

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2814 OF 2015

Smt.Smita Rajendra Kadu,
R/o.C-3/199, Pavana Building,
Sarvadharm Co-op. Hsg. Soc., Yerwada,
Pune-411 006.

Petitioner

versus

1. The State of Maharashtra.

2. The Secretary, Law and Judiciary
Department, Government of Maharashtra,
Mumbai.

3. The High Court of Judicature of Bombay,
Mumbai, through Registrar General.

Respondents

Mr.Anil V. Anturkar, Senior Advocate, with Mr.Sandeep Phatak
i/by Mr.Sugandh B. Deshmukh for Petitioner.

Mr.P.G.Sawant, AGP, for Respondent nos.1 and 2.

Mr.P.S.Dani, Senior Advocate, with Ms.Rebecca Gonsalvez for
Respondent no.3.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 23 December 2015

ORAL JUDGMENT - (Per : S.C.Dharmadhikari, J.) :-

Rule. Learned counsel for the Respondents waive service. By consent, the Rule is made returnable forthwith. The writ petition is taken up for hearing and final disposal, by consent and on the request of learned counsel.

2. By this petition under Article 226 of the Constitution of India, the Petitioner challenges the order dated 12 August 2014. By that order, a copy of which is annexed at Annexure-A, page 19 of the writ petition, the services of the Petitioner have come to an end meaning thereby she is discharged from the judicial service.

3. The Petitioner states that the Respondents before us namely Respondent nos.1 and 2 are the authorities who appointed the Petitioner in judicial service by virtue of Maharashtra Judicial Service Rules, 2008. They have passed the impugned order on the recommendations of Respondent no.3.

4. In paragraph 2 of this writ petition, it is stated that by invoking Rule 13(4)(ii)(b) of the Maharashtra Judicial Service Rules, 2008 ('the Rules'), the probation period of the Petitioner has been terminated and this action, by which the services have been brought to an end abruptly, violates the mandate of Article 14 of the Constitution of India.

5. For appreciating the contentions raised by Mr.Anturkar, Senior Advocate, appearing for the Petitioner, we would have to note the full facts. The applications for appointment to the post of direct District Judges were invited by an advertisement dated 28 July 2008. The Petitioner applied in pursuance of this advertisement. After the results of an examination were declared in March-2010, the interviews of the eligible candidates were held. Out of 268 candidates, only 14 were eligible. The Petitioner being one of them was called for interview and ultimately came to be selected. The Petitioner states that she belongs to Scheduled Caste category. After her successful completion of the examinations and the oral interview, a letter was received by her which was appointing her to the post of Judge, City Civil Court, Mumbai. Thus, the Petitioner joined the judicial service on 12 October 2010 as a Judge of the Bombay City Civil and Sessions Court. She states that after completion of all the formalities, she received her salary and thereafter she was posted at Dindoshi (Mumbai Suburban District). While in service at Dindoshi and functioning as a Judge of City Civil and Sessions Court, her services were transferred to Pandharpur. She therefore took over as a District Judge, at Pandharpur. She was designated as District Judge-I. She relies upon a communication in that behalf dated 22 October 2014.

6. The Petitioner then complains that she successfully worked at both the places and it is in that background that her challenge to the impugned order be appreciated.

7. Mr.Anturkar would submit that Petitioner's initial appointment was on probation for two years. That probation period commenced from 12 October 2010 and ended on 11 October 2012. Six months before the end of the probation period namely by 11 April 2012, the Respondent nos.1 and 2 herein considered the suitability for being appointed and to hold the post. She is not aware whether any of these Respondents applied their mind to the relevant factors. However, Mr.Anturkar states that the Petitioner received a letter dated 21 July 2012 from the Principal Judge, Bombay City Civil and Sessions Court and she complied with the requisitions contained therein. The Petitioner in paragraph 18 places reliance on Rule 13(4)(ii) of the Rules to urge that if the appointing authority finds that the person is not suitable to hold the post to which he or she was appointed or promoted, then, a reversion can be effected, meaning thereby a person can be reverted to the post held prior to the promotion or, if he is a probationary officer, discharge him or her from service. The impression of the Petitioner was that since nothing was communicated to her, her probation period is successfully completed. However, it is only when the order impugned in this petition was served upon her that she realized that though her

probation period was to end on 11 October 2012, it was extended by two years.

8. It is in these circumstances that it is submitted that the impugned order cannot be said to be termination or discharge simplicitor of a probationer from service. This is an order founded on misconduct and, therefore, casts a stigma on the Petitioner's conduct and character. Such an order could not have been passed unless an opportunity of being heard was granted to the Petitioner. That prior opportunity not being given, the impugned order deserves to be quashed and set aside.

9. It is next contended by Mr.Anturkar that during the course of probation, if there is any error or mistake committed and that is reported, then, an opportunity or chance to improve ought to be given to a Presiding Officer like the Petitioner. They should not be visited with extreme consequences. A judicial officer expects protection from the High Court. A judicial officer also expects guidance from his/her superiors. A judicial officer would also expect that in the event any complaint is received against him or her, the High Court would protect such officer and not entertain every vague or general complaint. Our attention is invited by Mr.Anturkar to page 98 of the paper book in this behalf. He would submit that the Reporting Officer namely the Principal Judge of the Bombay City Civil and Sessions Court has written Annual Confidential Remarks

(`ACRs'). It has been observed by her that there are complaints about Petitioner's integrity and of pronouncing the judgments without dictating them. Mr.Anturkar submitted that these observations in the ACRs have been highlighted and they have influenced the decision of Respondent no.3. These remarks and highlighted as above, were placed before the Hon'ble Guardian Judge. The Hon'ble Guardian Judge has opined that the Petitioner's performance is not satisfactory. Hence, she may be discharged from the service. Mr.Anturkar states that these recommendations of the Guardian Judge, when placed with the prefatory comment of the registry before a Committee of the Judges, it is apparent that the said Committee was also influenced to a great extent by the complaints and in that regard our attention is invited to page 103 of the paper book.

10. Thus, Mr.Anturkar would submit that the order is founded on complaints and charges of corruption or lack of integrity. If there are adverse remarks and the allegations in that behalf have a definite bearing in reaching the ultimate conclusion, then, it is apparent that this is not a case of termination simplicitor. The foundation being a misconduct and of serious nature, the order deserves to be quashed and set aside. It is then incumbent upon the Respondents to hold an inquiry so as to determine the guilt, if any, of the Petitioner. For all these reasons, it is submitted that the impugned order be quashed and set aside.

11. One more submission of Mr.Anturkar deserves to be noted, though there is no foundation laid for the same in the pleadings. It is submitted that the Petitioner, a lady judicial officer and belonging to Scheduled Caste, has been victimized and deliberately chosen for this treatment. Her superiors have ignored this fact and instead of protecting her and allowing her an opportunity to improve her performance, chose to dispense with her services. This amounts to serious miscarriage of justice. It is submitted that there is no assurance to the judicial officers after they sacrifice their careers as advocates and join the judicial service. If they join the judicial service with great hopes and aspirations that they would be protected and guided by the High Court, then, they are belied in the present case as the Petitioner is discharged from judicial service. All the more, when now more women are taking up judicial service as a career.

12. In support of the above contention, reliance is placed by Mr.Anturkar on the judgment of Hon'ble Supreme Court of India in the case of **Registrar General, High Court of Gujarat and another Vs. Jayshree Chamanlal Buddhbhatti**¹.

13. On the other hand, Mr.Dani, learned Senior Advocate appearing for Respondent no.3 would submit that

¹ (2013)16-SCC-59

none of the contentions of Mr.Anturkar deserve to be accepted. He would submit that there is no challenge to the Rules. There is no challenge to the power of the High Court. If the Rules provide for extension of probation period and that is precisely what is done, then, it is not open for the Petitioner to complain that there is any violation of Rules or that she was given any impression that her probation period is satisfactorily completed. There is no communication of this nature emanating from Respondent no.3 and placed on record. He would submit that all judicial officers and who join judicial service, are performing a public duty. Equally, the High Court is performing a public duty in evaluating and assessing their performance. Irrespective of caste, creed, sex and religion, all judicial officers, upon appointment, are placed on probation. The probation period has to be satisfactorily completed by all. It is open for the appointing authority to evaluate and assess the performance and if the same is found to be satisfactory, then the concerned judicial officer is continued in service. The larger public interest and public trust demands that the High Court performs its duty impartially, dispassionately, independently and in detached manner. That has been done in the instant case and there is absolutely no material to indicate that any allegation of corruption has influenced the decision of discharge from service. The decision to discharge the Petitioner is based on an overall assessment of her performance and work. It has been pointed out as to how the quality of civil judgments is not up to

the mark. It has also been pointed out that the judgments in criminal matters are not of the required standard and quality. In these circumstances, it is only the assessment of the performance and in an overall manner that has led to the decision. This is a case of termination or discharge simplicitor and of a probationary officer for unsatisfactory performance. In these circumstances, neither the judgment of the Supreme Court of India would be of any assistance nor any general allegation particularly highlighting the caste and sex of the Petitioner. For all these reasons, Mr.Dani would submit that the petition is frivolous and deserves to be dismissed.

14. For properly appreciating these submissions, a reference will have to be made to the Rules. A copy of the Rules is annexed to the petition and amended up to 11 June 2012. The term "Service" has been defined in Rule 2(j) to mean Maharashtra Judicial Services. Chapter-II of the Rules refers to the Constitution of Service and one of the categories or the cadre is that of the District Judges in the Maharashtra Judicial Services. The eligibility criteria for the same is then set out. Chapter-III refers to the Recruitment. The appointing authority for the cadres of District Judges and Civil Judges, Junior Division, shall be Governor and for the promotion to the cadre of Senior Civil Judges is High Court. The method of recruitment, age limit and qualifications are set out in Rule 5. Thereafter, Rule 6 refers to recruitment by nomination. The

Rule following it, namely Rule 7, sets out the disqualification for appointment. Then conditions relating to suitability, fitness and character are set out in Rule 8 and the fees for nomination are set out in Rule 9. Rule 10 provides for joining time after appointment and Rule 11 deals with appointment by promotion. By Rule 12, which was earlier in field, a competitive examination was provided for. By Chapter-IV, the matter of probation and officiation has been dealt with and Rules 13 to 15 are material for our purpose. They read as follows :

"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 satisfactory 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 the period of Probation or Officiation, as the 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."*

15. A perusal of these Rules would indicate that all appointments to the judicial service by nomination, shall be on probation for a period of two years, and all appointments on promotion shall be on officiating basis for a period of two years. The period of probation or officiation, as the case may be, for the reasons to be recorded in writing, may be extended by the Appointing Authority, by such period not exceeding two years. Then, by sub-Rule 4 of Rule 13, six months before the date of period of probation or officiation, the Appointing Authority shall

consider the suitability of the person so appointed to hold the post to which he/she was appointed or promoted. The satisfaction in terms of Rule sub-4, Clauses (i) and (ii) of Rule 13 of the Rules is apparent and in the case of a probationer, discharge from service is also contemplated. Rule 14 starts with a non-obstante clause and notwithstanding anything contained in Rule 13, the Appointing Authority may, at any time during the period of probation, discharge from service, a probationer, on account of his/her unsuitability from service. Rule 15 provides for confirmation.

16. Admittedly, 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. In the case of **Rajesh Kohli Vs. High Court of Jammu & Kashmir and another**², a litigation under similar Rules came up for consideration before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court in paragraphs 16 to 18 and 23 to 25 concluded as under :

"16. Since the Rules permits probation to be extended for another one year and since there was no order of confirmation

2 (2010)12 -SCC-783

passed by the respondents confirming his service, the petitioner would be deemed to be continuing on probation immediately after his expiry of the initial two years of probation. In this regard, we may refer to Satya Narayan Athya Vs. High Court of Madhya Pradesh {(1996)1-SCC-560} in which a judicial officer was not given any confirmation letter even after the completion of his two years of probation period. The rules in the said case provided for the extension of initial two years of probation period for a further period of two years.

17. This court in Athya case (supra) held at paras 3 and 5 that (SCC pp. 561-62)

`3. ... A reading thereof would clearly indicate that every candidate appointed to the cadre shall undergo training initially for a period of six months before he is appointed on probation for a period of two years. On his completion of two years of probation, it may be open to the High Court either to confirm or extend the probation. At the end of the probation period, if he is not confirmed on being found unfit, it may be extended for a further period not exceeding two years. *It is seen that though there is no order of extension, it must be deemed that he was continued on probation for an extended period of two years. On completion of two years, he must not be deemed to be confirmed automatically. There is no order of confirmation. Until the order is passed, he must be deemed to continue on probation.*

5. Under these circumstances, the High Court was justified in discharging the petitioner from service during the period of his probation. It is not necessary that there should be a charge and an enquiry on his conduct since the petitioner is only on probation and during the period of probation, it would be open to the High Court to consider whether he is suitable for confirmation or should be discharged from service.'

(emphasis supplied)

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."

In paragraphs 31 and 32, what we have emphasized above is laid down as a matter of principle. These paragraphs would read as under :

"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 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."

17. Upon perusal of these paragraphs it is apparent that the 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. These principles have been reiterated in several cases by the Hon'ble Supreme Court and it is not necessary to multiply this decision with them. Suffice it to note that in the following decision of the Hon'ble Supreme Court of India they are referred (See paragraphs 8 and 9 of the Judgment in a Three Judge Bench in the case of **H.F.Sangati Versus Registrar General, High Court of Karnataka and others** reported in **(2001)3-SCC-117**).

18. Mr.Anturkar does not dispute this legal position but would submit that the order impugned in the present case is founded on misconduct. His submission is that in a bold and highlighted portion of the ACR of the Petitioner, it is stated that there are complaints about her integrity as well. There is, according to Mr.Anturkar, a complaint that the Petitioner has not pronounced the judgments after dictating them but has pronounced them without dictation. It is in these circumstances that he would submit that the order is not of discharge

simplicitor but on account of serious misconduct and which can be established and proved only after a regular inquiry. That mandates an opportunity being given to the party like Petitioner and before being terminated/discharged from service. It is in these circumstances that he would submit that the impugned order is required to be quashed and set aside. We are unable to agree with Mr.Anturkar. The observations of the Principal Judge of Bombay City Civil and Sessions Court would have to be read as a whole. They refer to the criminal judgments and civil judgments. If there are no material defects in the civil judgments and that is why the argument is that the foundation of the order is a misconduct or complaint about integrity or of pronouncing the judgments without dictating the same, then, it is not a discharge simplicitor. However, this overlooks the fact that the judgment writing too suffers from four basic legal infirmities and as highlighted. It is in these circumstances that merely because something is written in bold does not mean that High Court has been influenced by that portion alone or it has based its decision on the same without taking into consideration the entire record and assessing it in a overall manner. Mr.Anturkar's argument overlooks the fact that the Principal Judge of the Bombay City Civil and Sessions Court is the Reporting Authority. His/Her remarks are placed before a learned Judge of this Court and who is nominated as a Guardian Judge for that particular District Court by the Hon'ble Chief Justice of this Court. When these remarks were placed

before the Hon'ble Guardian Judge, he endorsed that the performance of the Petitioner is not satisfactory and hence she may be discharged from service. Thereafter, a Committee comprising of four learned Judges two of whom are lady Judges and earlier presiding over as Judges of the Bombay City Civil and Sessions Court, considered the entire record. It is not that the remarks of the registry or the highlighted portion only has influenced their conclusion. The Committee in its ultimate order expressed its agreement with the remarks of the learned Guardian Judge.

19. Thereafter these remarks of the Probation Committee were placed before the Administrative Judges' Committee and it is the Administrative Judges' Committee, of which neither the Guardian Judge nor other two lady Judges were a part, expressed its independent agreement and held that the Probation Committee has rightly arrived at a conclusion that the Petitioner ought to be discharged from service. Nothing from this record would indicate that the order passed and impugned in the present petition is founded on the alleged misconduct of the Petitioner or is influenced by any complaint about lack of integrity. An overall assessment of the Petitioner's performance has been made. For that purpose, the service record has been perused in its entirety including all the judgments delivered and their quality. Once the Petitioner's performance is assessed for determining whether she is suitable

for being confirmed or continued in Maharashtra Judicial Services, then, it is erroneous to term the impugned order as casting any stigma or aspersion on the character of the Petitioner. It is nothing but a discharge simplicitor of a probationer and during the probationary period.

20. Now, what remains for consideration is the reliance of Mr.Anturkar on the decision of Hon'ble Supreme Court of India in Registrar General, High Court of Gujarat and another Vs. Jayshree Chamanlal Buddhbhatti¹ (supra). There, a lady Judge of Gujarat State Judicial Service was discharged from service. Mr.Anturkar invites our attention to the factual position as emerging from paragraphs 1 to 17. The factual position was that the Respondents asserted that she discharged her duties successfully and faithfully but during her work she found that her subordinates were not conducting their work properly and were taking the Court papers outside the Court premises, which was impermissible. That is how she brought to the notice of the District Judge, Junagarh these facts and in writing. She highlighted the difficulties faced by her due to the behaviour of the subordinate staff. There was no response to these letters but she received adverse remarks. The Respondent judicial officer before the Supreme Court replied to this communication containing the adverse remarks and highlighted that she has disposed off 500 and odd civil cases and 1,600 criminal cases

¹ (2013)16-SCC-59

during the period between January-2006 and October-2006. This would not have been possible without her good attitude and also without her dedication to work, co-operation of bar and public. She assured the registry of the High Court that the remarks with regard to her behaviour with the subordinate staff are taken by her in right spirit and she would be good with the staff, bar and public. Thereafter, further adverse remarks followed and which we find have been reproduced at page 577 of the law report. The Petitioner replied to them as well and in great details. It is in this backdrop that she was shocked to receive a termination letter. The Hon'ble Supreme Court, therefore, found that the High Court administration conducted a discrete inquiry against the judicial officer and, thereafter, another inquiry called as preliminary inquiry was conducted. The initial discrete inquiry was carried out by the District Judge whereas the subsequent inquiry was conducted by Registrar (Vigilance) of High Court who was at one time the District Judge at Junagarh and to whom the Petitioner had complained about behaviour of the subordinate staff. The officer who conducted the discrete inquiry earlier in point time, had again conducted the preliminary inquiry and gave his report.

21. The preliminary inquiry has been referred in depth and that is how the Supreme Court has made the observations in paragraphs 33 and 35 of the judgment. Mr.Anturkar's reliance on these paragraphs does not seem to be factually

correct and appropriate in our context. The Supreme Court relied upon the judgment in the case of Ishwar Chand Jain Vs. High Court of Punjab & Haryana {(1988)3-SCC-370} and the judgment in Samsher Singh Vs. State of Punjab {(1974)-SCC-(L&S)-550} only with a view to support its conclusions. The Supreme Court found that even on assessment of the service record of the Respondent judicial officer and in overall manner, it would not be proper to hold that the Respondent judicial officer is unsuitable for being confirmed or continued in judicial service. The disposal rate of the Respondent judicial officer was found to be very good. The complaints by the subordinate staff were clearly motivated. It is also pointed out in the judgment of the Supreme Court as to how the lady judicial officer suffered because of frivolous and vexatious complaints regarding her character.

22. We do not see how this judgment can help the Petitioner before us. The Supreme Court concluded that the foundation for termination or dispensation from service of the Respondent judicial officer before it was her alleged misconduct and a slur on her personal character. That was part of the record. The Hon'ble Supreme Court found as to how throughout this judicial officer complained about lack of co-operation from the subordinate staff and lack of response from her superiors.

23. It is no doubt true that the High Court is duty bound to protect honest and hard working judicial officers. It is no doubt true that 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 District Judiciary. Eventually High Court is expected to act as patriarch and is in a position as a parent guiding the pupil. It is not, therefore, proper to assume that the High Court victimizes or acts on frivolous or vague or general complaints and thereafter takes decisions detrimental to the interest of judicial officers. The High Court bears in mind the sacrifices of the Advocates and who join the judicial service and are ready and willing to be posted throughout the State. The High Court considers genuine difficulties of judicial officers in several matters including transfers and postings. There are, therefore, enough safeguards and in delicate issues, instead of taking extreme steps, the judicial officers are guided by superiors. There are measures such as personal counselling adopted in appropriate cases. Once the High Court administration in the case before the Hon'ble Supreme Court was found to have acted not in accordance with the above principles, that its decision was interfered with.

24. Equally, unsound is the argument of Mr.Anturkar that merely because some allegations about character and

integrity are made, the High Court being duty bound to inquire into the same, then, its failure violates the guarantee and protection to a Judicial Officer. The High Court has to find a Judicial Officer suitable for confirmation in the judicial service. While performing that duty, the High Court takes into consideration the service record. An overall assessment of the work and performance is made. In such circumstances and when the High Court is possessed of such powers, it is not proper to then urge that it has failed to perform its public duty or that it has based its decision on unverified allegations about lack of integrity and character. Such sweeping conclusions cannot be reached in law. Even that position has been clarified and when Mr.Anturkar placed reliance on Samsher Singh Vs. State of Punjab (supra), he reads paragraph 64 thereof in isolation.

25. The Hon'ble Supreme Court clarifies that if a probationer is faced with an inquiry on charges of misconduct or inefficiency or corruption and his services are terminated without following the mandate of law, he can claim the protection. The fact of holding an inquiry is not conclusive. What is decisive is whether the order is really a punishment. If there is an inquiry, the facts and circumstances in a particular case will be looked into in order to find out whether the order is of dismissal in substance. A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary

employee has been held not to attract the constitutional mandate enshrined in Article 311 thereof. It is in these circumstances that we do not find that any assistance can be derived from the principles laid down in Samsher Singh Vs. State of Punjab (supra). All paragraphs, namely 63 to 66 referred in the later decisions ought to be read together to cull out the legal principles.

26. One final argument needs to be considered. Though there is no foundation for the same in the pleadings, what we find is that relying upon certain materials placed in rejoinder affidavit of the Petitioner, it is argued by Mr. Anturkar that the Petitioner being a lady judicial officer is victimized by the High Court. She is victimized and meted out this treatment because she belongs to a Scheduled Caste.

27. It is very unfortunate that such arguments are canvassed and across the bar without any foundation or basis in the pleadings. Such arguments would have been dismissed outright in the case of any other official but when it comes to a judicial officer and canvassed by a Senior Advocate designated by this Court, then, it becomes our bounden duty to consider them. We do not find that the Petitioner has ever complained with regard to her performance being judged and assessed to find out whether she is suitable for continuation in judicial service. The Petitioner has never complained about the process

and manner of recruitment. She has never complained about being made to go through a written test and an oral interview. After having found that she was qualified and eligible, the Petitioner was appointed. Like any other judicial officer and as highlighted above, 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. It is in these circumstances that we do not find that the complaint of the nature made by Mr.Anturkar has any basis. The Petitioner has rendered judgments both on the civil and criminal side and they had to be assessed for their quality. Her performance as a whole had to be assessed to Judge her suitability. 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. Therefore, we do not find any basis for the complaint that is now made.

28. In the case of **State of Bihar and another Vs. Bal Mukund Sah and others**³, this is what the Supreme Court had to say on the aspect highlighted by Mr.Anturkar before us :

3 AIR-2000-SC-1296

"67. The plain and grammatical meaning of the words used in Section 4 quoted above unequivocally indicates, that it is a law relating to recruitment/appointment and as such once, it is held that the power of recruitment in respect of Judicial Services is provided for in Article 234, the State Legislature in the garb of making law in consonance with Article 16(4) cannot encroach upon Article 234. In course of hearing an elaborate argument had been advanced that reservation is intended to fulfil the Right of Equality under Article 16(1) read with 16(4) and the question whether there has been adequate representation of a particular backward class of citizens has been left to the satisfaction of the State Government in Article 16(4) and, therefore, the State Legislature cannot be denuded of its right to make such law to fulfil the aforesaid Constitutional mandate. We really fail to understand as to why the legislatures would feel that the Governor, when frames rules in consultation with the High Court and the Public Service Commission under Article 234 will not take into consideration the constitutional mandate under Article 16(1) or Article 16(4). In fact in the case in hand in the Bihar Judicial Service Recruitment Rules, 1955, reservations have been provided for Scheduled Caste and Scheduled Tribe candidates and the Full Court of Patna High Court have also adopted the percentage of reservation for these candidates as per the notification of the State Government. So far as the Superior Judicial Service is concerned, it is of course true that there has been no provision for reservation. But such provision could always be made by the Governor in consultation with the High court, also bearing in mind the mandate of Article 335, namely "Maintenance of Efficiency of Administration." *It is indeed painful to notice, some times law makers unnecessarily feel that the High Court or the Judges constituting the High Court are totally oblivious to the Constitutional mandate underlying Article 16 and more particularly, Article 16(4). It is also not appropriate to think that the High Court will not take into consideration the provisions of Article 16(1) and 16(4) while considering the case of recruitment to the judicial services of the State. The Judiciary is one of the three limbs of the Constitution and those who are entrusted with the affairs of administration of justice must be presumed to have greater expertise in understanding the Constitutional requirements. In this view of the matter, the contention of Mr.Dwivedi, appearing for the State of Bihar is unfounded.*"

29. We hope that had these remarks been brought to the notice of all concerned, such complaints as are made before us by Mr.Anturkar, would not be made. When Hon'ble Supreme Court holds that it is not appropriate to think that High Court will not take into consideration Articles 16(1) and 16(4) of the Constitution of India while considering the case of recruitment to the judicial service of the State and being one of the three limbs of the Constitution, it is presumed that the High Court is aware of the same, then, it is extremely unfair that such arguments are canvassed. We say nothing more.

30. As a result of the above discussion, we do not find any basis for the challenge to the impugned order. Having dealt with all contentions of the Petitioner's counsel and finding no merit in them, we proceed to dismiss this petition. It is accordingly dismissed but without any orders as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)