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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment dated 28th August, 2015

+ W.P.(C) 8292/2015

BALJINDER SINGH SRA

..... Petitioner

Through Mr. A.S.Chandhiok, Senior Advocate
with Mr. J.B. Mudgil & Mr. Rajat Kumar
Rathi, Advocates

versus

THE HIGH COURT OF DELHI THROUGH
ITS REGISTRAR GENERAL & ORS

..... Respondents

Through Mr. Rajiv Bansal, Mr. Nikhil Bhardwaj &
Mr. Anukrit Gupta, Advocates for
respondent no.1.
Mr. Anuj Aggarwal, Additional Standing
Counsel with Ms. Niti Jain, Advocate for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J (ORAL)

CM.APPL 17474/2015

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C).8292/2015 & CM.APPL 17474/2015(stay)

3. By the present writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ in the nature of certiorari thereby quashing the decision/Minutes of the meeting of the Full Court dated 13.7.2015 wherein it was resolved that the petitioner is not found suitable for appointment to the Delhi Higher Judicial Services and reports dated 14.7.2015 and 15.7.2015 of the Selection Committee whereby the name of

the petitioner was deleted from the selection list. The petitioner also seeks a writ in the nature of certiorari thereby quashing the report dated 6.7.2015 prepared by the Registrar General based on an incomplete and incorrect report sent by the High Court of Punjab and Haryana to the Delhi High Court regarding the previous service of the petitioner in the Punjab Civil Services (JB). The petitioner also seeks a writ of mandamus thereby directing the respondents to appoint the petitioner to the post of Additional District and Sessions Judge in the Delhi Higher Judicial Service by direct recruitment.

4. The brief facts of this case, as set out by the petitioner in the present writ petition, are that vide advertisement dated 28.12.2013, published by respondent no.2 for direct recruitment from the Bar against fourteen vacancies to Delhi Higher Judicial Services, applications were invited. The pattern of selection was detailed in the advertisement. Recruitment to the Delhi Higher Judicial Service is governed by the Delhi Higher Judicial Service Rules 1970. Rule 7 gives bifurcation of the percentage of post for different sources. Rule 7(1)(c) provides that 25% of the post in the cadre of District Judge shall be filled by direct recruitment from amongst the persons eligible as per Rule 7(c) on the basis of written and viva voce test conducted by the High Court. Rule 7(c) provides for detailed procedure for selection for appointment by direct recruitment. As per the advertisement, ten vacancies were for General Category, one vacancy was for Scheduled Caste and three vacancies for Scheduled Tribes candidates. The petitioner, being eligible, applied under the General Category and submitted his form.
5. As per the petition, the petitioner had been practising as an advocate in the High Court of Punjab and Haryana at Chandigarh since May, 2000. He served as a Civil Judge-cum-Judicial Magistrate from 15.5.2008 to 17.12.2009 in the State of Punjab and also served as Senior Public

Prosecutor in Central Bureau of Investigation, after his Selection by UPSC, from 16.2.2012 to 29.5.2012.

6. It is the case of the petitioner that necessary information was furnished by the petitioner in the application form, as required. Petitioner had also mentioned in the application form with regard to his previous matrimonial dispute with his ex-wife, the factum of FIR lodged by her and previous service rendered by the petitioner both, as a Judicial Magistrate as well as Senior Public Prosecutor in CBI.
7. The petitioner was issued a Roll Number to appear in the preliminary examination, which was held on 6.4.2014. The petitioner appeared in the said preliminary examination. Result of the preliminary examination was declared by respondent no2, wherein the petitioner was short listed to appear in the Delhi Higher Judicial Services Main Examination. Name of the petitioner figured at Sl.No.86. The Delhi Higher Judicial Services Main Examination was held on 9.8.2014. In the Main Examination, the petitioner was declared successful. He had obtained 66.47% marks in the overall merit and was ranked at No.2. Petitioner was short-listed and found eligible for viva-voce. Name of the petitioner figured at Sl.No.32 under the General category. The petitioner was called for the interview on 21.5.2015. Although, the final result of Delhi Higher Judicial Examination, 2013, was declared on 20.7.2015 yet the petitioner was not selected and declared '*not found suitable*', without disclosing any reasons, despite his having obtained second highest marks. The petitioner thereafter made a representation and also filed an application under Right to Information Act seeking reasons for his not being selected. The petition further discloses that the petitioner remained in judicial service for the period from 15.5.2008 to 31.12.2009 as he was selected as a Civil Judge (Junior Division)-cum-JMIC, PCS (J), however, his services were dispensed with during probation on account of

matrimonial dispute with his then wife vide order dated 17.12.2009.

8. The petitioner has also averred in the petition that the father of his ex-wife was the Political Advisor to the then Chief Minister of Punjab, who misused his official position to cause damage to the personal and professional life of the petitioner. The petitioner claims that a false FIR under Sections 498A, 406 of the Indian Penal Code was lodged against him and his family members, wherein he was granted anticipatory bail. The petitioner took all steps to show that the allegations levelled against him and his family members were false. In view of the steps taken by the petitioner, the ex-in-laws of the petitioner effected compromise and resultantly the FIR was quashed on 21.12.2010. A decree of divorce by mutual consent was also granted. The petitioner subsequently re-married and has two children.
9. The petitioner is also stated to have challenged the Order dated 17.12.2009, by which his judicial services were dispensed with during probation, by filing a writ petition, being CWP No.595/2011, which was disposed of on the judicial side by the Punjab and Haryana High Court vide judgment dated 12.10.2011, wherein it was held that the order dated 17.12.2009, by which the probation of the petitioner was not extended, was not stigmatic.
10. The petitioner thereafter resumed his practise. He then got selected as a Senior Public Prosecutor in the Central Bureau of Investigation but resigned on 29.5.2012 on account of family circumstances. The petitioner again got selected by the UPSC to the Post of Deputy Legal Advisor, Indian Legal Service.
11. The petitioner claims that all the above facts were truthfully disclosed by him in the application form. The petitioner also made an application under Right to Information Act to the High Court of Punjab and Haryana to ascertain as to whether any report was called by the High Court of Delhi

with respect to the previous service or antecedents of the petitioner, or not. A reply was received from the Public Information Officer, Punjab and Haryana High Court, disclosing the information sought. The petitioner was informed that a report was called by the Registrar General, High Court of Delhi, vide letter dated 22.5.2015, and the previous service record was sent by the High Court of Punjab and Haryana, to the Delhi High Court.

12. According to the petitioner, the report submitted by the Punjab and Haryana High Court to Delhi High Court was incomplete, as it did not make any mention to the filing of Civil Writ petition by the petitioner and the order dated 17.12.2009 passed by the Division Bench wherein it was held that the order of dispensing of his services was not stigmatic. Further the report relied upon by the Delhi High Court contained incorrect facts pertaining to the matrimonial dispute as well as the judicial service of the petitioner.
13. The petitioner also explained that during the period he was working as a Judicial Officer, he had carried out his duties diligently. The petitioner also claims that various representations were made to the respondent no.1 but no response was received.
14. Mr.Chandhiok, learned senior counsel appearing for the petitioner, submits that respondent no.1 has not disclosed any reason for declaring the petitioner unsuitable for appointment to Delhi Higher Judicial Service, however, the apparent reason for finding the petitioner unsuitable is based on the report sent by the High Court of Punjab and Haryana to the Delhi High Court. It is further submitted by Mr.Chandhiok that the report received by the Delhi High Court was incomplete and incorrect. Senior counsel further submits that the services of the petitioner were dispensed with by the Punjab and Haryana High Court during the period of probation and in the writ petition filed by the petitioner, challenging the order by

which his judicial services were dispensed with during probation, the Delhi High Court has failed to take into consideration the order passed by the Punjab and Haryana High Court holding that the dispensing with the services of the petitioner was not stigmatic. Great stress has been laid by learned senior counsel that the petitioner had disclosed the entire information in the application form including the factum of his matrimonial dispute, lodging of FIR, grant of anticipatory bail and the settlement arrived at with his wife. It has also been contended that the past conduct of the petitioner formed the basis of his rejection in the present case but the respondent no.1 has failed to take into account the fact that he has held responsible posts even after his services were dispensed with by the Punjab and Haryana High Court. It is further submitted that once it has been held that the services of the petitioner were dispensed with by the Punjab and Haryana High Court during the period of probation and the said order was not stigmatic, any record obtained by the Delhi High Court from Punjab and Haryana High Court could not have been used against the petitioner to deprive him of the present post. It has also been submitted that during the period of probation the petitioner had worked diligently and despite lack of infrastructure he had disposed of large number of cases. Mr.Chandhiok also contends that the respondent no.1 could not have relied upon incomplete material/record received from the Punjab and Haryana High Court and the said material cannot be the basis of finding the petitioner unsuitable for the post as the petitioner was not granted any hearing or opportunity to explain.

15. Mr.Bansal, learned counsel for respondent no.1, enters appearance on an advance copy. The basic facts have not been disputed. Mr.Bansal submits that the petitioner was not found suitable and, thus, his name did not figure in the final result. Mr.Bansal further submits that a communication was addressed to the Registrar General, Punjab and Haryana High Court at

Chandigarh, seeking information as to why the probation of the petitioner was not cleared. Relevant documents were also sought. Mr. Bansal has drawn the attention of the Court to Annexure P-19 to the present petition filed by petitioner, which forms the basis for not finding the petitioner suitable for the post:

“Accordingly, the matter was placed before Hon’ble Mr. Justice Hemant Gupta, Judge, High Court of Punjab & Haryana, who was pleased to submit his report dated 22.10.2009. The relevant extracts of the report are given below:

“The Administrative Committee in its meeting held on 9th October, 2009 asked me to examine the three issues relating to Mr. Baljinder Singh Sra, Civil Judge (Junior Division)-cum-Judicial Magistrate 1st Class, Amritsar. At the outset, it is to be noticed that Mr. Sra is not working since the day FIR was registered against him and his family members and is on probation.

i) To call for a report about the work and conduct of the officer from the District & Session Judge concerned;

I called for the judgments delivered by Mr. Baljinder Singh Sra since his assuming charge on 21.03.2009 at Amritsar. I was firstly informed by the District & Sessions Judge, Amritsar in his communication dated 13.10.2009 (Annexure A) that out of 7 contested civil cases and 118 contested criminal cases, Shri Sra has not dictated judgments in 3 civil and 38 criminal cases, i.e., cases at serial No. 5 to 7 and 88 to 125. The learned District and Sessions Judge vide his communication dated 14.10.2009 (Annexure B) informed that Shri Sra has decided 324 cases (Contested and Uncontested) but only 215 files have been consigned to the Record Room; thus 109 case files (84 criminal and 25 civil) have not been consigned. The learned District Judge has communicated that in 69 cases, the officer has either not signed or dictated the judgments before pronouncement. It shows that the officer has given wrong certificates with the monthly statements that he had dictated, signed and pronounced

judgments.”

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As per explanation given by Mr. Sra, at least some of the judgments have not been signed and placed on record even on 13.10.2009. It shows that the declaration given by Mr. Sra is incorrect. The judgments have to be signed and pronounced. If the judgments have been announced earlier but not signed as late as in October, 2009, the officer is clearly violating the decision rendered by a Division Bench of this Court in CWP No.12912 of 2013 titled Court on its motion Vs. State of Haryana and Others, decided on November 09, 2004.

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Mr. Sra has assumed charge on 21.03.2009 and in a short span of less than two months, he has given certificates which are factually incorrect. A perusal of the judgments further shows that the officer has tried to complete the units by deciding petty cases in which the witnesses have turned hostile, without deciding really contested cases. Such conduct of the officer is with a view to circumvent the directions of this Court and also to mislead this Court even during the period of probation. It disentitles Mr. Sra to continue as Judicial Officer. Such conduct cannot be considered satisfactory and I am of the opinion that he cannot become a good judicial officer.”

ii) To look into the complaints received against the officer

Learned District & Sessions Judge, Amritsar, has communicated two complaints against Mr. Sra. The complaints are in respect of non supply of copy of the order dated 28.08.2009. In the complaint, it has been mentioned that the complainant has appeared before the learned trial Magistrate. He was informed that the order has been dictated but still copy of the order has not been made available. I had called or the comments of the officer through District & Sessions Judge, Amritsar but the reply is

awaited.”

16. Mr.Bansal, counsel for respondent no.1, furthers submits that the extract of the report reproduced hereinabove would show that it was neither the matrimonial dispute, nor lodging of FIR, nor grant of anticipatory bail, nor the personal life of the petitioner, which came in the way of his selection as a Judicial Officer, but it was the assessment made by the concerned Court with regard to the judicial work carried out by the petitioner during the period he was a member of Punjab Civil Service. Mr.Bansal contends that the report would speak volumes of the ability, capability and the suitability of the petitioner for the post of Additional District and Sessions Judge. Counsel further contends that in 69 cases, the petitioner had either not signed or dictated the judgments before pronouncement. It was also reported that in fact the officer had given wrong certificates with the monthly statements that he had dictated, signed and pronounced judgments.
17. Mr.Bansal submits that as per the report received by the Punjab and Haryana High Court, the declarations of the petitioner were incorrect. It is further submitted that the judgments had been announced earlier but the same were not signed, which is against the decision rendered by a Division Bench of Punjab and Haryana Court in CWP No.12912/2013. Counsel contends that the petitioner had tried to complete units by deciding petty cases in which witnesses had turned hostile, without deciding contested cases, and, thus, an opinion was formed that he cannot become a good judicial officer. Reference was also made to two complaints against the petitioner regarding non-supply of copy of the order passed.
18. Mr.Bansal further contends that merely because the order passed in the writ petition filed by the petitioner, assailing the order by which his services were dispensed with during probation and the High Court of Punjab and Haryana having held that the services having been dispensed with during

probation is not stigmatic, can be of no help to the petitioner. The Punjab and Haryana High Court had arrived at a decision of dispensing with the services of the petitioner during probation for reasons as detailed above and, thus, he was not found suitable.

19. We have heard learned counsel for the parties and considered their rival submission. We have also perused the impugned order, the orders relied upon by the counsel for the parties and the report of Selection Committee. Great stress has been laid down by learned senior counsel for the petitioner that that respondent no.1 has found the petitioner unsuitable based on incomplete information received from Punjab and Haryana High Court inasmuch that a very vital piece of information being the order of the Division Bench of Punjab and Haryana High Court dated 10.12.2011 passed in W.P.(C)No.595/2011 was not placed before the Delhi High Court and as per this order it has been held that dispensing with the services of the probationer during probation are not stigmatic and, thus, the Delhi High Court could not have relied upon and incomplete information and could not have made his services being dispensed with as a ground to deprive the petitioner of the post after his being declared successful and having obtained a high rank.
20. We, thus, deem it appropriate to reproduce the relevant portion of the Order dated 12.10.2011 passed in CWP No.595/2011 by the Division Bench:

“Petitioner was appointed as a Judicial Officer pursuant to the selection made in the year 2008. He was on probation for a period of two years. Unfortunately, his services were dispensed with during the probation. Mr. Malik, learned Senior Advocate has referred to a report of the Committee comprising of three Hon'ble Judges of this Court, which seems to have persuaded the High Court to dispense with the services of the petitioner. It is contended on behalf of the petitioner that the Committee has taken into consideration some letter of S.S.P., Ludhiana which formed the basis for dispensing with the services of the petitioner.

We have perused the report of the Committee for review of work and

conduct of the probationer Judicial Officers (Annexure P-40). Even though the Committee has referred to the letter of S.S.P., Ludhiana, however, the Committee was of the opinion that the work and conduct of the officer is not satisfactory. Thus, the Committee seems to have reviewed the overall work and conduct of the petitioner.

It is settled proposition of law that dispensing with the services of a probationer during probation is not stigmatic in nature. Thus, without going into the contentions raised, suffice it to say that the order is not stigmatic in nature.

Mr. Malik has also stated at the bar that the petitioner does not want to go back into Judicial Service.

In view of the above, this petition is disposed of with the observations that the order impugned is not to be construed as stigmatic in nature.

(Emphasis added)”

21. There is no doubt that while disposing of the writ petition (CWP 595/2011), it has been observed by the Division Bench of Punjab and Haryana High Court that the Order impugned before the said Bench, i.e. the order dispensing the services of the petitioner, is not to be construed as stigmatic in nature. The explanation rendered by the petitioner in the said writ petition with regard to the adverse report i.e. be it not signing the judgments, giving wrong certificates with monthly statements, orders dictated, signed and pronounced, and the manner in which units were completed by deciding petty cases - cannot be examined by this Court for the reason that at the time of deciding writ petition filed by the petitioner before the Punjab and Haryana High Court, the same report was the subject matter of consideration, which is evident upon reading para 1 of the Order of Punjab and Haryana High Court dated 12.10.2011.
22. The petitioner had challenged the order dated 17.12.2009, by which his services were terminated. This order was upheld by the Division Bench of Punjab and Haryana High Court. While taking into account the report of three Judges, which fact finds mentioned in the order of the Division Bench

dated 12.10.2011, reproduced above, the report of the three Judges in our view has attained finality as the order of the Division Bench was not challenged. The relevant portion of the Order reads as under:

“We have perused the report of the Committee for review of work and conduct of the probationer Judicial Officers (Annexure P-40). Even though the Committee has referred to the letter of S.S.P., Ludhiana, however, the Committee was of the opinion that the work and conduct of the officer is not satisfactory. Thus, the Committee seems to have reviewed the overall work and conduct of the petitioner.”

23. The Punjab and Haryana High Court considered the report of the Committee, comprising of three Hon’ble Judges of the Punjab and Haryana High Court but what prevailed upon the Committee and the Division Bench of Punjab and Haryana High Court in not extending the probation of the petitioner was the opinion of the Committee that the work and conduct of the officer (petitioner herein) was not satisfactory. The Committee, as noticed by the Division Bench, reviewed the overall work and conduct of the petitioner.
24. In the case of ***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo And Others***, reported at (2014) 1 SCC 461, it has been held by the Apex Court as under:

“47. The whole thing has to be scrutinised from the point of view of power. Suitability or eligibility of candidate for appointment to a post is within the domain of the appointing authority. The only thing that can be scrutinised by the Court is whether the appointment is contrary to the statutory provisions/rules.”

25. The work and conduct of the petitioner was not satisfactory. The Committee of three Judges of Punjab and Haryana High Court after having reviewed his overall work and conduct did not extend his probation and the Committee considered the manner in which the petitioner decided cases and submitted wrong certificates with monthly statements. The respondent

has also taken into account and relied upon the report of the Committee where the Committee found that judgments were pronounced but not signed by the petitioner and to complete units petty cases were decided by him.

26. Having regard to the above findings we find no infirmity in the decision taken by respondent no.1. Such an officer cannot be considered fit for being appointed to the Delhi Higher Judicial Service. Merely because the order of the Division Bench says that his services being dispensed with cannot be treated as stigmatic, can be of no help for the petitioner for the reason that the report submitted by three Judges of the Punjab and Haryana High Court have categorically reached a conclusion that the petitioner was found to be most unsuitable to be a good judicial officer. The purpose of probation is to allow an employer to assess the suitability of a candidate. During the period of probation, the Punjab and Haryana High Court found the petitioner unfit for being a good judicial officer as his work and conduct was not considered satisfactory.
27. In our view the respondent no.1 has carefully examined the suitability of the petitioner. The procedure adopted by the respondents cannot be faulted in any manner as they have relied upon the report submitted by a Committee of three High Court Judges, which was the subject matter of a writ petition filed by the petitioner, which writ petition was dismissed. The effect of this would be that in case the findings of the Committee were perverse or illegal, the Division Bench would have interfered or at least the petitioner would have assailed the judgment of the Division Bench, which he did not.
28. For the reasons aforesaid, we find no merit in the present writ petition and the same is accordingly dismissed.

CM APPL. 17474/2015 (STAY)

29. Application stands dismissed in view of the order passed in the writ petition.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

AUGUST 28, 2015 pst/msr