen nor a Government employee can be prosecuted or tried for misconduct.

(2). Filing of affidavit in the court or making an statement during the course of trial in the court does not constitute misconduct. Whether it is common citizen or a Government servant it is their duty to assist the court in dispensation of justice and for that act neither such person may be persecuted nor may be prosecuted by the State or its authorities.

(3). A person may be tried and punished for filing a false affidavit or making false statement in courts in accordance to provisions contained in Code of Criminal Procedure, the Evidence Act (supra) and other statutory provisions and not otherwise. Of course in case while deciding the controversy the court passes stricture against a witness and reprimanded the conduct of the Government employee then in such situation the condemned employee may be charged for misconduct and not otherwise. Protection given by Cr.P.C. and the Evidence Act (supra) is a matter of public policy to secure the witnesses from persecution or prosecution by an aggrieved or affected party and also to encourage the citizens to assist the court in dispensation of justice. Accordingly, unless the court makes some adverse observation while deciding a case against the Government employee he or she cannot be charged for misconduct.

(4). In case the disciplinary authority is disagreed with the finding of fact recorded by the enquiry officer then it shall be incumbent upon the disciplinary authority to serve a notice indicating therein the points of difference between him and the enquiry officer calling response from delinquent employee. In case, it is not done, it shall be violative of principle of natural justice and render the order of punishment

illegal.

(5). Whether it is police officer or any other Government employee or any citizen, everyone has got right to appear in court, file affidavit or stood as a witness to assist the court in dispensation of justice. It is the pious obligation of citizen or the Government employee to assist the court. Assisting the court by filing affidavit with correct fact or making a statement on oath during the course of judicial proceeding does not make out a case for disciplinary action.

(6). Petitioners have been charged for filing of affidavit in the writ petition, filed in this court. There is nothing on record which may indicate that a finding has been recorded by the High Court that facts narrated by the petitioners in their affidavits was incorrect or was for some extraneous reasons or consideration, hence, petitioners do not seemd to have committed any misconduct under Service Rules. A person may be tried for misconduct only on the ground enumerated in the Service Rule and not otherwise.

85. In view of above, the impugned order seems to be passed on unfounded ground and is not a "misconduct" under Service Rule. Writ Petition deserves to be allowed.

86. The present case seems to be of its own kind brought before this Court. The question involved particularly with regard to immunity to the witnesses appears to be not covered by any previous known decision. To place on record, I appreciate the assistance provided by the learned counsel for the petitioner Shri Amit Bose as well as Shri Ashwani Kumar Agnihotri learned standing counsel in deciding the issue, which is of public importance.

87. Writ petition is allowed. A writ in the nature of certiorari is issued, quashing the impugned orders of dismissal from service dated 1862008 passed by the Senior Superintendent of Police, Lucknow as contained in Annexure1 to 4 to the writ petition with all consequential benefits. Petitioners shall be restored in service forthwith expeditiously and preferably within a period of one month from the date of receipt of a certified copy of this order with all consequential benefits.

Writ petition is allowed accordingly. Cost easy.