

Bombay High Court

Girish Satyanarayan Shukla vs High Court Of Judicature At Mumbai on 4 August, 2014

Bench: A.S. Oka

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wp-96.07

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.96 OF 2007

Girish Satyanarayan Shukla, )  
age about 42 years, Occupation -Advocate, )  
R/o. 120, Shankar Nagar, Nagpur. ).. Petitioner

Vs

1. High Court of Judicature at Mumbai, )  
Through the Honourable Registrar, )  
(Appellate Side), Fort, Mumbai - 32. )

2. The State of Maharashtra, )  
ig )  
through the Secretary, )  
Ministry of Law and Judiciary, )  
Mantralaya, Mumbai - 400 032. ).. Respondents

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Shri S.C. Naidu for the Petitioner.  
Shri V.S. Kapse for the Respondent No.1.

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CORAM : A.S. OKA & A.S.CHANDURKAR, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 18TH JULY 2014

DATE ON WHICH JUDGMENT IS PRONOUNCED: 4TH AUGUST 2014

JUDGMENT ( PER A.S. OKA, J)

. The Petitioner was appointed as a Civil Judge, Junior Division and the Judicial Magistrate, First Class on 23 rd October 1992.

The Petitioner joined the service on 19 th November 1992. By an order dated 4th October 1996, the appointment of the Petitioner was terminated. Prior to that, by an order dated 22 nd March 1995, the ash 2 wp-96.07 probationary period of the Petitioner was extended by one year with effect from 24th November 1994. The challenge in this Petition under Article 226 of the Constitution of India is essentially to the said order dated 4th October 1996 by which the employment of the Petitioner was terminated. A declaration is sought that the Petitioner be held to have completed his probation period satisfactorily on 19 th November 1994.

Another prayer made in the Petition is for directing the first Respondent or any authority or any Judge of this Court to grant personal hearing to the Petitioner in the matter of his representations dated 23 rd September 1996, 11th November 1999, 23rd May 2001 and 9th August 2001.

2. Rule was issued by a Division Bench of this Court at Nagpur on 24th April 2002.

#### SUBMISSIONS OF THE PETITIONER

3. Learned counsel appearing for the Petitioner has made detailed submissions. He pointed out that the tenure of the Petitioner in the judicial service will have to be divided into three blocks. The first block will be for the period from 19 th November 1992 when the Petitioner joined the employment till May 1994. He pointed out that in May 1994, the judgments delivered by the Petitioner while holding the post of Civil Judge, Junior Division and Judicial Magistrate, First Class at Chandrapur were called by the learned District Judge at Chandrapur.

ash 3 wp-96.07 The Judgments were called to enable the learned District Judge to submit a report to the Registrar of this Court on the performance of the Petitioner. The learned counsel appearing for the Petitioner urged that a report on the judicial work of the Petitioner was forwarded by the learned District Judge at Chandrapur to the Registrar, of this Court. He pointed out that the second block will be for the period from May 1994 till 12th September 1994. The last block will be for the subsequent period ending with the date of impugned order. He pointed out that in May 1994 itself, the Petitioner made a request to the High Court Administration to transfer him from Chandrapur on

health grounds.

The said request was accepted and the Petitioner was transferred from Chandrapur to the Court at Panvel with effect from June 1994. The learned counsel appearing for the Petitioner pointed out that the Petitioner assumed the charge of the office of the post of the Civil Judge, Junior Division and the Judicial Magistrate, First Class at Panvel on 6th June 1994. He pointed out that on 12th September 1994, the District & Sessions Judge, Raigad made a report to this Court alleging that the Petitioner has misbehaved with a Peon attached to the Court of Civil Judge, Senior Division at Panvel. Learned counsel appearing for the Petitioner pointed out that initial period of probation of two years was completed by the Petitioner on 19th November 1994. He urged that there was nothing adverse against the Petitioner till that date except the alleged complaint made by the Peon, a copy of which never ash 4 wp-96.07 furnished to the Petitioner. His submission is that according to the information received by the Petitioner, nothing adverse was found even in the quality of the judgments rendered by him. He pointed out that the letters received by the Petitioner, which are annexed at Pages 141 to 158, show that the disposal of the Petitioner for various quarters was either noteworthy or satisfactory or adequate. He pointed out that on more than one occasions, the disposal was noteworthy.

4. Learned counsel appearing for the Petitioner pointed out that on 13th March 1995, the Petitioner was transferred to Osmanabad as the 3rd Joint Civil Judge (J.D). He assumed charge of the said post on 21st March 1995. He pointed out that there was allegedly a resolution passed against the Petitioner by the Bar Association of Osmanabad. He pointed out that even as regards any such resolution passed by the Osmanabad Bar Association, the Petitioner was not given any information. He pointed out that on 22nd March 1995, the Petitioner received a communication from the Additional Registrar of this Court recording that his probation period has been extended from 24th November 1994 for a period of one year.

5. The learned counsel appearing for the Petitioner pointed out that on 24th January 1996 when the Petitioner was recording the evidence in a trial, he suggested to the Advocate cross-examining the ash 5 wp-96.07 witness that the question put by him deserved to be re-framed. This suggestion was not well received by the Advocate. At that time, the Advocate in a disorderly manner banged the brief at the bar and left the Court room. He pointed out that according to the case of the Petitioner, on 8th February 1996, the learned District & Sessions Judge, Osmanabad forwarded a report on the said incident to the Registrar of this Court in which it is recorded that till 24th January 1996, there was no complaint made against the Petitioner. He pointed out that an affidavit-in-reply has been filed by the Registrar of this Court on 28th May 2002 in which it is stated that in the report dated 11th April 1996 submitted by the learned District & Sessions Judge at Osmanabad, there was no recommendation that either the Petitioner should be discharged or that his probation period should be further extended. The learned counsel appearing for the Petitioner invited our attention to the representation made by the Petitioner on 23rd September 1996. He pointed out that the said representation was in continuation of the Fax messages sent by the Petitioner earlier. He pointed out that it is an admitted position that the said representation has been received by the Registry of this Court. Even before the said representation could be considered and decided by this Court, the impugned order of termination was issued which was served on the Petitioner on 9th October 1996.

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6. Learned counsel appearing for the Petitioner submitted that almost all the judgments rendered by the Petitioner were confirmed by the higher Courts. He urged that against Shri P.B. Shah, the learned District & Sessions Judge, Osmanabad, the Petitioner had made a complaint. However, even the said District & Sessions Judge found nothing wrong with the Petitioner as far as the integrity and judicial performance of the Petitioner was concerned. Inviting our attention to the order made by a Division Bench of this Court at the stage of admission, he pointed out that a prima facie finding was recorded that the judicial performance of the Petitioner was rated as "noteworthy"

and even the report of the concerned District & Sessions Judge does not show any deficiency on his part. He urged that this Court should go into the record relating to the disposal of the cases by the Petitioner and contended that the disposal in many quarters was "noteworthy"

and it was never below "adequate". He urged that this Court should examine all the ACRs, special reports of the District & Sessions Judge (which should be minimum two) and other material on record. He invited our attention to the affidavits filed by the Registrar of this Court.

The first affidavit was filed on 22 nd April 2002 opposing admission. The second affidavit was filed on 28 th May 2002 and the third one was filed on 11th February 2004. Inviting our attention to the affidavit filed on 28th May 2002, he urged that it is not disputed that there was no doubt ash 7 wp-96.07 about the integrity of the Petitioner and that there was no dispute about the quality of the judgments rendered by the Petitioner. He pointed out that even the said affidavit accepts that the disposal of the Petitioner was quantitatively not deficient. He invited our attention to the Clause

(d) of Paragraph 21 of the said Affidavit. He submitted that the same shows that the order of termination was passed on the alleged misdemeanor on the part of the Petitioner. He submitted that there is enough material on record to show that the alleged termination is not merely on the ground that the Petitioner was found unfit to continue in service but the termination is based on the allegations made against the Petitioner. He urged that the material against the Petitioner was never shown to him and apart from the fact that the impugned order becomes stigmatic, the Respondents have committed a gross breach of the principles of natural justice.

7. He invited the attention of the Court to the law laid down by the Constitution Bench of the Apex Court in the case of Samsher Singh v. State of Punjab and Another 1. He relied upon another decision of the Apex Court in the case of Jarnail Singh and Others, etc. v. State of Punjab and Others<sup>2</sup>. Inviting the attention of the Court to what is held by the Apex Court in Paragraph 32 of the said decision, he submitted that though the impugned order does not refer to any allegation against 1 (1974)<sup>2</sup> SCC 831 2 AIR 1986 SC 1626 ash 8 wp-96.07 the Petitioner, the attending circumstances as well as the basis of the order will have to be taken into consideration for deciding the legality of the same. He submitted that as this is a case where a specific case has been made by the Petitioner that the order impugned is based on the misdemeanor and/or misconduct of the Petitioner, it is the duty of the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. He, therefore, submitted that this Court will have to peruse the record as

the same is not made available to the Petitioner. He urged that there is no communication made to the Petitioner of the remarks in his ACRs.

Inviting our attention to a recent decision of the Apex Court in the case of Sukhdev Singh v. Union of India and Others 3, he urged that the law laid down by the Apex Court is that every entry in the ACR must be communicated to the concerned employee even if the entry is very good or good. He submitted that what is done by the Apex Court is only stating the correct legal position which was prevailing even on the date on which the impugned order was passed. He also relied upon a decision of the Apex Court in the case of Ishwar Chand Jain v. High Court of Punjab and Haryana and another 4. He submitted that the Apex Court has noted in the said decision that every judicial officer is under a constant threat of complaints and inquiries on trifling matters. The Apex Court has also noted that an honest and strict judicial officer is 3 AIR 2013 SC 2741 4 AIR 1988 SC 1395 ash 9 wp-96.07 likely to have adversaries in the mofussil Courts, and therefore, it is imperative that the High Court should take steps to protect its honest judicial officers. He pointed out that in the present case, the Administration of the High Court appears to have been swayed by the allegations purportedly made by the Bar Association against the Petitioner though there is absolutely no substance in the same.

Learned counsel appearing for the Petitioner also invited our attention to a decision of the Apex Court in the case of Registrar General, High Court of Patna v. Pandey Gajendra Prasad and others 5. He invited our attention to a decision of the Chancery Division in the case of John v.

Rees and others6.

8. Lastly he urged that though the objection regarding delay may have been raised in the affidavit-in-reply filed by the Registrar of this Court, now this Court cannot consider the issue of delay. He pointed out that the Petition has been admitted in the year 2002 and now after a lapse of 12 years, the Respondents cannot be permitted to agitate the issue of delay. He invited the attention of the Court to the representations made by the Petitioner which are on record. He relied upon a decision of the Division Bench of this Court in the case of Diwakar Pundlikrao Satpute v. Zilla Parishad, Wardha and others 7. On the aspect of delay, he also relied upon a decision of the Apex Court in 5 (2012)6 SCC 357 6 [1969]2 All E.R. 274 7 2004(3) Mh.L.J. 151 ash 10 wp-96.07 the case of High Court of Judicature at Patna v. Madan Mohan Prasad & Others8.

#### SUBMISSIONS OF THE HIGH COURT ADMINISTRATION

9. The learned counsel representing the High Court Administration submitted that the impugned order is not at all stigmatic. He urged that the period of probation was extended to enable the Petitioner to improve himself. He submitted that the Committee appointed by the High Court after considering the entire material found that the Petitioner was not suitable for continuation after the completion of the probation period. He produced for the perusal of this Court the file containing original service record of the Petitioner. He urged that no interference is called for with the impugned order.

## DECISION OF ADMINISTRATIVE JUDGES

10. As extensive submissions are made on merits, we are considering the Petition on merits without going into the objection of delay. We find from the perusal of the file that the case of the Petitioner was placed before the Administrative Judges in their meeting held on 19th August 1996 at 5.00 pm. The decision taken by the Administrative Judges reads thus:

8 AIR 2011 SC 3046

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"Discussed.

Considering the material placed before the Committee, it is found that Shri G.S. Shukla, Joint Civil Judge, Junior Division & Judicial Magistrate, First Class, Osmanabad, is not suitable to continue as he has failed to complete the probation period satisfactorily. His services are no more required.

Registrar to take up follow-up action."

## THE SERVICE RECORD OF THE PETITIONER

11. We have perused the service record of the Petitioner. We have perused the ACR of the Petitioner for the period ending with 31 st March 1993. It is stated in the ACR that the Petitioner was found to be a good judicial officer and even his judicial ability was assessed as "good". It was stated that the Petitioner is an honest officer. Perusal of the ACR for the period ending with 31 st March 1994 shows that the remarks are similar to the remarks in the earlier ACR. The ACR for the period ending with 31st March 1995 which is dated 1st April 1995 written by the learned District & Sessions Judge, Raigad at Alibag records that the Petitioner is an "average Judge with aggressive nature".

The net result is assessed as "Average". The Petitioner had worked under the said District & Sessions Judge with effect from 1 st December 1993. Though his integrity was stated as "not doubtful" and the character was certified as "good", the ACR records that the relationship of the Petitioner with the staff was "not so cordial". It noted that his behaviour with the members of the Bar was "not respectable". It ash 12 wp-96.07 records that his behaviour with the litigants, members of the public and officers and employees of the other departments was "not proper". The ACR for the period ending with 31 st March 1996 is written by Shri B.P.

Shah, the District & Sessions Judge, Osmanabad, against whom the Petitioner had made a complaint. The ACR records that there was no complaint about the integrity of the Petitioner and his character was "good". However, his impartiality was stated to be "doubtful". The ACR records that his behaviour with the colleagues and superiors, members of the staff, members of the bar and

the litigants as well as the officers and employees of the other departments was "not good".

However, his knowledge of law and procedure has been assessed as "adequate". Nothing was found wrong with the quality of judgments except the remark that though the judgments are precise and clear, the same lack in proper reasoning. However, it was found that the language and lucidity was good and the Petitioner had a fair capacity to marshal and appreciate the evidence. The net result given in the ACR was "average". In the general remarks, the learned District & Sessions Judge, Osmanabad has noted that the officer is over-assuming and finds fault with the superiors. The learned District & Sessions Judge has recorded that the bar boycotted his Court since 24 th January 1996 and the same continues till 14th May 1996 when the ACR was written. It is stated that his behaviour is "full of arrogance".

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12. In the record, there is a report dated 12 th September 1994 submitted by the then District & Sessions Judge at Alibag as regards the allegations of misconduct and misbehaviour made against the Petitioner by one Shri Sadanand Talojkar, a Peon, working on the establishment of the Civil Judge, Senior Division at Panvel while he was posted at Panvel.

The said report records that after making a discreet inquiry, the learned District & Sessions Judge, prima facie, found that there is a substance in the complaint made against the Petitioner. The learned District Judge has recorded that he showed the complaint to the Petitioner who flatly denied the contents thereof. However, the Petitioner admitted that on the relevant day he had scolded the said Peon in the morning and evening. The learned District & Sessions Judge forwarded the necessary documents along with the said report to the Registrar of this Court.

13. It appears that the case of the Petitioner for consideration of successful completion of the period of probation was placed before a learned Judge of this Court. The learned Judge of this Court after considering the record recommended on 25 th January 1995 that it was desirable to give an opportunity to the Petitioner to improve his conduct and performance by extending his probation by a period of one year. It was stated that his behaviour with the sub-ordinate staff and members of the bar will have to be watched for one year and after getting a ash 14 wp-96.07 report of the learned District & Sessions Judge on these two aspects, the question of satisfactory completion of probation period may be examined. The report dated 12 th September 1994 of the learned District & Sessions Judge was also placed before the learned Judge.

The learned Judge of this Court in his recommendation noted that there was nothing adverse against the Petitioner in the special report as well as in the ACR and his judgments were satisfactory. The recommendation of the learned Judge was placed before the Administrative Committee of the Hon'ble Chief Justice and two senior most Judges. The recommendation of the learned Judge was accepted by the Administrative Committee on 7 th February 1995. Accordingly, a communication dated 22nd March 1995 was issued to the Petitioner.

14. The record shows that a special report about the conduct and performance of the Petitioner as well as his judgments was submitted by the learned District & Sessions Judge, Osmanabad on 11 th April 1996. Though the learned District & Sessions Judge recorded that the Petitioner was honest and his integrity was above suspicion, he recorded that the relations of the Petitioner with the members of the Bar were not very good and his behaviour with the members of the bar and litigants was very arrogant. However, his judgments were found to be in order except the fact that his marshalling of the evidence was not up to the mark. In the recommendation, the learned District Judge ash 15 wp-96.07 noted that the grievance of the members of the bar is that the behaviour of the Petitioner with the members of the bar is arrogant and there is a "total lack of politeness in him". It is stated that since 24 th January 1996, the Bar Association has boycotted the Court of the Petitioner. The learned District & Sessions Judge has recorded that though he has tried his level best, it is not possible to improve the Petitioner. We must also note that the learned District & Sessions Judge, Osmanabad submitted another report dated 8th February 1996 to this Court by which he reported the boycott by the members of the Bar on the Court of the Petitioner in which he has stated about the arrogant behaviour of the Petitioner with the members of the Bar and litigants.

15. It appears from the file that the reports of the learned District & Sessions Judges to which we have made a reference above were placed before the Administrative Judges of this Court. The recommendation of the learned Judge of this Court, who recommended the extension of probation period for one year, was also placed before the Administrative Judges. The special report submitted by the District & Sessions Judge, Osmanabad was also placed before the Administrative Committee. It appears that the Administrative Judges were apprised of the observations made by the District & Sessions Judge, Osmanabad about the quality of the judgments of the Petitioner.

As we have noted above, the Administrative Committee in its decision ash 16 wp-96.07 recorded that the Petitioner was not suitable to continue as he has failed to complete the probation period satisfactorily.

#### LEGAL POSITION AND CONSIDERATION OF SUBMISSIONS

16. It is in the light of these factual aspects, a reference will have to be made to a decision of the Apex Court in the case of Jarnail Singh. In Paragraph 32, the Apex Court held thus:

"32. The position is now well settled on a conspectus of the decisions referred to herein before that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad-hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and



will see whether the order was made on the ground of misconduct, inefficiency or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records of these petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without ash 17 wp-96.07 following the procedure provided in Article 311(2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1980. Thus the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" are made by way of punishment."

(emphasis added)

17. Reliance was placed by the learned counsel appearing for the Petitioner on the decision of the Apex Court in the case of Samsher Singh. Paragraphs 64 to 67 of the said decisions read thus:

"64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved, in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. In Gopi Kishore Prasad v. Union of India MANU/SC/0213/1959 : (1960)ILLJ577SC it was said that if the Government proceeded ash 18 wp-96.07 against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course,, the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer.

65. The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. (See State of Orissa v. Ramnarain Das MANU/SC/0311/1960: (1961)ILLJ552SC ). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is

one of dismissal in substance. (See *Madan Gopal v. State of Punjab* MANU/SC/0360/1962:(1964)ILLJ68SC). In *R.C. Lacy v. State of Bihar and Ors.* (Civil Appeal No. 590 of 1962 decided on 23 October, 1963) it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2). (See *R.C. Banerjee v. Union of India* MANU/SC/0264/ 1963 : [1964]2SCR135). A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311 (See *Champaklal G. Shah v. Union of India* MANU/SC/0274/ 1963:(1964)ILLJ752SC). On the other hand, a statement in the order of termination that the temporary servant is undesirable has been held to import an element of punishment (See *Jagdish Mitter v. Union of India* MANU/SC/ 0277/1963:(1964)ILLJ418SC).

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66. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive. (See *K.H. Phadnis v. State of Maharashtra* ).

67. An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct- (See *State of Bihar v. Shiva Bhikshuk Mishra*, (1971)2 SCR 191:(1970)2 SCC 871)."

(emphasis added)

18. We must also make a reference to the decision of the Apex Court in the case of *Rajesh Kohli V. High Court of Jammu and Kashmir and Another*<sup>9</sup>. The Apex Court was dealing with the issue of the legality of an order of termination of a judicial officer who was on probation.

The contention before the Apex Court was that the service was terminated on the ground of alleged misconduct such as pendency of a criminal complaint against him and his alleged objectionable behaviour with the sub-ordinate staff. It was alleged that the order of termination of his service is a stigma on him. In Paragraph 18 of the said decision, the Apex Court observed thus:

"18. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself."

(emphasis added) After considering its several earlier decisions, in Paragraph 28, the Apex Court held thus:

"28. In the present case, the order of termination is a fallout of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such satisfaction even if recorded that his service is unsatisfactory would not make the order stigmatic or punitive as sought to be submitted by the petitioner. On the basis of the aforesaid resolution, the matter was referred to the State Government for issuing necessary orders."

(emphasis added) In Paragraph 32, the Apex Court has made the following observations which read thus:

"32. Upright and honest judicial officers are needed not only to bolster the image of the judiciary in the eyes of the litigants, but also to sustain the culture of integrity, virtue and ethics among judges. The public's perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of ash 21 wp-96.07 transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct."

(emphasis added)

19. As held by the Apex Court in Paragraph 18 of its decision in the case of Rajesh Kohli, during the period of probation, a judicial officer remains under watch and his service and his conduct is under scrutiny.

While considering his case for continuation, around the time of expiry of the period of probation, an assessment is required to be made not only of the judicial work but also of his conduct during the period of probation. With some emphasis, the Apex Court has observed that the services rendered

by a judicial officer during the period of probation should be assessed not solely on the basis of the judicial performance but also on the probity as to how he has conducted himself. In Paragraph 28, the Apex Court observed that the order of termination in the case before it was a fallout of unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Even if it is recorded in the order of termination that his service is unsatisfactory, it would not make the order stigmatic or punitive. In paragraph 32, the Apex Court reiterated that the judicial officer has to maintain a high benchmark of not only on the honesty but also on the accountability and good conduct. In Paragraph 18 of the said decision, the Apex Court has observed that considering the overall record of the judicial officer, the extension of probation period can be ash 22 wp-96.07 granted if permissible under the law for the purposes of further scrutiny of the conduct of the judicial officer. In the present case, the Petitioner was granted extension with a view to observe his conduct and with a view to give him an opportunity to improve his performance.

20. Going back to the decision of the Apex Court in the case of Samsher Singh, the Apex Court has observed that the authority may come to the conclusion that for any temperamental or other object not involving moral turpitude, the probationer is unsuitable for the job. It is observed that the authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry and in those cases, the authority may not hold an inquiry and may simply discharge the probationer. Importantly, the Apex Court held that the mere fact of holding an enquiry is not always conclusive.

21. We must also make a reference to the decision of the Apex Court in the case of Union of India and other v. Mahaveer C. Singhvi 10.

In Paragraph 46, the Apex Court held thus:

"46. As has also been held in some of the cases cited before us, if a finding against a probationer is arrived at behind his back on the basis of the enquiry conducted into the allegations made against him/her and if the same formed the foundation of the order of discharge, the same would be bad and liable to be set aside. On the 10 (2010)8 SCC 220 ash 23 wp-96.07 other hand, if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving him a hearing, the same would be valid. However, the latter view is not attracted to the facts of this case."

What is held is that if the allegations were merely a motive for passing an order of discharge of the probationer without giving him a hearing, the same would be valid. This issue has been also dealt with by the Apex Court in another decision in the case of State Bank of India and others v. Palak Modi and another<sup>11</sup>. In Paragraph 25 of the said decision, the Apex Court held thus:

"25. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the

competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

(emphasis added) Thus, it is held that even the holding an inquiry for judging the suitability of the probationer or for his further continuance in the service is permissible and if such inquiry is the basis for taking a 11 (2013)3 SCC 607 ash 24 wp-96.07 decision of terminating his employment, the order cannot be castigated as punitive. In the case of State of Bihar v. Gopi Kishore Prasad 12, the Constitution Bench in Paragraph 5 held thus:

"5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause."

(emphasis added)

22. After having perused the record, we find that the Administrative Judges have made an overall assessment of the performance and conduct of the Petitioner. As stated earlier, his probation was once extended with a view to give him a chance to improve. Even assuming that before passing an order of continuation of the period of probation for one year, a learned Judge of this Court held an inquiry, from the noting made by the learned Judge, it is obvious that the inquiry made was only to assess the suitability for the continuation of the Petitioner in service. The decision of the Administrative Judges dated 19th August 1996 is not based on any inquiry and it appears to be based on consideration of an overall record of the Petitioner showing his judicial performance and conduct.

12 AIR 1960 SC 689 ash 25 wp-96.07

23. Learned counsel appearing for the Petitioner relied upon what is held by the Apex Court in Paragraphs 8 and 9 of the decision in the case of Sukhdev Singh. The Paragraphs 8 and 9 of the said decision read thus:

"8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every

entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good- must be communicated to him/her within a reasonable period.

9. The decisions of this Court in Satya Narain Shukla v. Union of India and others and K.M. Mishra v. Central Bank of India and others and the other decisions of this Court taking a contrary view are declared to be not laying down a good law."

It is true that there is nothing placed on record to show that the ACRs were communicated to the Petitioner. In fact, the learned Counsel for ash 26 wp-96.07 the High Court administration stated that the practice of communicating the remarks in the ACRs was started on the basis of the decision taken by the Administrative Judges in the meeting on 5 th January 2010. However, in the present case, there is no question of complying with the principles of natural justice. As the impugned order is neither punitive nor stigmatic, the same would not vitiate on the basis of the alleged violation of the principles of natural justice. The Apex Court has held that misconduct of a probationer may be a motive for passing an order of termination and such order does not become bad.

While considering the case of a judicial officer for confirmation, what is required to be considered is not only his judicial performance but also the manner in which he has conducted himself. In the present case, we are satisfied that the order is not at all punitive and is based on consideration of the overall performance of the Petitioner. He was found unsuitable to continue as a judicial officer. There was material to come to the said conclusion. The order cannot be said to be a stigmatic based on any misconduct or misdemeanor. Moreover, as is permissible in law, the period of probation of the Petitioner was extended by a period of one year with a view to give him an opportunity to improve his performance.

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24. Therefore, we find no merit in the Petition and accordingly, we pass the following order.

ORDER :

The Petition is rejected. The Rule is discharged with no orders as to costs.

( A.S.CHANDURKAR, J )

( A.S. OKA, J )

