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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13484 OF 2018

Ajay Ramesh Dinode]
age 44 years,]
Occupation : practicing advocate] Petitioner.
r/o Shiv Priya Wankhede Lay out,]
Near Dr. Laddhad Hospital, Buldhana]
Taluka & District : Buldhana]

V/s.

1] The State of Maharashtra,]
Through the Principal Secretary]
and Legal Remembrance,]
Law and Judicial Department,]
Mantralaya, Mumbai 400 032.]
]
2] The Registrar General]
High Court, Bombay]
Appellate Side,]
Bombay 400 032] Respondents
]
3] Mr. Sandeep Karnik]
Ex-DCP, EOW, Mumbai]
Presently posted at]
Additional Commissioner of Police]
Crime Branch, Mumbai]

- Mr. A.V. Anturkar, Senior Advocate i/by Mr. Avinash B. Avhad, for the petitioner.

- Mr. Milind Sathe, Senior Advocate a/w Mr. Sanjay Udeshi a/w Mr. N.N. Gawade i/by M/s Sanjay Udeshi & Co., for respondent No.2.

- Mr. A.I. Patel and R.P. Kadam, AGP for respondent No.1.

CORAM : S. S. SHINDE &
N.B. SURYAWANSHI, JJ.

JUDGMENT RESERVED ON : 17th OCTOBER, 2019
JUDGMENT PRONOUNCED ON : 30th JANUARY, 2020

JUDGMENT [Per: N. B. Suryawanshi, J.]

1] Rule, rule made returnable forthwith with the consent of the parties and the petition is taken up for final hearing at the admission stage.

2] By this petition under Articles 14, 16, 21 309, 311(2) and 226 of the Constitution of India, the petitioner questions the legality and propriety of order of discharge from service, issued by the State Government on 23rd June, 2017, under the provisions of Rule 13(4)(ii)(b) and Rule 14 of the Maharashtra Judicial Services Rules 2008 (for brevity referred to as, "the MJS Rules"), which according to the petitioner is creating disqualification from future employment as per Rule 7(b) of the MJS Rules.

3] The Brief facts which are necessary for the decision of this petition, are as follows :-

The Maharashtra Public Service Commission published an advertisement inviting applications for the post of "District of Judge",

by nomination in the month of November, 2013. The petitioner was successful in the selection process and was appointed as District Judge, vide order dated 26th August, 2014. The petitioner was posted as Additional District and Sessions Judge III, Akola on 14.9.2014 on which date the petitioner joined service and took charge at Uttan, District Thane. The petitioner was transferred from time to time and on 27.11.2019, the petitioner was transferred to City Civil Court, Mumbai. The Annual Confidential Report of the petitioner for the period 24.11.2014 to 31.3.2015 is good (B).

4] The petitioner was thereafter conferred with the powers of Additional Sessions Judge, in the month of December, 2015. In July 2016, the petitioner was nominated by the High Court, as Special Judge for speedy and expeditious trial for the matters relating to National Spot Exchange Ltd., ("NSEL" for short) Scam. Thereafter the petitioner was also assigned the work as Special Judge under the Prevention of Money Laundering Act for NSEL. While the petitioner was honestly and diligently discharging his duties, the petitioner was discharged vide order dated 22.06.2017. Hence this petition.

5] Learned Senior Counsel appearing on behalf of the petitioner, in support of the case of petitioner urged the following points:-

i. The impugned order is not passed in conformity with the MJS Rules.

ii. The MJS Rules specifically refer to the distinction between "appointing authority and "recruiting authority". As per the said distinction, for the petitioner, the High Court is not the appointing authority under the provisions of Rules 13 and 14 of the MJS Rules, the order is required to be passed by the appointing authority and not by the recruiting authority.

iii. The appointing authority i.e. the State Government has mechanically and almost like post office manner, simply followed the recommendations of the High Court. A more meaningful role is expected to be played by the executive as appointing authority under the MJS Rules.

iv. The appointing authority has more resources to find out, the "suitability" or otherwise of the Judicial officer.

v. Rule 13(4) (a) requires finding. If the finding is to be recorded, then an enquiry is expected to be conducted, which may be minimal, but (to the same), it has to be there.

vi. The suitability of the candidate is not properly assessed. Rule 20 of the MJS Rule is in the nature of residuary provision. The MJS Rules are silent in respect of assumption of suitability of the probationer whether to discharge him or to confirm. Therefore, according to him

IAS (Probationary) Rules and more particularly Rule 12 and instructions contained in the directions (I) (iv) would be attracted. The decision making process shows a total non application of mind on the part of High Court as well as by the Government.

vii. According to the petitioner, IAS Rules requires summary enquiry, opportunity of being heard and timely communication of adverse remarks to the petitioner enables him to improve. All these aspects were grossly violated in the decision making process.

viii. In the affidavit filed by the High Court a misleading statement is made which, according to the learned Senior Counsel, is an attempt to malign the career of petitioner. The administration has not properly assisted the decision making authority.

ix. The order of discharge of the petitioner has civil consequences and the same is not simple order in the nature of golden shake hand. Since the impugned order has civil consequences, principles of natural justice ought to have been followed. At least the opportunity of being heard ought to have been given to the petitioner.

x. In view of the statements made in the affidavit-in-reply filed by High Court, the order can be termed as stigmatic, hence an opportunity of being heard ought to have been given.

6] Learned Senior Counsel for the petitioner, vehemently assailed the impugned order by elaborating the propositions enumerated hereinabove. The main thrust of the argument is that the appointing authority i.e. the State Government has mechanically followed the recommendations of the High Court. In fact the appointing authority ought to have verified the suitability of the petitioner through their own resources. Since Rule 13(4) (a) mentions the word, “finding”, in absence of any enquiry there cannot be any finding. Hence an enquiry, howsoever, brief in nature should have been conducted. It is further urged that since ACRs of the petitioner were good, there was no reason and/or occasion for his discharge. It is argued that since certain adverse facts, integrity, morality of the petitioner have been taken into consideration, as has been disclosed in the affidavit filed by the High Court, the impugned order is stigmatic and the same cannot be sustained in absence of any enquiry conducted by the High Court. He further argued that since the MJS Rule dis-entitle a person who is discharged during the probation, from competing for the post of Government Pleader etc, the impugned order ensues civil consequences and for absence of observance of principles of natural justice, the order is vitiated.

7] In support of the points argued, the learned Senior Counsel for

the petitioner relied on the following the citations :-

I. **Registrar General, High Court of Gujarat and anr vs. Jayshree Chamanlal Buddhbhatti**[1].

II. **State bank of India and ors ~~vs~~ lPalak Modi & Anr**[2]

III. **High Court of Judicature at Patna vs. Ajay Kumar Shrivastava & ors**[3]

IV. **High Court of Judicature at Patna vs. Ajay Kumar Shrivastava & ors**[4]

V. **Deepti Prakash Banerjee vs. Satendranath Bose National Center of Basic Sciences Calcutta and ors** [5]

VI. **Madan Mohan Choudharyt vs State of Bihar and ors**[6]

VII. **Pradip Kumar vs. Union of India and ors** [7]

8] In reply to the above, learned Senior Counsel appearing for the second respondent, would urge that the impugned order is of simpliciter discharge without casting any stigma/aspersions on the petitioner, hence there was no necessity to follow the principles of natural justice. It is further argued that according to the terms of the appointment order, the appointment of the petitioner was of a temporary nature and the appointment order stipulates that without assigning any reason the services of the petitioner can be discharged

1 (2013) 16 SCC 59
2 (2013) 3 SCC 607
3 (2017) 5 SCC 138
4 Civil Appeal (S) 8775 of 2015
5 (1999) 3 SCC 60
6 (1999) 3 SCC 396
7 (2012) 13 SCC 182

during the probation period.

9] It is further argued that the impugned order is in conformity with the MJS Rules. In terms of Scheme of Article 233, 234, 235, 236 and 309 of the Constitution of India, High Court has primacy in the matters of recruitment and appointment on probation, confirmation on probation, disciplinary proceedings, compulsory retirement and termination of District Judges. In terms of Rule 13 and 14 of the MJS Rules, the recommendation of the High Court is binding on the State Government. The use of the words "finding and suitability" by no stretch of imagination can be said to imply holding of an enquiry. Such interpretation would be contrary to the intention of the rule making authority.

10] In reply to the argument that IAS Service Rules should be applied to the facts of the present case, the learned Senior Counsel would urge that the MJS Rules is a self contained Code, for appointment of Judicial Officers in Maharashtra and Chapter IV, "Probation and Officiation" deals with all the aspects of appointment on probation and discharge and/or confirmation. There is no lacuna or ambiguity in these rules and IAS rules have no application in the present matter. Learned Senior Counsel further resisted the

argument of the petitioner that the impugned order entails civil consequences, contending that the order is of simpliciter discharge. In view of the catena of decisions of the Apex Court, the services of probationer can be terminated at any time during the probation. For termination of probationer, minimal opportunity of being heard, passing a reasoned order demonstrating that the decision making authority has taken into consideration all relevant things etc. cannot be expected.

11] In reply to the argument that the impugned order is punitive and/or stigmatic, the learned Senior Counsel, contended that while judging the order of discharge, what has to be considered is the concept, “motive and foundation” and if the factor is only the motive which stimulates an act, the termination/discharge of probationer cannot be considered as stigmatic. It is urged that the discharge order does not refer to any document. Hence the order is of discharge simpliciter. Therefore, there was no occasion and/or reason to hold enquiry and to hear the petitioner. In these circumstances learned Senior Counsel prayed for dismissal of the writ petition.

12] Learned Senior Counsel appearing for the second respondent in support of his arguments relied upon the following citations :-

I. State of Bihar vs. Bal Mukund Sah[8]

II. State Bank of India vs. Palak Modi (supra)

III. H.F.Sangati vs.Registrar General, High Court of Karnataka[9]

IV. Abhijit Gupta ~~vs~~ S.N.B. National Centre, Basic Science[10]

V. Chaitanya Prakash vs. H. Omkarappa[11]

VI. Girish S.Shukla vs. High Court of Judicature at Mumbai[12]

VII. Smita Rajendra Kadu vs. State of Maharashtra[13]

VIII. Vishnu Dattarao Gite vs The State of Maharashtra W.P.No.8210 of 2016 dated 14/16.9.2016.]

IX. Girish Chandrakant Gosavi vs. Chief Secretary[14]

X. Rajeshkumar Shrivastava ~~vs~~ State of Jharkhand[15]

XI. Rajesh Kohli vs. High Court of Jammu and Kashmir[16]

XII. High Court of Judicature at Patna vs. Pandey Madan Mohan Prasad Sinha[17] .

13] Learned Senior Counsel appearing for the second respondent

8 2000 (4) SCC 640
9 2001 (3) SCC 117
10 2006 (4) SCC 469
11 2010 (2) SCC 623
12 2014 (5) BCR 104
13 2016 (2) Mah. L.J.867
14 2018 (3) BCR 709
15 2011 (4) SCC 447
16 2010 (12) SCC 783
17 1997 (10) SCC 409

has made available the original record of the present matter maintained by the Registrar General, High Court, and with the able assistance of both the learned Senior Counsels, we have perused the original record.

14] Learned AGP has adopted the arguments of learned Senior Counsel for second respondent.

15] The learned Senior Counsel for the petitioner has made available the appointment order of the petitioner during the course of argument, which is taken on record and marked "X" for the purpose of identification. The perusal of the appointment order of the petitioner shows that it is issued by the State Government. Clause 2 of the appointment order clearly states that the appointment of the petitioner is of a temporary nature and the same can be terminated without assigning any reason.

16] Thus, even in terms of the appointment order, the services were of temporary nature and could have been terminated without assigning any reason. In this view of the matter since the petitioner was discharged during the period of probation, we do not find any fault in the impugned order.

17] We are unable to accept the argument of the petitioner that the impugned order is not passed in conformity with the MJS Rules 13 and 14.

18] The MJS Rules are made in exercise of power conferred under Article 233, 234 and the proviso to Article 309 of the Constitution of India read with Article 235. On perusal of the MJS Rules, it is evident that it is a self contained Code for appointment of Judicial officers in Maharashtra. Rule 13 of Chapter IV of the said Rules deals with probation and officiation, Rule 14 deals with discharge of the probationer during the period of probation, Rule 15 deals with confirmation. Rule 16 deals with increment during the period of probation and/or officiation, thus, it can be said that Chapter IV of the MJS Rules deals with every aspect of appointment on probation. For ready reference the relevant Rules are quoted here:-

"**CHAPTER IV**

PROBATION AND OFFICIATION

13. Probation and Officiation:- (1) All appointments to the service by nomination shall be on probation for a period of two years.

(2) All appointments by promotion shall be on officiating basis for a period of two years.

(3) The period of probation or officiation, as the case may be, for reasons to be recorded in writing, may be extended by the Appointing Authority by such period not exceeding

two years.

(4) Six months before the end of the period or extended period of Probation or Officiation, as the case may be, the Appointing Authority shall consider the suitability of the person so appointed or promoted to hold the post to which he was appointed or promoted and

(i) if found suitable, issue an Order declaring him to have satisfactorily completed the period of Probation or Officiation, as the case may be, and such an Order shall have effect from the date of expiry of the period of Probation or Officiation, including extended period, if any, as the case may be;

(ii) if the Appointing Authority finds that the person is not suitable to hold the post to which he was appointed or promoted, as the case may be, it shall by Order,

(a) if he is a promotee, revert him to the post which he held prior to his promotion;

(b) if he is a probationer, discharge him from service.

(5) No person shall be deemed to have satisfactorily completed period of Probation or Officiation, as case may be, unless so declared by a specific Order to that effect.

14. **Discharge of a Probationer during the period of Probation:-** . Notwithstanding anything contained in rule 13, the Appointing Authority may, at any time during the period of probation, discharge from services, a probationer on account of his unsuitability for the service.

15. **Confirmation :-** A Probationer who has been declared to have satisfactorily completed his Probation and a promotee who has been declared to have satisfactorily completed his period of Officiation shall be confirmed as a member of the service in the category of post to which he was appointed or promoted, as the case may be, in any substantive vacancy which may exist or arise”

19] On plain reading of Rule 13 and 15 for considering the suitability of the person appointed to hold the post and the satisfaction of appointing authority about the suitability of the candidate on probation is contemplated. The word “finds” used in the Rule 13 cannot be read in isolation and given the meaning as is tried to be given by the learned senior counsel for the Petitioner. The word “finds” has to be given its ordinary dictionary meaning. The appointing authority needs to be find out as to whether or not the person appointed on probation is suitable to hold the post or not. Thus, it has to be read in the context of suitability of a person. By no stretch of imagination, the word “finds” can be interpreted in the present case to mean that finding has to be recorded about the suitability of the candidate on probation. The word “finds” has to be read in the common parlance about the suitability of the candidate on probation. Therefore, we are not impressed by the argument that because the word “finds” and “suitability” are used in the rules. Some brief inquiry has to be made in that behalf.

20] A conjoint reading of the Article 233 and Rule 13 and 14 of MJS Rules, make it clear that the recommendation of the High Court is binding on the State Government. A useful reference in this behalf can be made to the ratio laid down by the Hon’ble Apex Court in the

case of **State of Bihar vs. Bal Mukund Sah** (supra) has observed thus :-

> "26. ... . Article 233 dealing with appointment of District Judges, on its own express terminology projects a complete scheme regarding the appointment of persons to District Judiciary as District Judges. In the present appeals, we are concerned with direct recruitment to the cadre of District Judges and hence sub-article (2) of Article 233 becomes relevant. Apart from laying down the eligibility criterion for candidates to be appointed from the Bar as direct District Judges, the said provision is further hedged by the condition that only those recommended by the High Court for such appointment could be appointed by the Governor of the State. Similarly, for recruitment of judicial officers other than District Judges to the judicial service at lower level, complete scheme is provided by Article 234 wherein the Governor of the State can make such appointments in accordance with the rules framed by him after consulting with the State Public Service Commission and with the High-Court exercising jurisdiction in relation to such State. So far as the Public Service Commission is concerned, as seen from Article 320, the procedure for recruitment to the advertised posts, to be followed by it is earmarked therein. But the role of the Public Service Commission springs into action after the posts in a cadre are required to be filled in by direct recruitment and for that purpose due intimation is given to the Commission by the State authorities. They have obviously to act in consultation with the High Court so far as recruitment to posts in subordinate judiciary is concerned. Of course, it will be for the High Court to decide how many vacancies in the cadre of District Judges and Subordinate Judges are required to be filled in by direct recruitment so far as the District Judiciary is concerned and necessarily only by direct recruitment so far as subordinate judiciary is concerned. This prime role of the High Court becomes clearly discernible from Article 235 which deals with the control of the High Court over the subordinate judiciary and also of subordinate Courts. The said article provides as under:
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> > "Control over subordinate Courts, The control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but

> nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.
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> 29. ... . But so far as the High Court is concerned, its consultation becomes pivotal and relevant by the thrust of Article 233 itself as it is the High Court which has to control the candidates, who ultimately on getting selected, have to act as Judges at the lowest level of the judiciary and whose posting, promotion and grant of leave and other judicial control would vest only in the High Court, as per Article 235".
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> "30. It has also to be kept in view that neither Article 233 nor Art. 234 contains any provision of being subject to any enactment by the appropriate Legislature as we find in Articles 98, 146, 148, 187, 229(2) and 324(5). These latter articles contain provisions regarding the rule making power of the authorities concerned subject to the provisions of the law made by the Parliament or Legislature. Such a provision is conspicuously absent in Articles 233 and 234 of the Constitution of India. Therefore, it is not possible to agree with the contention of learned Counsel for the appellant - State that these Articles only deal with the rule making power of the Governor, but do not touch the legislative power of the competent Legislature. It has to be kept in view that once the Constitution provides a complete Code for regulating recruitment and appointment to District Judiciary and to the Subordinate Judiciary, if gets insulated from the interference of any other outside agency. We have to keep in view the scheme of the Constitution and its basic framework that the Executive has to be separated from the judiciary. Hence, the general sweep of Article 309 has to be read subject to this complete Code regarding appointment of District Judges and Judges in the subordinate judiciary".

In this view of the matter, there is no substance in the argument of the petitioner that the State Government must independently assess the proposal of the High Court for discharge of a petitioner.

21] In view of the above observations that the High Court has primacy in the matter of recruitment and appointment on probation, confirmation of probation, disciplinary proceedings etc. In this view of the matter, we are unable to accept the argument of learned Senior Counsel for the petitioner that there is violation of MJS Rules and Government must independently assess proposal of the High Court in respect of the suitability of the petitioner.

22] We do not agree with the submission on behalf of the petitioner that Rule 20 of the MJS Rules is applicable and IAS rules would apply in the present case, as has been observed hereinabove since Chapter IV of the MJS Rules can be said to be self contained Code for appointment of Judicial Officers and as Chapter IV deals with the probation and officiation i.e. with all the aspects of appointment on probation, discharge and/or confirmation.

23] This Court in Writ Petition No.8210 of 2016 and in connected matters by relying on Rule 20, Chapter V of the Judicial Service Rules has held that the members of Judicial Service are governed by the MJS Rules and no other rules can be relied upon in their case. Hence reliance by the petitioner on IAS Rules can be said to be misplaced. We do not find any ambiguity in the MJS Rules and we are

of the considered view that IAS Rules have no application in the present case.

24] The next argument of the petitioner that in view of the statements made in the reply-affidavit of the second respondent, the order can be said to be stigmatic and in view of the non following of the principles of natural justice, the order is stated to be vitiated. Learned counsel for the second respondent is right in his submission that the order of discharge is of simpliciter discharge under Chapter IV Rule 13 (ii) and 14 of the MJS Rules. Since the impugned order apparently is of simpliciter discharge, the same is in consonance with the appointment order at Exh. "X" issued to the petitioner, no fault can be found with the said simpliciter discharge.

25] The next argument is that in the affidavit-in-reply filed on behalf of the High Court, some aspersions are casted on the petitioner. It is necessary to mention here that discharge order does not refer to any document, the cause referred in the affidavit-in-reply can be said to be motive which may have triggered the discharge order, but that by itself cannot term the impugned order as stigmatic as the impugned order, on the face of it, is of simpliciter discharge and cannot be termed as stigmatic, as sought to be propounded by the learned

Senior Counsel for the petitioner.

26] The cause referred in the affidavit in reply may be one of the several relevant factors which motivated the termination order. But that itself is not sufficient to term the impugned order as stigmatic or punitive. In the line of judgment, the Hon'ble Supreme Court has observed that "if there is suspicion of misconduct, the discretion is of the employer to go into it or he may not go into it but would like to keep the man with whom he is not happy". It is also held in **Palak Modi** (supra) that "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.

27] In the light of above observations of the Hon'ble Supreme Court and in view of the fact that the impugned order is of simpliciter termination and it can not be termed as stigmatic/ punitive, we are not inclined to accept this argument.

28] The argument of the learned Senior Counsel for the petitioner that the order of discharge of the petitioner has civil consequences, therefore, the principles of natural justice ought to have been followed and at least an opportunity of hearing ought to have been given to the petitioner does not appeal to us. The said argument is based on Rule 7(b) of MJS Rules which is quoted hereinbelow for ready reference:-

> **7. Disqualification for appointment:- No person shall be eligible for appointment to the service:-**
>
> (a) xxx xxx xxx
>
> (b) if he is compulsorily retired, removed or dismissed from judicial service or from service in Government or Statutory or Local Authority or failed to complete probation period in judicial service on any post, or in Government or Statutory or Local Authority; or

29] The petitioner being a practicing advocate applied for the post of District Judge at the relevant time. It is unacceptable that the Petitioner without going through the relevant MJS Rules which clearly states that the appointment of the Petitioner is temporary nature and the same can be terminated without assigning any reason. Having accepted the appointment order of probation with open eyes it does not allow in the mouth of the Petitioner now to contend that he suffered disqualification because of the impugned termination order and therefore the principles of natural justice ought to have been

violated. Since the order of termination of the Petitioner is simplisitor termination of a probationer, it was not necessary to follow the principles of natural justice and or to hold any inquiry before issuing an order of termination to the Petitioner.

30] In view of the discretion in the aforesaid paras, we are also of the considered opinion that in absence of any challenge to Rule 7(b) which provides for disqualification, we are not inclined to accept the contention of the petitioner that some incurs civil consequences and the enquiry ought to have been held before discharge of the petitioner.

31] The learned Senior Counsel for the petitioner has relied upon the ratio in **Registrar General, High Court of Gujarat & Anr. Vs. Jayshree Chamanlal** (supra), to support his argument that enquiry is expected to be held, even in cases of probationer before discharge. In para Nos. 31, 35 and 38 of the said judgment, it has been held by the Apex Court that :-

> "31. Having gone through the salient judgments on the issue in hand, one thing which emerges very clearly is that, if it is a case of deciding the suitability of a probationer, and for that limited purpose any inquiry is conducted, the same cannot be faulted as such. However, if during the course of such an inquiry any allegations are made against the person concerned, which result into a stigma, he ought to be afforded

the minimum protection which is contemplated under Article 311(2) of the Constitution of India even though he may be a probationer. The protection is very limited viz. to inform the person concerned about the charges against him, and to give him a reasonable opportunity of being heard.

35. As held by this Court time and again, it is the responsibility of the High Court to protect honest judicial officers. As the facts in this case indicate, apart from the fact that no opportunity was afforded to the Respondent, even the material placed on record did not establish any such aspect which would lead to a conclusion of unsuitability. The disposal of the Respondent was very good, and the complaints by the subordinate staff were clearly motivated. There was no involvement of the Respondent in the suicide by the wife of Shri N.P. Thakker, and all that the High Court administration could lay hand on was the telephonic conversations which the Respondent had with Mr. Thakker. The inference of unsuitability drawn by the High Court administration was therefore totally uncalled for. The impugned judgment setting aside the termination order dated 14th December 2007 issued on the ground of unsuitability is, therefore, fully justified.

38. Before we conclude, we must once again reflect on the facts that have emerged in the present case. As noted earlier, the Respondent was a candidate who had obtained a high rank in the selection for the judicial service, and was given an independent posting in a rural area, where she was living all alone. Her disposal of cases had been very good to say the least. The complaints made by her, regarding the misbehaviour of the staff, and the harassment to her by a section of the bar, were not heeded by the then District Judge, leave aside making an attempt to understand the difficulties faced by her. Instead, certain unjustified adverse remarks were made against her. Subsequently, the then District Judge conducted the preliminary inquiry against her, in his capacity as the vigilance officer, wherein without any justification he tried to connect her with the death of the wife of another judicial officer. It is the duty of the District Judge and also of the High Court to protect the judicial officers against unjustified allegations. However, what we find in the present case is that instead of doing the same, an investigation was conducted against the Respondent without affording her any opportunity, though it contained allegations against her character, and the investigation was sought to be justified as

> determination of her suitability for the post which she was holding. We would like to take this opportunity to emphasise that the High Courts must see to it that the hostile work environment for junior judicial officers, particularly the lady officers, is eliminated. This is necessary to encourage the young officers to put in good judicial work without fear or favour. We are constrained to say that in the present case the High Court administration has clearly failed in this behalf. In the circumstances, we have no reason to interfere in the judgment and order of High Court and we confirm the same.

32] We are bound by the ratio laid down in this Authority, However, this authority is different on facts. In that case, a lady judicial officer who obtained high rank for selection for judicial service and was given an independent posting in rural area where she was alone. Her disposal was good. The complaint made by her regarding the misbehaviour and harassment by section of bar were not heeded by the then District Judge. The difficulties faced by her were not considered by the District Judge. On the contrary, unjustified adverse remarks made against her and the District Judge after conducting preliminary inquiry against her in the capacity as a Vigilance Officer without there being any justification tried to connect with the death of wife of another judicial officer. Thus, without offering any opportunity, the investigation was conducted against the judicial officer though there was allegation against her character and the said investigation was sought to be justified as termination of her suitability for the post which she was holding, Thus, the decision in

this authority is in different set of facts and in our opinion this ratio is not applicable in the fats of the present case.

33] The learned senior counsel for the Petitioner placed reliance on **Pradip Kumar** (supra). In that case the probation of the Petitioner was continued even after completion of the mandatory period of probation without any extension and the Respondent was continued in service without receiving any formal or informal notice about the defects in his work or any deficiency in his work and in that case there was complaint made by some advocate and a report prepared by the President communicated that the only reason of issuing the order of termination was contained in the said report. Hence, the Hon'ble Supreme Court opined that the order of discharge passed by the Union of India was clearly vitiated legal malice. It was further observed that there was clearly a nexus between the decision to discharge the Respondent and the disturbance caused by the members of Bar in the Court of Respondent and he is leaving the Bench and retiring in his chamber. The report of the President leaves no manner of doubt that the Respondent had been condemned unheard on the basis of aforesaid incident and the report of the Chairman dated 18th November, 2009. The order of discharge being based upon the report of the President is clearly stigmatic and could

not have been passed without giving an opportunity to the Respondent to meet the allegations contained in the report of the President. Thus, it was held that the order of discharge cannot be upheld as it was stigmatic and punitive in nature. Thus the facts of that case were different and it cannot be help to the Petitioner.

34] The learned senior counsel for the second Respondent relied on **Palak Modi & Anr** (supra) in which the Hon'ble Supreme Court by quoting judgment in **Chandra Prakash Shahi vs. State of U.P.**[18] has held as under:

> 18. In Chandra Prakash Shahi v. State of U.P. (2000) 5 SCC 152, the Court considered the correctness of the order passed by the High Court which had allowed the writ petition filed by the State and set aside the order passed by U. P. Public Services Tribunal for reinstatement of the appellant. The competent authority had terminated the appellant's service in terms of Rule 3 of the U. P. Temporary Government Servants (Termination of Service) Rules, 1975. It was argued on behalf of the appellant that the order by which his service was terminated, though innocuous, was, in fact, punitive in nature because it was founded on the allegation that he had fought with other colleagues and used filthy and unparliamentary language. In the counter affidavit filed on behalf of the respondents, it was admitted that there was no adverse material against the appellant except the incident in question. The original record produced before the Tribunal revealed that the appellant's service was terminated on account of his alleged involvement in the quarrel between the constables. After noticing various precedents, this Court observed:
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> > 27. "The whole case-law is thus based on the peculiar facts of each individual case and it is wrong

18 (2000) 5 SCC 152

to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi case that there was a conflict of decisions on the question of an order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of "motive" and "foundation" was always kept in view.

28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29 "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action

> would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

35] The observations made in **Chandra Prakash Shahi** (supra) are squarely applicable, in our opinion, to the facts of the present case and since the order is of simpliciter termination, we do not find force in the arguments of the Petitioner. We are unable to accept the contention of the Petitioner that the order is punitive.

36] The ratio laid down in cases **High Court of Judicature at Patna Vs. Ajay Kumar Srivastava & ors** (supra) and in the case of **Madan Mohan Choudhari vs. State of Bihar** (supra), are pertaining to compulsory retirement and hence are of no help to petitioner.

37] In **Deepti Prakash Banerjee** (supra) while deciding the termination of service whether is punitive or simpliciter, the considerations are (i) In what circumstances the termination of the probationer can be said to be founded on misconduct and (ii) In what circumstances, it would be said that the allegations will be only a motive. It was held that if “findings” arrived at in an inquiry as to

misconduct, behind the back of the officer or without a regular departmental inquiry simply order of termination is to be treated as 'founded' with allegations and will be bad. If however, inquiry was not held, no findings were arrived at and the employer was not inclined to conduct inquiry but at the same time, he did not want to continue the employee against whom there was complaints it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of allegations because of delay in regular departmental proceeding or he was doubtful about the securing adequate evidence. In such circumstances, the allegations would be motive and not foundation and simply of termination would be followed.

38] It was further held that on material which amounting to `stigma' need not be contained in termination order of probationer but might be contained in documents referred to in the termination order or in its annexures, such documents can be asked for or called for by any future employer of the probationer. In such a case, employee's interests would be harmed and therefore termination order would stand vitiated on the ground that no regular inquiry was conducted. If we apply this ratio to the facts of the presnet case, it is clear that the impugned order of discharge is simpliciter termination

or discharge. The impugned order, cannot be said to be punitive and it does not contain any word amounting to stigma. In this view of the the matter also, no fault can be found with the impugned termination order. In case the order reflected stigma, then the petitioner ought to have been heard and enquiry could have been held. However, since there is no stigma in the impugned order, there was no occasion to hold any enquiry.

39] In the case in hand since the order of discharge was passed by the State Government i.e. appointing authority on reference from the High Court, after the Administrative Committee of the High Court had considered all the relevant material and formed an opinion that the Petitioner is not suitable for the post which was accepted by the State Government. The impugned order is in consonance with Rule 14 of the MJS Rules and the same is simpliciter discharge and the same, in our opinion is justified in the present case.

40] The learned Senior Counsel for the second respondent was justified in placing reliance on the ratio laid down in the case of **Abhijit Gupta** (supra). In para Nos. 11 and 12, the Hon'ble Apex Court, held thus :-

"11. Having observed thus, the Court formulated the

judicial test to determine as to on which side of the fence the case lay, in the following words (vide para 21):

> "21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.
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> 9. It referred to Dipti Prakash Banerjee and pointed out that in Dipti Prakash Banerjee the termination letter expressly made reference to an earlier letter which had explicitly referred to all the misconducts of the employee and a report of an inquiry committee which had found that the employee was guilty of misconduct and so the termination was held to be stigmatic and set aside. Finally, this Court said that whenever a probationer challenges his termination the court's first task will be to apply the test of stigma or the 'form' test. If the order survives this examination the "substance" of the termination will have to be found out.

41] In this case, the impugned order and the record makes it clear that since it is simpliciter termination, it cannot be said that the same is stigmatic or is issued by way of punishment. There was no full scale formal enquiry into the allegations involving moral turpitude or misconduct of the petitioner which culminated in the finding of guilt. In absence of these three factors, as per the ratio quoted above, the impugned order cannot be termed as stigmatic. The impugned order is neither punitive nor stigmatic, the same is not vitiated on the basis

of alleged violation of principles of natural justice. This Court in the case of **Girish Satyanarayan Shukila** (supra) in para 23 has held thus :-

> "23. ... ...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 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 5th 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 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"

The above observations are applicable to the facts of the present case.

42] This Court, in **Smita Rajendra Kadu** (supra), has held as under:-

> "High Court performs a solemn duty to evaluate and appraise the services of a judicial officer before confirming him or her in service. The District Judiciary is foundation of our judicial system and is positioned at the primary level of entry. It is, therefore, obligatory for the High Court to evaluate and assess the performance of officers of district judiciary. The suitability for confirmation in service or continuation in service is an important function of High Court on administrative side. The High Court is duty bound to protect honest and hard working judicial officers. When complaints against judicial officers are found to be motivated

> or false and vexatious, then the High Court has ignored them. One must presume and in absence of any material to the contrary that the High Court protects the interests of members of the District Judiciary. Eventually High Court is expected to act as patriarch and is in a position as a parent guiding the pupil. The petitioner has not been confirmed in service. There is no communication or letter to that effect. There is nothing like deemed confirmation in the law. She was on probation. The authorities were duty bound to assess her performance and to find out whether she is suitable for confirmation in judicial service. That is an obligation and trust which the High Court discharges, and for protecting the larger public interest. After having found that she was qualified and eligible, the petitioner was appointed. Like any other judicial officer she was appointed on probation. After she joined the initial posting, she came to be transferred. Like all other judicial officers, the High Court was duty bound to assess her performance. All Judicial officers in the District Judiciary irrespective of their caste, creed, sex and religion go through similar process. None has ever questioned the same on the ground of a gender or caste discrimination. All concerned must remember that Higher Judiciary is acting free of such prejudice or bias in above matters and none has accused it of the same till date. The probation period of the petitioners has been terminated in exercise of powers under Rule 13(4)(ii)(b) after overall assessment of her performance. It is nothing but a discharge simpliciter of a probationer during probationary period."

43] On going through the record of the case, we are of the view that the impugned order was passed taking into consideration the overall performance, conduct and the suitability of the petitioner for the job. While taking such decision neither notice is required to be given to the petitioner nor opportunity of being heard is required to be given, since the case of the petitioner is not of removal or it cannot be termed as stigmatic/punitive, the same is of simple discharge of

petitioner from service. It cannot be termed as removal for any misconduct or on the ground of indiscipline. While judging performance of the petitioner overall suitability, performance record, so also reports from higher authorities were called and were looked into before arriving at the decision of discharging the petitioner from service. In this view of the matter also no fault can be found with the impugned decision.

44] In view of above discussion, we find no merit in the writ petition and it is liable to be dismissed. Hence the following order.

ORDER

I] The Writ Petition is dismissed.

II] Rule is discharged. Therefore, there shall be no order as to costs.

[N. B. SURYAWANSHI, J.] **[S. S. SHINDE, J.]**