Neutral Citation No. - 2025:AHC-LKO:14635-FB

Reserved on 06.02.2025
Delivered on 10.03.2025

(1) **Case** :- Writ A No. - 2001502 of 2014

Petitioner :- Sudhir Mishra

Respondent :- State Of U.P.Thru Prin.Secy.Appointment Deptt.Lucknow & Ors.

Counsel for Petitioner :- Naveen Kumar Sinha,Mudit Agarwal

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,U.N. Misra

Connected with

(2) **Case** :- Writ A No. - 2001775 of 2014

Petitioner :- Asha Ram Pandey

Respondent :- State Of U.P. Thru Prin.Secy.Appointment Deptt.Lko. & Ors.

Counsel for Petitioner :- Amar Singh

Counsel for Respondent :- C.S.C., Gaurav Mehrotra, U.N. Misra

(3) **Case** :- Writ A No. - 2001776 of 2014

Petitioner :- Akhilesh Kumar Sharma

Respondent :- State Of U.P. Through Prin. Secy. Appointment Deptt. Lko. &

Counsel for Petitioner :- Amar Singh

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra, U.N.Mishra

(4) **Case** :- Writ A No. - 2001811 of 2014

Petitioner :- Ashtosh Tripathi

Respondent :- State Of U.P. Through Prin. Secy. Appointment Deptt. Lko. &

Counsel for Petitioner :- Surya Mani Royekwar,Dr. Deepti Singh

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra, U.N.Mishra

(5) **Case** :- Writ A No. - 2001356 of 2015

Petitioner :- Mukesh Kumar & Anr.

Respondent :- State Of U.P. Thru. Prin.Secy. Appointment,Lucknow & 2 Ors.

Counsel for Petitioner :- Sandeep Dixit, Mohd. Anas Khan, Varadraj Shreedutt Ojha

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,U.N. Mishra

AND

(6) **Case** :- Writ A No. - 2001357 of 2015

Petitioner :- Hirdesh Kumar & Anr.

Respondent :- State Of U.P. Thru. Prin.Secy. Appointment,Lucknow & 2 Ors.

Counsel for Petitioner :- Akhilesh Kalra,Avinash Chandra

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra

Hon'ble Jaspreet Singh,J.

Hon'ble Manish Mathur,J.

Hon'ble Subhash Vidyarthi,J.

(Delivered by Hon'ble Manish Mathur,J.)

1. These petitions have been placed before this Full Bench due to difference of opinion between two Hon'ble Judges earlier hearing the matters.

2. Considering the same, vide order dated 11.12.2018 records were required to be placed before Hon'ble the Chief Justice for nomination of Larger Bench in terms of Chapter VIII Rule 3 of Allahabad High Court Rules 1952 whereafter the Full Bench has been constituted in terms of order dated 13.11.2019 and reconstituted vide order dated 16.8.2023 by Hon'ble the Chief Justice. Vide order dated 12.8.2021, writ petitions No. 1502 (S/B) of 2014 (now Writ A No. 2001502 of 2014) titled Sudhir Mishra versus State of U.P. and others and Writ Petition No.1356 (S/B) of 2015 (now Writ A No. 2001356 of 2015) titled Mukesh Kumar versus State of U.P. and others were directed to be leading petitions of the Bunch. However subsequently Writ Petition No. 1356 (S/B) of 2015 (now Writ A No. 2001356 of 2015) was dismissed as withdrawn vide order dated 31.1.2020 regarding petitioner No.2 Shobhit Sourav and survives regarding petitioner No.1 Mukesh Kumar and Writ Petition No. 1357 (S/B) of 2015 (now Writ A No. 2001357 of 2015) was dismissed as withdrawn vide order dated 12.8.2021 pertaining to petitioner No.1 Hirdesh Kumar and survives with regard to petitioner No.2 Himanshu Mishra.

3. Heard Mr. J.N. Mathur Senior Advocate assisted by Mr. Mudit Agarwal, Mr. Akhilesh Kalra, Mr. S.M. Singh Roykwar, Mr. Avinash Chandra, Advocates & Mr. Sandeep Dixit Senior Advocate assisted by Mr. V.S.Ojha Advocate appearing on behalf of petitioner and Mr. Gaurav Mehrotra Advocate as well as Mr. Ajay Kumar Singh Tomar learned State Counsel appearing on behalf of opposite parties.

4. Petitions have been filed assailing the order dated 22.9.2014 whereby services of petitioners have been discharged under Rule 24(4) of the U.P. Judicial Service Rules, 2001. In certain petitions, the inquiry report dated 12.9.2014 and the proceedings of Full Court dated 15.9.2014 have also been challenged.

5. In writ petition No. 1356(S/B) of 2015 (now writ A No. 2001356 of 2015) and writ petition No.1357 (S/B) of 2015 (now writ A No. 2001357 of 2015), order of discharge simpliciter dated 15.6.2015 and the Full Court resolution dated 23.5.2015 is under challenge.

6. Shorn of verbiage, facts of the case as narrated are that the petitioners after clearing the Provincial Civil Services (Judicial) Examination joined their posts of Additional Civil Judge in 2013 and at the time of passing of impugned order's were holding the post of Civil Judge (Junior Division). While discharging their functions as Civil Judge, an induction training programme was conducted for their batch in the Institute of Judicial Training and Research, Lucknow during the period 9.6.2014 to 8.9.2014. On the eve of last day of training i.e. 7.9.2014, the petitioners along with their colleagues numbering 15 persons went for dinner at the Charan Club and Resort situate on Faizabad Road, Lucknow.

7. As per contents of petitions, during the course of dinner, an altercation took place between Mr. Akhilesh Kumar Sharma and Mr. Asha Ram Pandey on one side and Mr. Ashwani Panwar, Mr. Bhanu Pratap Singh and Mr. Rahul Singh on the other side. It is stated that although the altercation resulted in a scuffle between the parties but the same was resolved amicably on the next day with the said persons apologizing to one another.

8. Apparently information pertaining to the said incident was provided to the Registrar General of the High Court on 8.9.2014 telephonically whereafter a note was put up before Hon'ble the Chief Justice who vide order dated 9.9.2014 directed the Senior Registrar (Judicial) to submit a report.

9. In pursuance to directions of Hon'ble the Chief Justice, the Senior Registrar (Judicial) submitted an inquiry report dated 12.9.2014 verifying the incident while indicating that the scuffle had taken place initially at the said resort and was continued subsequently in the premises of the Institute.

10. Upon receipt of report, the Administrative Committee of the High Court considered the report in its meeting held on 15.9.2014 and resolved to place the matter before Full Court of the High Court for discussion and subsequent action.

11. Accordingly the report of Senior Registrar (Judicial) was put up before the Full Court of the High Court and after deliberation upon the same, vide resolution dated 15.9.2014, it was resolved that 11 probationers i.e. (Mr. Akhilesh Kumar Sharma, Mr. Asharam Pandey, Mr. Ashutosh Tripathi, Mr. Ashwani Panwar, Mr. Bhanu Pratap Singh, Mr. Kshitish Pandey, Mr. Rahul Singh, Mr. Ravi Kumar Sagar, Mr. Sandeep Singh , Mr. Sudheer Mishra and Mr. Vineet Kumar) be discharged from service for having failed to give satisfaction as stipulated in Rule 24(4) of the Rules and accordingly orders for discharge simpliciter of the said Probationary Judicial officers was recommended to be issued under Rule 24(4) of the U.P. Judicial Service Rules, 2001.

12. Subsequently the cases of four other probationers namely Mr. Mukesh Kumar, Mr. Hirdesh Kumar, Mr. Shobhit Sourav and Mr. Himanshu Mishra were considered by the Full Court which vide its resolution dated 23.5.2015 recommended discharge simpliciter of the said probationers, in pursuance of which discharge orders dated 15.6.2015 were passed which are under challenge.

13. Since aforesaid petitions involved same cause of action, they have been clubbed and are being decided by this common judgment.

14. Mr. J.N. Mathur Learned Senior Counsel has submitted that although the order of discharge indicates that services of petitioners have been

discharged by a simpliciter order in terms of Rule 24(4) of the Rules of 2001 but effectively said orders are punitive in nature and have been passed without any inquiry or opportunity of hearing being provided. It is submitted that order of discharge is in fact a camouflage and has not been passed simpliciter although worded simply. As such it is submitted that this court is required to lift the veil in order to ascertain the punitive nature of impugned orders. Learned counsel has further submitted that in case the legal proposition of lifting of veil is resorted to, it would be evident that the impugned order of discharge is based primarily on the report dated 12.9.2014 submitted by the Senior Registrar (Judicial), which in itself imputes misconduct upon the petitioners and as such it would be evident that misconduct is the foundation of the impugned order of discharge and not merely a motive due to which a proper inquiry was required to be conducted in the matter since petitioners have a fundamental right to be treated fairly in accordance with Article 14 of the Constitution of India.

15. Learned senior counsel has submitted that a perusal of the minutes of Full Court meeting indicates that there was only one incident considered in the Full Court which was also the only item indicated in the agenda for the Full Court meeting, without any analysis of performance of petitioners regarding their suitability or performance during the probation period. It is therefore submitted that since the agenda as well as resolution of Full Court meeting pertained to the one incident, it clearly was with regard to consideration of misconduct and not for assessing their suitability for the purposes of confirmation.

16. He has also submitted that so far as Full Court meeting dated 15.9.2014 is concerned, it pertained to consideration of only five people and that too only on the basis of report dated 12.9.2014 which also clearly indicates that there was no application of mind with regard to the other persons and is based only on one incident.

17. Learned Senior Counsel has also submitted that the impugned order of discharge has painted all the petitioners by the same brush completely ignoring the fact that there were in fact three different categories of probationers viz aggressors, victims and bystanders and such a segregation was required pertaining to the petitioners even if misconduct was not being imputed. The aforesaid segregation not having been resorted to, is clearly arbitrary and whimsical whereby again provisions of Article 14 have been violated.

18. It has been submitted that even the contents of counter affidavit filed by opposite parties clearly demonstrates and corroborates the fact that order of discharge was due to misconduct being imputed against petitioners and as such the discharge was not simpliciter in nature. It has also been submitted that although by means of Full Court resolution dated 15.9.2014, 11 probationers had been recommended to be discharged from service but subsequently the remaining four probationers were also removed from service as per the inquiry report dated 27.1.2015. Learned Senior Counsel has relied upon various judgments of Hon'ble Supreme Court to buttress his submissions.

19. Mr. Sandeep Dixit learned Senior Counsel while adopting the arguments of Mr. J.N. Mathur has further elaborated that the conduct required to be seen under Rule 22 (3) of the Rules of 2001 pertains to work being performed by the probationers and not otherwise. It is submitted that misconduct during discharge of duties forms the motive of the dismissal order while any such misconduct outside the discharge of duties forms the foundation of the discharge thereby requiring a full-fledged inquiry in the matter. He has also submitted that Full Court resolution itself makes it evident that discharge of probationers has been recommended only on the basis of report dated 12.9.2014 and the work and conduct of petitioners during their entire period of probation has not been evaluated by the Full Court.

20. Learned Senior Counsel submits that with regard to inquiry report dated 27.1.2015, the same did not pertain to all the persons and straightaway the administrative committee recommendations were made and Full Court resolution in pursuance thereof was passed. It is therefore submitted that the discharge dated 15.6.2014 is only on the basis of inquiry report dated 27.1.2015 which clearly pertains to only one incident and amounts to consideration of misconduct. It is submitted that the same can not even be the foundation under Rule 24(4) of the Rules of 2001. It is also submitted that the impugned order does not indicate any qualitative examination of merits or performance of the petitioners and since it is based only on one incident and the inquiry report pertaining to only the said incident, misconduct is the foundation and not merely motive of the impugned order and this Court would be empowered to lift the veil in order to ascertain that the impugned orders are stigmatic and punitive although couched in a language indicating termination simplicitor.

21. It is also submitted that the inquiry report as well as the Full Court resolution have been passed only on the basis of presence of petitioners at the incident without even ascertaining their participation or any finding with regard thereto, therefore in the absence thereof, allegations levelled against petitioners are not even worthy of inquiry.

22. It is also submitted that since the discharge of petitioners from service is on the basis of misconduct, as such a reasonable opportunity of being heard was required to be given in terms of Article 311(2) of the Constitution of India.

23. Learned counsel appearing for other petitioners in connected writ petitions have adopted the submissions of Mr. J.N. Mathur and Mr. Sandeep Dixit.

24. Mr. Avinash Chandra learned counsel appearing for petitioner in writ petition No.1357(S/B) of 2015 (now writ A No.2001357 of 2015) submits that since allegations have been levelled against petitioners in paragraph

22 of the counter affidavit pertaining to misconduct as per Rule 4(A) of the Conduct of the U.P. Government Servants Conduct Rules 1956, the protection indicated under Article 311(2) of the Constitution of India was clearly applicable. He has also adverted to the supplementary affidavit dated 1.9.2021 to submit that the fact that the discharge was not merely simplicitor would be evident from the fact that for subsequent employment, petitioner has been refused joining only on the ground of the impugned dismissal order.

25. Mr. S.M. Singh Royekwar learned counsel for petitioner appearing in writ petition No.1811(S/B) of 2014 (now writ A No.2001811 of 2014) while adopting submissions of his predecessors, in addition thereto submits that the agenda and Full Court meeting even otherwise are contrary to Rules 5,11, 12 and 16 of the Allahabad High Court Rules 1952 inasmuch as the impugned resolution as well as counter affidavit are conspicuously silent on the mode and manner in which the meeting of administrative committee had taken place as to whether it was by way of circulation or transacted in a meeting. It is also submitted that the Full Court meeting can be assumed to be held within 15 minutes of conclusion of administrative committee meeting which is against Rule 11 of the Rules which clearly mandates three days clear notice for a Full Court meeting except in the case of an emergency, which was not the case here. He has also adverted to Rule 12 of the Rules of 1952 to submit that the meeting and counter affidavit are also silent with regard to quorum required. Learned counsel submits that although Rule 16 of the Rules of 1952 saves the proceeding but it cannot be construed to prima facie give a license for by passing any rules or procedure and such an interpretation must be shunned since a procedure as prescribed is required to be adhered to.

26. Mr. Gaurav Mehrotra learned counsel for High Court rebutting the submissions of learned counsel for petitioners has submitted that a bare perusal of the impugned order would make it evident that discharge of

petitioners is simpliciter without any comment being made on their conduct or otherwise. It is further submitted that there is no vested right for a probationer to continue in service if his work and conduct during the period of probation is found to be unsatisfactory. It has also been submitted that the inquiry conducted by the Senior Registrar (Judicial) was only for purposes of verification of the incident without any probe pertaining to misconduct of any particular probationer and therefore since the purpose of inquiry was only to ascertain and verify the incident, there is no stigma attached to the discharge order therefore the entire submission pertaining to motive and foundation of the impugned discharge order is irrelevant.

27. It has been further submitted that the said inquiry conducted by the Senior Registrar (Judicial) was only a discreet fact finding inquiry, which can not be termed even to be a preliminary inquiry and as such the discharge order has been passed in terms of Rule 24 (4) of the Rules of 2001 since the petitioners while discharging their duties as probationers failed to give satisfaction. In the alternative, it is submitted that even one such incident as verified by the inquiry report is enough for a simpliciter discharge under Rule 24 of the Rules of 2001.

28. It has further been submitted that the impugned order is even otherwise not stigmatic in view of amendment in Rule 24 (5) of the Rules of 2001 whereunder now a probationer discharged simpliciter would be eligible for reappointment to the service as evident since some of the discharged probationers have subsequently been appointed in judicial service. It is also asserted that consumption of intoxicating drinks and drugs is a misconduct in terms of Rule 4(A) of U.P. Government Servants Conduct Rules, 1956.

29. It is submitted that the second inquiry was only for the purposes of ascertainment of the role of Senior Judicial Officers of the institute and not for the four probationers whose names surfaced during the inquiry. It is submitted that said inquiry therefore was only for the purposes of

verification of the incident and not for establishing guilt of any particular person due to which the impugned discharge is only simplicitor since it was only for consideration of suitability for confirmation. He has submitted that a person appointed as a Judge is required to have a stellar reputation and conduct which is a must and therefore without going into the aspect of misconduct, performance of probationers was the only aspect under consideration which can not be termed as stigmatic.

30. Learned counsel has adverted to the following judgments:-

Rajesh Kohli versus High Court of J&K, (2010) 12 SCC 783; Parshotam Lal Dhingra versus Union of India A.I.R. 1958 Supreme Court 36; Municipal Committee, Sirsa versus Munshi Ram, (2005) 2 SCC 382; Pavanendra Narain Verma versus Sanjay Gandhi Post Graduate Institute of Medical Sciences (2002) 1 SCC 520; Rajendra Singh Verma versus Lieutenant Governor and others (2011) 10 SCC 1; Daya Shankar versus High Court of Allahabad and others (1987) 3 SCC 1; R.C. Chandel versus High Court of M.P., (2012) 8 SCC 58.

31. Mr. Ajay Kumar Singh Tomar learned Additional Chief Standing Counsel on the basis of counter affidavit has sought to defend the impugned orders primarily on the ground that discharge orders have been passed in pursuance of the Full Court resolution of the High Court in terms of Rule 24(4) of the Rules of 2001. It is submitted that since the initial order dated 19.9.2014 was found to be defective, a request was made by the High Court to pass amended orders as per Full Court resolution dated 15.9.2024 and in pursuance thereof, the discharge orders have been passed. It is submitted that since discharge of petitioners was only in terms of the Rule 24(4) of the Rules of 2001 pertaining only to confirmation or otherwise in service, neither any inquiry nor any opportunity of hearing was required to be accorded to petitioners since the orders indicate discharge from service simplicitor.

32. Lastly it is submitted that ample material was available before the Full Court to ascertain suitability of petitioners to continue in service

upon conclusion of their probation period, which was seen in terms of the inquiry report and as such no inference can be drawn that the discharge orders have been passed pertaining to their misconduct since in fact over all situation was seen by the Full Court.

33. Upon consideration of submission advanced by learned counsel for parties, the following questions arise for determination in the present Bunch of petitions:-

> (A) Whether impugned order discharging services of petitioners as probationer can be termed to be simpliciter or stigmatic in nature, thereby requiring inquiry?
>
> (B) Scope of the maxim *'audi alterm partem'* as envisaged in Article 14 read with Article 311 (2) of the Constitution of India regarding discharge of probationers from service.

Question No.(A)

34. From the material on record, particularly the counter affidavit filed by High Court, it is evident that upon obtaining knowledge pertaining to the incident in question, the Senior Registrar (Judicial) was required to submit a report. The report was submitted on 12.9.2014. The opening paragraph of the inquiry report conveys that a discreet inquiry had been directed vide order dated 9.9.2014 by Hon'ble The Chief Justice based on a report submitted by the Registrar General pertaining to an alleged incident occurring on 7.9.2014 at Charan Restaurant, Hazratganj, Lucknow whereby a group of trainee officers who had dined there consumed liquor whereafter some altercation took place amongst them in reference to a lady officer undergoing training with them and resultantly a scuffle also took place. Thereafter they came back to the Institute. The inquiry report dated 12.9.2014 thereafter indicates collection of electronic and documentary evidence pertaining to the incident and upon analysis of evidence the Enquiry Officer reached a conclusion that such an incident had actually taken place on 7.9.2014 in Charan Club and Resort,

Faizabad Road, Lucknow whereby consumption of liquor by all the officers present in the restaurant was categorically confirmed by the staff with altercation and scuffle having taken place. In conclusion, the report clearly indicted Mr. Ashwani Panwar, Mr. Bhanu Pratap Singh and Mr. Rahul Singh as initiators of the altercation with Mr. Akhilesh Kumar Sharma and Mr. Asha Ram Pandey being the victims. Report in its penultimate paragraph states that the matter appears to be quite serious and requires a judicial frown else it will spell wrong message in the society. The said report by the Senior Registrar (Judicial) was thereafter placed before the Administrative Committee of the High Court on 15.9.2014 which resolved that the report dated 12.9.2014 be accepted and the matter be referred to the Full Court for discussion.

35. In pursuance to the resolution of Administrative Committee dated 15.9.2014, the matter was placed before the Full Court on 15.9.2014 itself. The agenda and resolution of the meeting of Full Court are as follows:-

Sl. No.	***AGENDA***	***RESOLUTION***
1.	*1 Suitability of the probationary Judicial Officers, namely, Sri Ashwani Panwar, Additional Civil Judge (Junior Division), Lakhimpur Kheri, Sri Bhanu Pratap Singh, Additional Civil Judge (Junior Division), Bahraich, Sri Asha Ram Pandey, Judicial Magistrate, Maharajganj, Sri Rahul Singh, Judicial Magistrate, Auraiya and Sri Ashutosh Tripathi, Civil Judge (Junior Division), Azamgarh.* *2. Any other matter with the permission of the Chair.*	*Considered the report dated 12.9.2014 submitted by Smt.Rekha Dixit, Senior Registrar (Judicial) (Budget)(Recruitment Cell), High Court. Allahabad.*

	Consideration of report dated 12 September 2014 submitted by Smt. Rekha Dixit, Senior Registrar (Judicial) (Budget)(Recruitment Cell), High Court, Allahabad	*The meeting of the Full Court commenced at 4.30 p.m. A live video link between the Hon'ble Judges at Allahabad and Lucknow was established.* *The Chief Justice opened the discussion by elaborating upon the nature of the power conferred by Rule 24(4) of the Uttar Pradesh Judicial Service Rules, 2001, which provides as follows:* *"24.Probation-(1)* *.....* *4. If, it appears, to the Court at any time during or at the end of period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, it may, make recommendation to the appointing authority whereupon the probationers shall be discharged from the service by the appointing authority."* *The letters of appointment issued to the probationers stipulate that their appointments are temporary in nature and that until they are permanently appointed, their conditions of service would be governed by the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975, notified on 11 June 1975. The Chief Justice while elaborating on the power conferred upon the HIgh court to asses the suitability of a probationer for continuance in service drew attention to sub-rule (4) of Rule 24, under which the High Court may make a recommendation to the appointing authority for the discharge of a probationer from service, where the probationer has "otherwise failed to give satisfaction" during the term of the probationary appointment. The position of a probationer has been laid down by the judgment of a Constitution Bench of the Supreme Court in State of Bihar Vs. Gopi Kishore Prasad (AIR 1960 SC 689) and in a judgment of Seven Hon'ble Judges of the Supreme Court in Shamsher Singh Vs. State of Punjab (AIR 1974 SC 2192) which have been followed since. The present meeting, the Chief Justice noted, was only confined to determining the suitability of the probationers.* *The report submitted by the Senior Registrar (Judicial), dated 12 September 2014 had been*

		circulated to all the judges for the purposes of determining the suitability of the probationary judicial officers for their continuance in service. *The Chief Justice invited participation by the Hon'ble Judges, both at Allahabad and Lucknow. The Hon'ble Judges who wished to place their views before the Full Court both at Allahabad and Lucknow placed their views before the Full Court. The discussions which commenced at 4.30 pm continued until 6.00 pm. during the course of the discussion, the suitability for continuance in service of the following probationary judicial officers was considered;* *1. Sri Akhilesh Kumar Sharma* *2. Sri Asharam Pandey,* *3.Shri Ashutosh Tripathi* *4. Sri Ashwani Panwar* *5. Sri Bhanu Pratap Singh* *6. Sri Kshitish Pandey* *7. Sri Rahul Singh* *8. Sri Ravi Kumar Sagar* *9. Sri Sandeep Singh* *10.Sri Sudheer Mishra* *11.Shri Vineet Kumar* *The Full Court resolved that the aforesaid 11 probationers be discharged from service for having failed to give satisfaction, as stipulated in Rle 24(4) and that a recommendation to that effect be submitted to the appointing authority. All the probationers, who are to be discharged from service, should be paid one month's pay plus allowances in lieu of notice.* *Accordingly, orders for the discharge simpliciter of the aforesaid probationary judicial officers be recommended to be issued by the appointing authority under Rule 24(4) of the Uttar Pradesh Judicial Service Rules, 2001.*

36. Thereafter due to letter written by an Hon’ble Judge of the High Court dated 15.9.2014 requiring further inquiry over and above inquiry report dated 12.9.2014, Hon’ble the Chief Justice vide order dated 29.10.2014 directed a vigilance inquiry be conducted with regard to role

of senior judicial officers of the institute. The inquiry officer submitted his report on 27.1.2015 concluding and indicting senior judicial officers of the institute to the effect that their work was not with devotion, sincerity and responsibility. The aforesaid report was placed before the Full Court meeting on 23.5.2015 and vide recommendation of the same date, the said four probationers were recommended to be discharged simpliciter in terms of Rule 24(4) of the Rules of 2001. Excerpt from the Minutes of the Full Court Meeting dated 23.5.2015 are as follows:-

"AGENDA *RESOLUTION*

2.	*Sri Mukesh Kumar, Additional Civil Judge (Junior Division), Pratapgarh, Sri Hirdesh Kumar, Judicial Magistrate, Jalaun at Orai, Sri Shobhit Sourav, Civil Judge (Junior Division), Shravasti at Bhinga and Sri Himanshu Mishra, Additional Civil Judge (Junior Division), Basti.* *Consideration of the Vigilance report dated 27.1.2015 submitted by Sri Sanay Kumar Pachori, O.S.D.(Enquiry), High Court, Allahabad pursuant to the Administrative Committee's Resolution dated 5.2.2015.*	*Resolved that the following four probationers:* *1 Sri Mukesh Kumar* *2 Sri Hirdesh Kumar* *3 Sri Shobhit Sourav and* *4 Sri Himanshu Mishra* *be discharged from service for having failed to give satisfaction, as stipulated in Rule 24(4) of the Uttar Pradesh Judicial Service Rules, 2001 and that a recommendation to that effect be submitted to the appointing authority. The probationers, who are to be discharged from service, should be paid one month's pay plus allowances in lieu of notice.* *Let orders for discharge simpliciter of the aforesaid probationary judicial officers be recommended to be issued by the appointing authority."*

37. On the basis of Full Court resolution dated 23.5.2015, the impugned order dated 15.6.2015 was passed discharging the subsequent four probationers from service.

38. Considering the aforesaid facts, it is evident from the record that suitability of the probationary Judicial officers was considered by the

Full Court only in the context of report dated 12.9.2014 submitted by the Senior Registrar (Judicial) and the report dated 27.1.2015 submitted by the O.S.D. (Inquiry). The resolution of the Full Court does not indicate consideration of any other report or evaluation of work and conduct of petitioners during the course of probation. The recommendation for discharge simpliciter of the Probationary Judicial Officers i.e. the petitioners was recommended to be issued in terms of Rule 24(4) of the Rules of 2001.

39. Provisions pertaining to discharge simpliciter of Probationary Judicial officers is ensconced in Rule 24 of the U.P. Judicial Service Rules 2001 which reads as follows:-

> *"24. Probation -(1) All persons shall, on appointment to the serving in the substantive vacancies, be placed on probation. The period of probation shall, in each case, be two years.*
>
> *(2) The Court may, in special cases, extend the period of probation upto a specified date.*
>
> *(3) An order extending period of probation shall specify whether or not such extension shall count for increment in the time-scale.*
>
> *(4) If, it appears, to the Court at any time during or at the end of period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, it may make recommendation to the appointing authority whereupon the probationers shall be discharged from the service by the appointing authority.*
>
> *(5) A person, whose services are dispensed with under sub-rule (4) shall not be entitled to compensation and shall also not be eligible for reappointment to the service."*

40. A perusal of the aforesaid Rule, particularly Sub Rule 4 makes it evident that the court at any time during or at the end of period of probation or extended probation shall have the option to recommend discharge of a probationer from service on the ground that such a probationer has not made sufficient use of the opportunities or has otherwise failed to give satisfaction.

41. The recommendation of the Full Court dated 15.9.2014 is to be seen in the context of Rule 24(4) of the Rules of 2001. As noticed herein

above, it is apparent that while recommending discharge of petitioners from service, only the report of Senior Registrar (Judicial) dated 12.9.2014 has been considered by the Full Court. From a reading of the resolution dated 15.9.2014, it can not be said that any other aspect pertaining to work and conduct of petitioners was considered by the Full Court prior to recommending their discharge from service.

42. However, the penultimate recommendation to the appointing authority is that orders for discharge simpliciter of the Probationary Judicial Officers be issued. In terms thereof, the State Government vide notification dated 22.9.2014 has discharged the petitioners under Rule 24(4) of the Rules of 2001.

43. Although the impugned order of discharge does not reflect upon any misconduct of the petitioners and merely discharges their services simpliciter, the aspect required to be considered is whether the discharge order, though couched in simpliciter terms, is in fact based on the report dated 12.9.2014 pertaining to a single incident of altercation and scuffle between some of the petitioners and further more whether such discharge order can be said to have been passed with misconduct of petitioners as its foundation thereby requiring a proper inquiry and opportunity of being heard prior to passing of discharge order.

Citations relied upon by parties

44. One of the earliest enunciation of law on the aspect of applicability of Article 311(2) of Constitution of India is by Supreme Court in **Parshotam Lal Dhingra versus Union of India A.I.R. 1958 Supreme Court 36** in which it has been held that although the right to terminate employment of probationary or temporary service is inherent in an employer but in case the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is punishment and requirements of Article 311 must be complied with. Relevant paragraph of the judgment is as follows:-

> ***"28.*** *The position may, therefore, be summed up as follows : Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. Union of India [(1953) 1 SCC 420 : (1953) SCR 655] . Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh [(1955) 1 SCR 26] . In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India [LR 58 Bom 673 : AIR (1956) Bom 455] wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with."*

45. With regard to aforesaid aspect, Hon'ble the Supreme Court in the case of **Samsher Singh versus State of Punjab and another (1974) 2 Supreme Court Cases 831** held as follows:-

> ***"79.*** *The Enquiry Officer nominated by the Director of Vigilance recorded the statements of the witnesses behind the back of the appellant. The enquiry was to ascertain the truth of allegations of misconduct. Neither the report nor the statements recorded by the Enquiry Officer reached the appellant. The Enquiry Officer gave his findings on allegations of misconduct. The High Court accepted the report of the Enquiry Officer and wrote to the Government on June 25, 1969 that in the light of the report the appellant was not a suitable person to be retained in service. The order of termination was because of the recommendations in the report.*
>
> ***80.*** *The order of termination of the services of Ishwar Chand Agarwal is clearly by way of punishment in the facts and circumstances of the case. The High Court not only denied Ishwar Chand Agarwal the protection under Article 131 but also denied itself the dignified control over the subordinate judiciary. The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of*

misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside."

46. Similarly Hon'ble the Supreme Court in the case of **Anoop Jaiswal versus Government of India 1984 (2) Supreme Court Cases 369** held as follows:-

"12. *It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."*

47. Subsequently Hon'ble the Supreme Court in the case of **Dipti Prakash Banerjee versus Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others (1999) 3 Supreme Court Cases 60** held as follows:-

"21. *If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were 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 enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.*

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34. *It will be seen from the above case that the resolution of the Committee was part of the termination order being an enclosure to it. But the offensive part was not really contained in the order of termination nor in the resolution which was an enclosure to the order of termination but in the Manager's report which was referred to in the enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager's report were the basis for the termination and the said report contained words amounting to a stigma. The termination order was, as stated above, set aside.*

35. *The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be*

contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma."

48. In the case of **Nar Singh Pal versus Union of India (2000) 3 Supreme Court Cases 588** the Supreme Court relied upon the earlier judgment in Gujarat Steel Tubes Limited versus Mazdoor Sabha the relevant portion of which is as follows:-

"9. *We may, at this stage, refer to the observations of Krishna Iyer, J. in Gujarat Steel Tubes Ltd. v. Mazdoor Sabha [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] , in which the learned Judge observed as under: (SCC p. 617, para 53)*

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."

(emphasis supplied)"

49. In the judgment of **Registrar General High Court of Gujarat versus Jayshree Chamanlal Buddhbhatti (2013) 16 SCC 59** the Supreme Court has invoked the doctrine of lifting of veil to go behind the formal order of discharge to find out the real cause of action and as to whether it would form the foundation or motive for the order of discharge and has held as follows:-

> ***"28.*** *These propositions have been reiterated in a number of judgments thereafter, and the counsel for the respondent referred to Anoop Jaiswal v. Govt. of India [(1984) 2 SCC 369 : 1984 SCC (L&S) 256] , where this Court held that, the Court can go behind the formal order of discharge to find out the real cause of action. In that matter, the order of discharge of the probationer on the ground of unsuitability was actually based upon the report/recommendation of the authority concerned indicating commission of an alleged misconduct by the probationer. The Court held that the order was punitive in nature, and in the absence of any proper inquiry it amounted to violation of Article 311(2) of the Constitution of India."*

50. In another judgment in the case of **State Bank of India and others versus Palak Modi and another (2013) 3 Supreme Court Cases 607**, the Supreme Court while holding that the probationer has no right to hold the post and that his service can be terminated at any time during or at end of period of probation on account of general unsuitability, laid down the criteria as to when an allegation of misconduct constitutes the foundation or motive for a termination order in following terms:-

> ***"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."*

51. In the case of **Ratnesh Kumar Choudhary versus Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others (2015) 15 Supreme Court Cases 151**, the ratio laid down in the case of Palak Modi (supra) was reiterated indicating distinction between a simpliciter discharge and the right of employer to discharge for any defined misconduct or misbehaviour in the following manner:-

> ***"26.*** *In the facts of Palak Modi case [SBI v. Palak Modi, (2013) 3 SCC 607 : (2013) 1 SCC (L&S) 717] , the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent*

authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct."

52. In the case of **Gujarat Steel Tubes Ltd. versus Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593** it has been held that the anatomy of a dismissal order is not a mystery once it is agreed that substance, not semblance governs the decision and as such, the form of order or language in which it is couched is not conclusive and it is for the court exercising power of judicial review to lift the veil to see the true nature of the order. It has been held that if the severance of service is effected, and if the foundation or cause of such severance is the servant's misconduct, it would form the foundation of the order. Relevant portions of the aforesaid judgment are as follows:-

"53. *Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.*

54. *On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in*

fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

53. In the case of **Rajasthan High Court versus Ved Priya 2020 SCC OnLine SC 337,** it has been held that if the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance, the veil of simpliciter termination/discharge order is required to be lifted and in such a case the misconduct would form foundation of the order. However when the discharge order is not based on any specific instance but on the basis of over all performance during the period of probation, the theory of order being punitive will not be attracted. Relevant portion of the aforesaid judgment is as follows:-

"24. *Even otherwise, it may not be true that just because there existed on record some allegations of extraneous considerations that the High Court was precluded from terminating the services of Respondent No. 1 in a simplicitor manner while he was on probation. The unsatisfactory performance of a probationer and resultant dispensation of service at the end of the probation period, may not necessarily be impacted by the fact that meanwhile there were some complaints attributing specific misconduct, malfeasance or misbehavior to the probationer. If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of over all performance during the period of probation, the theory of action being punitive in nature, will not be attracted. Onus would thus lie on the probationer to prove that the action taken against him was of punitive characteristics."*

54. Amongst the rulings cited by learned counsel for opposite parties, the one germane to the issue is that of ***Rajesh Kohli v. High Court of J&K*, (2010) 12 SCC 783** wherein it has been held that 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. It has been further held that the High Court has a solemn duty to consider and appreciate the service of a judicial officer before confirming him in service. Public perception of the judiciary

matters just as much as its role in dispute resolution. Relevant portions of the judgment are as follows:-

> ***"31.*** *The High Court has a solemn duty to consider and appreciate the service of a judicial officer before confirming him in service. The district judiciary is the bedrock of our judicial system and is positioned at the primary level of entry to the doors of justice. In providing the opportunity of access to justice to the people of the country, the judicial officers who are entrusted with the task of adjudication must officiate in a manner that is becoming of their position and responsibility towards the society.*
>
> ***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 transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct."*

55. However in the aforesaid judgment also it has been held that around time of completion of probation period, an assessment of work and conduct during the period of probation is to be made and it is on such assessment that a decision regarding discharge or confirmation is required. The judgment also indicates that for the said purpose consideration of records of service are necessary. The relevant paragraphs 18 and 19 of the judgement are as follows:-

> ***"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.*
>
> ***19.*** *The aforesaid resolution taken by the Full Court on its administrative side clearly indicates that the matter regarding his confirmation or otherwise or extension of his probation period for another one year was considered by the Full Court but since his service was not found to be satisfactory on consideration of the records, therefore, the Full Court decided not to confirm him in service and to dispense with his service and accordingly recommended for dispensation of his service. On the basis of the aforesaid recommendation of the High Court, an order was passed by the Government of Jammu and Kashmir dispensing with the service of the petitioner."*

56. Emphasis has also been laid on the judgment of **Krishnadevaraya Education Trust & Another versus L.A. Balakrishna (2001) 9 SCC 319** to submit that during period of probation, the probationer is on test and if his services are not found to be satisfactory, the employer has in terms of letter of appointment, the right to terminate his services.

57. Reliance has also been placed on the judgment of **H.F. Sangati v. Registrar General, High Court of Karnataka, (2001) 3 SCC 117** in which following has been held:-

> ***"8.*** *It is well settled by a series of decisions of this Court including the Constitution Bench decision in Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36 : 1958 SCR 828] and seven-Judge Bench decision in Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] , that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In Samsher Singh case [AIR 1958 SC 36 : 1958 SCR 828] it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post; the competent authority may come to the conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation. Recently, in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences [(1999) 3 SCC 60 : 1999 SCC (L&S) 596] , having reviewed the entire available case-law on the issue, this Court has held that termination of a probationer's services, if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence would be valid. In Satya Narayan Athya v. High Court of M.P. [(1996) 1 SCC 560 : 1996 SCC (L&S) 338 : AIR 1996 SC 750] the petitioner appointed on probation as a Civil Judge and not confirmed was discharged from service in view of the non-satisfactory nature of his service. This Court held that the High Court was justified in discharging the petitioner from service during the period of probation and it was not necessary that there should have been a charge and an inquiry on his conduct since the petitioner was only on probation and it was open to the High Court to consider whether he was suitable for confirmation or should be discharged from service."*

58. Much emphasis has been laid by learned Counsel appearing for the High Court that judicial services are not ordinary government services and that a Judge holds an office of public trust; as such he must be a

person of impeccable integrity and unimpeachable independence. It is submitted that standard of conduct expected from a judge is much higher than that from an ordinary person since credibility of the judicial system is dependent upon the judges. It is submitted that the conduct of a probationer in judicial service is required to be higher than ordinary standards, failing which the services are required to be dispensed with, which can not be said to be punitive in nature. Reliance has been placed on the case of **R.C. Chandel versus High Court of M.P. (2012) 8 SCC 58**. Relevant portion of the judgment is as follows:-

> ***"29.*** *Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."*

59. However upon perusal of aforesaid judgment of R.C. Chandel (supra), it transpires that the Supreme Court interfered in the matter since the administrative decision of the Full Court to recommend compulsory retirement was made as if it was sitting as an appellate authority which was held to be beyond the scope of judicial review. Ratio decidendi of the judgement is as follows:-

> ***"34.*** *The learned Single Judge examined the administrative decision of the Full Court to recommend to the Government to compulsorily retire the appellant as if he was sitting as an appellate authority to consider the correctness of such recommendation by going into sufficiency and adequacy of the materials which led the Full Court in reaching its satisfaction. The whole approach of the Single Judge in*

consideration of the matter was flawed and not legally proper. The learned Single Judge proceeded to examine the materials by observing, "The entire record pertaining to complaints against the petitioner has also been produced before me during the course of argument by the learned Senior Counsel for Respondent 1. Thus, I am dealing with each and every complaint one by one". We are afraid, the learned Single Judge did not keep the scope of judicial review in view while examining the validity of the order of compulsory retirement. The Division Bench of the High Court in the intra-court appeal was, thus, fully justified in setting aside the impugned order [High Court of M.P. v. R.C. Chandel, Writ Appeal No. 72 of 2006, decided on 23-11-2006 (MP)] ."

60. Learned counsel for the High Court in furtherance of his submission pertaining to conduct of judicial officer has also referred to the judgments of **Rajendra Singh Verma versus Lieutenant Governor and others (2011) 10 SCC 1 and Daya Shankar versus High Court of Allahabad and others (1987) 3 SCC 1**.

61. The aspect that the conduct of a judicial officer should be unblemished goes without saying but at the same time, none of the judgments relied upon by learned counsel for opposite parties indicate any enunciation of law that discharge of a probationary judicial officer or his confirmation can be based solely on the aspect of conduct without adverting to his over all performance during the probation period.

62. In the case of **High Court of Judicature, Patna v. Shiveshwar Narayan, (2011) 15 SCC 317**, the scope of judicial review has been enunciated as follows:-

"13. *Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL)] made the following statement: (WLR p. 1161)*

"... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."

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19. *Unfortunately, the Division Bench considered the matter as if it was sitting in appeal over the decision of the High Court on administrative side which, in our view, was not permissible. The consideration of the matter by the Division Bench shows that it has gone into the correctness of the*

decision itself taken by the High Court on the administrative side and not the correctness of the decision-making process.

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22. *The present case is a case where the Division Bench embarked upon the exercise of examining each complaint and material against the Judicial Officer to find out the correctness of the decision of the Full Court which was legally not permissible. The weight of the material is not capable of reassessment while sitting in judicial review over such decision. Even if some other view is possible on the material that was considered by the Evaluation Committee and the Full Court to evaluate the Judicial Officer's case for extension of superannuation age to 60 years, in our opinion, that did not justify interference in the decision of the Full Court which was founded on material and relevant considerations."*

63. The aforesaid decision clearly propounds the distinction between judicial review and merit review while holding that consideration of a decision pertaining to a judicial review is to be seen only in the context of correctness of the decision making process and not the correctness of the decision itself. In the context of the present case, as such the aspect of judicial review can not transgress the scope of such judicial review which remains confined to evaluating the correctness of the decision making process embarked upon by the Full Court as also to examine whether the discharge of petitioners is founded on any misconduct or is based on an evaluation of over all performance of the petitioners.

64. Learned Counsel appearing for opposite parties has also placed reliance on the judgment of **Ashok Kumar Sonkar versus Union of India and others reported in (2007) 4 SCC 54** to expound the proposition pertaining to useless formality theory and requiring the petitioners to show any real prejudice that has been caused. It is submitted that earlier Rule 24(5) of the Rules, 2001 provided that in case of discharge of a probationer under Rule 24(4) of the Rules of 2001, he would not be eligible for reappointment to the service. It is submitted that subsequently on 4.9.2015, the U.P. Judicial Service (IIIrd Amendment) Rules 2015 were published whereby a person whose services are dispensed with under Rule 24(4) of the Rules shall not be entitled to compensation. The aspect that such a probationer would not be eligible for reappointment to service has been dispensed with. As such it is

submitted that no real prejudice is being caused to the petitioners since they would be re-eligible for service subsequently. In support of his submission he has submitted that some of the petitioners such as Sandeep Singh versus State of U.P and others (Writ Petition No. 1501 (S/B) of 2014), Ravi Kumar Sagar versus State of U.P and others (Writ Petition No. 1503 (S/B) of 2014), Vineet Kumar versus State of U.P and others (Writ Petition No. 1519 (S/B) of 2014), Rahul Singh versus State of U.P and others (Writ Petition No. 1653 (S/B) of 2014), Ashwani Panwar versus State of U.P and others (Writ Petition No. 1655(S/B) of 2014) Kshitij Pandey versus State of U.P and others (Writ Petition No. 1635 (S/B) of 2014) have been reengaged in judicial service in U.P. as well as in other States.

Consideration of submissions and relevant citations:-

65. The vexatious issue of misconduct being the foundation or motive of a simpliciter discharge order has been the subject of fascination of various courts for a long time and the inscrutable quandary has been sought to be dispelled by various judgments which shall be considered herein after.

66. Krishna Iyer J. in the case of Gujarat Steel Tubes Limited and others (supra) has clearly held that the anatomy of a dismissal order is not a mystery once we agree that substance, not semblance, governs the decision. An order fair on its face may be taken at its face value but some times words are designed to conceal deeds by linguistic engineering and courts have the power to lift the veil to see the true nature of the order since the form of order and the language in which it is couched is not conclusive. It has been further held that in many situations the manifest language of termination order is equivocal or misleading and dismissals have been dressed up as simple termination.

67. In such a situation, it has been held that if severance of service is effected, and if the foundation or causa causans of such severance is the servant’s misconduct, the same would definitely form foundation for the

order of termination which can then be held to be stigmatic or rooted in misconduct due to which a full-fledged inquiry would be required prior to termination/dismissal of service. It was further held that masters and servants can not be permitted to play hide and seek with the law of dismissals and the proper criteria are not to be misdirected by terminological cover ups and must be grounded on the substantive reason for the order whether disclosed or undisclosed, which the courts will have the power to discern from proceedings or documents connected with the formal order of termination as the true ground for termination. If thus scrutinized, the order has a punitive flavour in cause or consequence, it would amount to a dismissal but if it falls short of this test, it can not be called a punishment.

68. To put the matters in a simple context, a termination effected because the master is satisfied of the misconduct and of consequent desirability of terminating the service of delinquent servant would be a dismissal notwithstanding the fact that termination order has been couched in simpliciter terms. The decisive aspect is the plain reason for discharge, not the strategy of a non inquiry or clever avoidance of stigmatizing epithets.

69. The aspect has been further elucidated by the Supreme Court in the case of Anoop Jaiswal (supra) to the effect that where the form of order is merely a camaflouge for an order of dismissal based on misconduct, it is always open for the courts to go behind the form and ascertain the true nature of the order.

70. In the case of Dipti Prakash Banerjee (supra) as well, it has been held that findings arrived at in an inquiry pertaining to misconduct of a delinquent employee would be termed as the foundation of a simple order of termination in case it is based on the allegations levelled against such an employee. However, a word of caution was also included to the effect that in case no subjective findings are arrived at pertaining to misconduct of the employee against whom there are complaints, it would be a case

only of motive of the simpliciter order of termination and would not construe foundation.

71. In the subsequent judgments of Supreme Court in the cases of Jayshree Chamanlal Buddhbhatti (supra), Palak Modi (supra) and Ratnesh Kumar Choudhary (supra), the concept of motive and foundation has been sought to be explained further with the proposition that even in case of a probationer who is discharged on the ground of unsuitability, misconduct can be said to be the foundation in case the order is actually based on some report indicating commission of an alleged misconduct by the probationer. It was held that although the probationer has no right to hold the post but if the allegation of misconduct forms the basis of decision arrived at by the employer regarding such unsuitability for continuance in service, it would form the foundation and not the motive of discharge and as such, the order of termination even though couched in simpliciter terms, would be punitive requiring an inquiry prior to termination of services.

72. Upon perusal and consideration of aforesaid judgments referred to herein above, the consistent refrain of the Supreme Court pertaining to motive or foundation is discernible that in case order of termination is based on an over all evaluation of performance of the delinquent employee and is not based on any allegation of misconduct, the same would constitute discharge simpliciter. However in case the employer has conducted an inquiry in order to seek validation or otherwise of any allegation of misconduct, it would constitute the foundation of the order since it would not be on account only of general unsuitability of the post held by him.

73. The aforesaid concept has been subsequently clarified by the Supreme Court in the case of Ved Priya (supra) to the effect that the entire objective of probation is to provide the employer an opportunity to evaluate performance and test suitability of probationer for a particular post for which the true test of suitability is actual performance of duties.

It has been held that although probationers have no indefeasible right to continue in employment until confirmed but if they are removed in a manner which prejudices their future prospects or casts aspersions on their character, it would be a case of stigmatic removal.

74. It is therefore an inevitable inference of the judgments referred to herein above that if the basis of order of termination of service is a specific act of misconduct irrespective of over all evaluation of performance of duties during the probation period, it would amount to foundation of an order even though couched in simpliciter terms and it is only when the order of simpliciter discharge is based on over all performance of the work done by the probationer during the period of probation that it would not be stigmatic.

75. The power of a writ court under Article 226 of the Constitution of India pertaining to examination of resolution of the Full Court has been elucidated by the Supreme Court in the case of **High Court of Judicature for Rajasthan versus Bhanwar Lal Ramror and others (2021) 8 SCC 377** in which it has been specifically held that the High Court on its judicial side can very well exercise the power of judicial review of resolutions of the Full Court of the High Court pertaining to discharge of service if it is found that the same is not based on material on record or is in fact relied on irrelevant material or that apposite material was overlooked and discarded.

76. *Au contraire,* judgments relied upon by the learned counsel for opposite parties have the common thread that probationers do not have any vested right to continue in service in case their discharge is simpliciter without any comments being made on their conduct or otherwise as well as the fact that the office of a judge is one of public trust and as such he must be a person of impeccable integrity and unimpeachable independence and therefore the standard of conduct is required to be higher than that of an ordinary person. Much emphasis was laid by learned counsel for opposite parties on the judgment rendered by

Hon'ble Supreme Court in the case of **Pavanendra Narain Verma versus Sanjay Gandhi Post Graduate Institute of Medical Sciences (2002) 1 SCC 520** but it is relevant that the aforesaid judgment has been overruled in the subsequent judgment of **Palak Modi (supra)**.

77. Learned counsel for opposite parties has placed much emphasis on the judgment rendered in **Pavanendra Narain Verma** (supra) as indicated herein above. However a perusal of the aforesaid judgment indicates that the Supreme Court has yet again followed its earliest enunciation of law pertaining to applicability of Article 311(2) of Constitution and has held that anything which jeopardizes rights of a probationary or temporary officer to seek new employment would be a punishment. It has also been held that evil consequences of termination order passed even simplicitor would be evident in case such a termination refers to a document which stigmatizes the officer. Relevant paragraphs of the aforesaid judgment are as follows:-

> ***"12.*** *Therefore, although the General Manager had issued the order of termination on the basis of the adverse reports, the order was not considered as a punishment because it did not jeopardise the appellant's career prospects. It is also clear from the paragraph quoted that punishment means the deprivation of a right which the employee otherwise has. Thus, if he is already in service and is reverted from an officiating post, although he does not have a right to continue in the officiating post, he still has a right to be considered for promotion. If he is on probation or on a temporary appointment, he has a right to seek new employment if his appointment or probation is terminated. Anything which jeopardises these rights would be by way of punishment.*
>
> *xxx* *xxx* *xxx*
>
> ***14.*** *If "punishment" were restricted to "evil consequences", the court's task in deciding the nature of an order of termination would have been easier. Courts would only have to scan the termination order to see whether it ex facie contains the stigma or refers to a document which stigmatises the officer, in which case the termination order would have to be set aside on the ground that it is punitive. In these cases the "evil consequences" must be assessed in relation to the blemish on the employee's reputation so as to render him unfit for service elsewhere and not in relation to the post temporarily occupied by him. This perhaps is the underlying rationale of several of the decisions on the issue."*

78. There can obviously be no truck with the aforesaid proposition of law as submitted by learned counsel for opposite parties but at the same

time, this Court would be failing in its duty in case the veil is not lifted and the actual reason for passing of discharge order is not explored merely on a general proposition that conduct of a judge is required to be exemplary. The fundamental right of a person being protected from arbitrariness under Article 14 of the Constitution of India applies with same rigour upon judges as upon ordinary citizens. Such a fundamental right can not be denied to judges only on the ground that they hold an exalted post.

79. Upon applicability of the judgments referred to herein above, particularly the case of Ved Priya (supra), it is evident that for the purposes of ascertaining suitability or otherwise for continuance in service for a probationer, it is imperative that the over all performance of work and conduct of the probationers should be evaluated prior to passing of an order of confirmation or discharge.

80. It is also relevant that with regard to confirmation of probationary services, Rule 24 of Rules of 2001 can not be seen in isolation but has to be considered in consonance with Rule 25 of the said Rules pertaining to confirmation. The relevant rule is as follows:-

> *"24. Probation.(1) All persons shall, on appointment to the service in the substantive vacancies, be placed on probation. The period of probation shall, in each case, be two years.*
>
> *(2) The Court may, in special cases, extend the period of probation upto a specified date.*
>
> *(3) An order extending period of probation shall specify whether or not such extension shall count for increment in the time-scale.*
>
> *(4) If, it appears, to the Court at any time during or at the end of period of probation or extended period of of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, it may make recommendation to the Appointing Authority whereupon the probationers shall be dis-charged from the service by the Appointing Authority.*
>
> *(5) A person whose services are dispensed with under sub-rule (4) shall not be entitled to any compensation.]"*

81. An examination of the aforesaid rule makes it evident that for the purposes of confirmation of appointment of probationer at the end of

period of probation, the court is mandatorily required to take into consideration the aspects pertaining to his having undergone satisfactory prescribed training, his work and conduct, his integrity and the fact that the court is satisfied that he is otherwise fit for confirmation.

82. In the considered opinion of this Court, Rules 24 and 25 of the Rules of 2001 are conjointly required to be considered for the purposes of confirmation of probationary officers. However a perusal of the impugned orders and the Full Court resolution clearly indicate that no such consideration as required under Rule 25 of the Rules of 2001 have been made.

83. In the present case, a bare perusal of the agenda before the Administrative Committee as well as before the Full Court was only the report dated 12.9.2014 submitted by the Senior Registrar (Judicial). It is a glaring factor that apart from report dated 12.9.2014, no other document or report has been considered prior to resolving that orders of discharge simpliciter should be issued.

84. The report dated 12.9.2014 in its very inception has clarified that it was required only to inquire into an alleged incident occurring on 8.9.2014 pertaining to misconduct by the trainee officers i.e. the petitioners. The aforesaid report dated 12.9.2014 does not indicate that apart from the said factor, over all work and conduct of petitioners was also examined.

85. As such it is clearly discernible from the record that the over all performance of petitioners as probationers was not at all evaluated by the Full Court prior to passing the resolution dated 15.9.2015 recommending their discharge simpliciter.

86. As has been noticed herein above in the case of Ved Priya (supra) that it is only in case a discharge order is passed simpliciter based on a probationer’s performance during the period of probation that it would not be stigmatic. However it has been held that where the genesis of the

order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, it would form foundation of the order.

87. In the present case, since the impugned order of termination is based on the resolution of Full Court dated 15.9.2014 which in itself is based only on the report dated 12.9.2014, it clearly amounts to petitioners being discharged from service on the basis of specific act of alleged misconduct and therefore the same would necessarily constitute foundation of the impugned order even though couched in simpliciter terms. As such it is held that the impugned order of discharge is clearly based and founded on allegations of misconduct.

88. The submission of learned counsel for opposite parties that in view of the amendment in Rule 24(5) of the Rules of 2001, the order can not be said to be stigmatic since petitioners would be eligible for reappointment to service, does not hold good ground. The aspect of matter is not merely whether the petitioners are eligible for reappointment in service or not but rather on the factor as to whether the order for discharge is based on an alleged specific act of misconduct particularly when the motive behind the order is to punish the probationer for the alleged misconduct.

89. Similar is the situation pertaining to writ petition No. 1356 (S/B) of 2015 (now writ A No. 2001356 of 2015) and writ petition No. 1357(S/B) of 2015 (now writ A No. 2001357 of 2015). It is a relevant fact that the impugned orders of discharge dated 15.6.2015 in the said petitions are based on the inquiry report dated 27.1.2015. However a perusal of the inquiry report itself evidences that the said inquiry was instituted in pursuance to order dated 29.10.2014 passed by Hon’ble the Chief Justice for constituting a vigilance inquiry only with regard to role of senior judicial officers of the institute. As such the scope of the inquiry constituted subsequently resulting in submission of report dated

27.1.2015 was not at all pertaining to the petitioners who were Probationary Judicial Officers.

90. Even otherwise, the Full Court resolution dated 23.5.2015 also makes it evident that the only agenda before the Full Court was consideration of vigilance report dated 27.1.2015. There is no mention of consideration of any other material or report pertaining to work and conduct of the petitioners during their entire period of probation. As such, it can be concluded that so far as petitioners of writ petition No.1356(S/B) of 2015 (now writ A No. 2001356 of 2015) and writ petition No.1357 (S/B) of 2015 (now writ A No. 2001357 of 2015) are concerned, their discharge orders are based on an inquiry which did not pertain to their work and conduct at all and was in fact for the purpose of ascertaining the role of senior judicial officers of the institute.

91. Upon evaluation of aforesaid factors, it is evident that the impugned order of discharge of petitioners being based on a specific act of alleged misconduct clearly forms the foundation of the order and would therefore be punitive in nature.

Question No.(B)

92. In view of the fact that answer to question No. A has been held in favour of petitioners that the discharge orders and resolution of Full Court does not amount to discharge simpliciter but in fact stigmatic, provisions of Article 311(2) of the Constitution of India come into play, which are as follows:-

> *"(2)No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;*
>
> *Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*
>
> *Provided further that this clause shall not apply--*

(a)where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b)where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c)where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry."

93. Since the petitioners' discharge has clearly been held to be stigmatic, it was incumbent upon the opposite parties to have held an inquiry as contemplated under Article 311(2) of Constitution of India. Such a course having not been followed, the impugned orders are clearly arbitrary, unreasonable and therefore violative of not only Article 311(2) but also of Article 14 of Constitution of India. The question No. B therefore also is decided in favour of petitioners.

94. The questions as such formulated are answered in the following manner:-

(A) The order of discharge of services of petitioners as probationer are clearly stigmatic which required inquiry prior to discharge from service.

(B) Since the order of discharge of service of petitioners is punitive in nature, the maxim of Audi alterm partem was required to be followed prior to their discharge.

95. Consequently, a writ in the nature of Certiorari is issued quashing the impugned orders of discharge dated 22.9.2014 and 15.6.2015 as well as the resolution of Full Court dated 15.9.2014 and 23.5.2015. A further writ in the nature of Mandamus is issued commanding the opposite parties to reinstate the petitioners forthwith as Probationary Judicial Officers on the post held by them prior to passing of the impugned order. Their continuance or otherwise in service shall be subject to their confirmation in service.

96. The writ petitions as such succeed and are allowed. Parties to bear their own costs.

(Subhash Vidyarthi,J.) (Manish Mathur,J.) (Jaspreet Singh,J.)

Order Date:-10.03.2025
prabhat