

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2733 OF 2013

Gurunath Dinkar Mane,
Age: 35 years, Occ: Advocate,
R/o Danoli, Tal. Shirol,
Dist: Kolhapur.

.... Petitioner

- Versus -

1. State of Maharashtra

2. High Court of Bombay,
at Mumbai (Registrar General,
High Court, Mumbai.)

.... Respondents

Mr. P.R. Arjunwadkar for the Petitioner.
Ms Sushma Bhende, Asstt. Government Pleader, for
Respondent No.1-State.
Mr. Rajesh S. Datar for Respondent No.2.

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

DATE : SEPTEMBER 23, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents through their Advocates
waive service. By consent, rule is made returnable forthwith and

the writ petition is taken up for hearing and final disposal.

2. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by respondent No.1-State, dated 17-5-2012, discharging him from judicial services.

3. The petitioner completed his Five Years Law Degree Course in the year 2001. He states that he comes from a middle-class agriculturist family. After obtaining the Law Degree, he applied for issuance of Sanad to practice as an Advocate. That was issued by the Bar Council of Maharashtra and Goa on 4-7-2001. The petitioner submits that he has no legal background. He started practice at Kolhapur. After having gained sufficient experience, in the year 2010 the petitioner applied for being appointed as a Civil Judge, Junior Division and Judicial Magistrate, First Class. The petitioner was selected for the said post. An appointment order was issued on 28-12-2011. That order refers to a Notification dated 23-12-2011. The petitioner was directed to report at the Maharashtra Judicial

Academy & Indian Mediation Centre & Training Institute at Uttan, District Thane. The training course was to commence on 9-1-2012. The petitioner reported for the said training on the day he was given charge as an Extra Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Satara. The duration of the training was 16 weeks. It was to end on 28-4-2012. The petitioner's case is that, the course is residential inasmuch as the trainees are required to stay and reside in the bachelor's accommodation. The petitioner successfully completed the training course and in that regard reliance is placed on the Certificate issued on 28-4-2012 (page 27 of the paper-book). It is then submitted that the petitioner did not in any manner misconduct or misbehave during this training. There was no complaint from any colleague or faculty member, much less the Directors at the Judicial Academy.

4. The petitioner thereafter reported back to the post to which he was appointed at Satara. The petitioner was working sincerely, but on 28-5-2012 he received a letter posted on 23-5-2012, issued by the Registrar General of respondent No.2,

informing him that as per the Notification dated 17-5-2012, a copy of which was annexed to the said letter, the petitioner has been discharged from judicial service.

5. Thereafter, the petitioner made a representation, copy of which is at page 32 of the paper-book. The petitioner stated and specifically in this representation that he was selected because he was eligible, qualified and suitable. He was not communicated any remark or any adverse comment while he was undergoing training. None could, therefore, claim to have any grievance about his character and conduct. It is in these circumstances that the order discharging him from judicial service requires to be withdrawn and set aside. That is a drastic measure which adversely affects his career. His family also suffers. The petitioner was expecting a favourable response to this representation dated 22-6-2012. However, finding that there was no response, he proceeded to file this writ petition on 30-1-2013.

6. After service of a copy of this petition on the High

Court Administration, a reply affidavit has been filed. The reply affidavit denies all the allegations. In the reply affidavit it was pointed out that the petitioner was a probationary officer. He was discharged during the period of probation. He was discharged by relying on Rule 14 of the Maharashtra Judicial Service Rules, 2008.

7. Without prejudice to the contention that this is a case of discharge simpliciter and during the probationary period, there is a reference made to a discreet inquiry. The discreet inquiry revealed that the petitioner was found under the influence of alcohol while residing as a trainee Judge at the Academy. There was a complaint or a confidential report received from the Joint Director of the said Academy bringing to the notice of the Registrar General of this Court this incident. The incident is stated to have occurred twice, on 29-1-2012 and 5-2-2012. There was a discreet inquiry with the colleagues and the staff and thereafter this report was forwarded. This report was considered by the Administrative Committee of Judges on 15-2-2012. Thereafter, at a further meeting held on

20-3-2012, a decision was taken to discharge the petitioner from judicial service. That decision was communicated to the Law and Judiciary Department of the State of Maharashtra, whereupon the impugned order was served on the petitioner.

8. The petitioner has filed a rejoinder affidavit in which the case set up is that, the affidavit in reply itself would indicate as to how this is not a case of discharge simpliciter. It is submitted that even a probationer, if discharged or his services are terminated for alleged misconduct, then, the law requires the Administration to hold an inquiry at which full opportunity to defend has to be granted to a probationer or temporary employee as well. Once there is an adverse report received about the conduct of the petitioner, as is admitted in the affidavit in reply, then, non-adherence to this principle would vitiate the impugned order. On that ground alone, the petition must succeed.

9. A justification is also provided and that is stated to be the true event. That justification is that while at the Academy,

it is only the petitioner who was continuously complaining about the quality of the food which was served at the canteen. The food was not at all satisfactory. Its quality was poor. There was no cleanliness and hygiene. A balanced square meal was not provided. At times the food was stale. It is in these circumstances that the petitioner, firstly, complained to the Manager of the canteen and he replied that other candidates are satisfied with his service and, therefore, the petitioner should not dare to question him. So the matter was taken up with the Joint Director and the petitioner was insulted. The Joint Director, as also the Additional Director and the Administrative Officer ganged up against the petitioner and brought about a situation where they would ruin his career by submitting an adverse report. It is that design which is achieved. That is how the petitioner complains that he was harassed and treated with cruelty by these three officers at the Academy for having complained about the poor quality of the food. This is why this termination is nothing but victimisation. It in any event casts a slur on the petitioner's character.

10. It is on this material that we have heard Mr. Arjunwadkar, appearing for the petitioner, and Mr. Datar, appearing for respondent No.2. Mr. Arjunwadkar tenders compilation of documents. Mr. Arjunwadkar complains that the original record may be perused so as to verify this information, which is provided to the petitioner upon an application made invoking the Right to Information Act, 2005. This would reveal as to how the inquiry was factually held. It could not be termed as secret or discreet. There was an inquiry behind the back of the petitioner and relying on the report of that inquiry the order has been passed. Thus, Mr. Arjunwadkar emphasizes that the foundation or basis of the order is the alleged misconduct of the petitioner. The misconduct has also been elaborated inasmuch as the petitioner is alleged to have indulged in disorderly and indecent behaviour by consuming alcohol at the training Academy Campus. That was an act which does not befit a Judicial Officer or a person like the petitioner who is trained by the Administration to be a Judge. That, according to the report, would be a wrong example for others. If this is how the

petitioner has been proceeded against, by relying upon statements of some colleagues/officials, the staff of the canteen, the watchmen, etc., then, this is a clear case of a termination based on misconduct. This casts a slur on the petitioner's reputation and character. For these reasons, the impugned order deserves to be set aside.

11. Mr. Arjunwadkar also submits that time-to-time the Hon'ble Supreme Court has held that it is the duty of the High Court to guide the Judicial fraternity since the District Judiciary looks upon the High Court as a parent or a father for guidance. Therefore, even if there is some incident or a mistake, which occurs not on account of any deliberate act but because of a given social background, then, it is the duty of the High Court to pardon such Judicial Officer and give him an opportunity to correct himself. In other words, action or warning could have served the purpose and such Officer should have been directed to mend his ways or at best could have been kept under a watch for some time. Passing a drastic order of terminating his services and relying on Rule 14, when the foundation or basis for the

same is alleged misconduct, therefore, runs contrary to the principles of law laid down in several decisions of the Supreme Court.

12. Reliance is placed on the Judgments of the Hon'ble Supreme Court in the cases of *Shamsher Singh Vs. State of Punjab*, reported in AIR 1974 SC 2192 = (1974) 2 SCC 831, *Ishwar Chand Jain Vs. High Court of Punjab & Haryana*, reported in AIR 1988 SC 1395 and *Registrar General, High Court of Gujarat & Another Vs. Jayshree Chamanlal Buddhhatti*, reported in (2013) 16 SCC 59.

13. Mr. Datar, appearing for the second respondent and the learned AGP support the impugned order. It is submitted that merely because some inquiry is held discreetly does not mean that the foundation or basis for the termination is misconduct or misbehaviour. On examination of the record in an overall manner it was held that the petitioner is unfit for continuance in service. It is a termination simpliciter of a probationer during his probationary period. That while assessing

his performance and considering his suitability for continuance in the post if it is found that the probationer has not rendered satisfactory service, then, a termination order can be issued. It is nothing but a discharge simpliciter for an unsatisfactory performance. An overall assessment can always be made with regard to the petitioner's performance and his character. In these circumstances, it is submitted that the petition has no merit and it should be dismissed.

14. With the assistance of the learned counsel appearing for both sides, we have perused the writ petition, all annexures thereto and the affidavits placed on record. We have carefully considered the submissions of Mr. Arjunwadkar as, according to him, it is a question of the petitioner's career. We have also perused the relevant decisions cited before us.

15. The facts are not in dispute. Further, there is no challenge to the power of the Administration to discharge a person like the petitioner from judicial service during the probationary period. Admittedly, the petitioner was appointed

on probation and the duration of two years had not expired. Admittedly, upon the appointment, the petitioner was sent for training at the Judicial Academy in terms of the Judgment and Order of the Hon'ble Supreme Court of India. A training academy is set up so as to train the officers recently and newly appointed. That would enable them to discharge their services to the satisfaction of the litigants and all concerned. Eventually, they are the part of the judicial service. Judicial service, as the Hon'ble Supreme Court of India time-and-again clarifies, is part and parcel of a sovereign and regal function of the State. Administration of justice, maintenance of law and order and defence of the country are sovereign and regal functions. If Judges and Advocates are part and parcel of such regal function and get an opportunity to serve the public by joining the services of this nature, then, the least that is expected of them is that their conduct and behaviour befits the service in which they are appointed. They are Judges and people look upon Judges with great respect and regard. Eventually, Court of law is the last resort for the common man. Wherever and whenever he suffers

injustice or has a serious grievance against the opponent or somebody trampling and unjustifiably taking away his legal rights, then, he has no recourse but to approach the nearest Competent Court. It is that Court which is expected to take up his cause and by exhibiting a genuine and bona fide concern. The litigant deserves a fair and just trial, even if the ultimate conclusion or decision is rendered against him. Such is the expectation from the Judicial Officer. He is, therefore, expected to be responsible, sensitive and of an exemplary character. It is not as if the petitioner is novice to the field of law. The petitioner has behind him, and according to him, nine years and more experience as a practising Advocate. Even a practising Advocate is not expected to behave or conduct himself in an indecent or disorderly manner. Therefore, the petitioner and Advocates are well aware that the Society looks upon them as one who are part and parcel of the sovereign and regal function discharged by the State. Even as Advocates, they have to ensure that their performance is one of highest standard and does not fall below it. We do not agree with Mr. Arjunwadkar that

persons with an agricultural or rural background lack the basic moral values and are unaware of the norms of civilised conduct. People residing in rural areas are also well informed and educated. Even if they do not attend a school or college, they are sensible and sensitive enough to understand as to how they must conduct themselves. It is preposterous to suggest that rustic villagers are necessarily uncouth and uncivilised. That is a sweeping and irresponsible remark. It is not that only rich and prosperous are cultured and civilised. Whether, rich or poor, everybody understands and is aware of the norms of orderly and decent conduct to be followed at a place like the Judicial Academy. Else, the Grade-IV staff at the Academy and coming from this very background would have freely indulged in drinking and disorderly conduct.

16. It is not as if we are proceeding on the lines that the termination was on account of misconduct. We are making merely a reference to the submissions of Mr. Arjunwadkar and which are emphasized throughout. We are astonished that a grievance has been made by the petitioner in his affidavit in

rejoinder about a trio at the Academy harassing and victimising him. The earliest opportunity at which the petitioner could have raised this issue was when he made a representation to this Court. In the representation, he makes no grievance at all of the alleged incident whereat he is supposed to have complained about the quality of food. At that time if he was admonished by anybody, including the Joint Director, etc., he could have lodged a complaint. It is said that it is too much to expect from a lower level Judicial Officer that he would not take up issues with the High Court Administration. He would not dare to, at a stage where he is placed in life. If the petitioner finds that he was being served food of poor quality and had complained to the Joint Director and others, then, that incident with details would have found place in his representation. Nothing of this sort is referred. All contentions which are raised now in the affidavit in rejoinder are but an afterthought. There are no specific details, much less charges or allegations which would enable the Court to even now consider and sympathetically the grievance of the petitioner that he has been victimised and that the impugned

order casts a stigma or slur on his character.

17. None of the decisions cited by Mr. Arjunwadkar lay down any absolute principle. None of the decisions of the Hon'ble Supreme Court hold that merely because some preliminary or discreet inquiry is held while judging for assessing the performance and in an overall manner of a probationer, that the foundation of the order ultimately passed of discharging him from service is a misconduct. It is always open for the authorities while assessing and considering the performance in an overall manner to take note of some event and incident. Merely because they take note of it or called for a report about the same from the superior of the person like the petitioner, does not mean that they desire to hold a full-fledged inquiry or there is a decision to terminate the services on account of some misconduct. The decisions also refer to cases where inquiries were commenced under the relevant Service Rules but they were not taken to their logical conclusion and end. During the pendency of the same, a probationer was discharged for unsatisfactory performance. Thus, the law

enables assessment of the performance and conduct of a Judicial Officer. All the more if an overall assessment reveals that the probationer is unsuitable for continuation in service any further, then, an order of discharge simpliciter can be passed. Precisely, such is the nature of the impugned order. The order does not refer to any misconduct. There is no need to go behind it or the allegations that the petitioner makes in the affidavit in rejoinder. We do not think that the record indicates, even from the information generated by the petitioner under the Right to Information Act, that the foundation or basis for the impugned order is the petitioner's alleged misconduct or misbehaviour at the Academy. His performance is assessed in an overall manner for finding out whether he is suitable to be continued in service. He was appointed on 28-12-2011. A periodical assessment of his performance could have always been undertaken and the Rules permit this course of action. Therefore, during the probationary period, in March 2012, the petitioner's performance was assessed and an occasion for the same could be some complaint or incident which had occurred during the course of the training

at the Academy. That by itself and without anything more does not mean that the petitioner has been terminated for some misconduct and which required an inquiry to precede the same. There was no need for an inquiry, much less a full-fledged Departmental one. That was not necessitated at all. This was a case of assessment of the performance of a Judicial Officer who is a probationer and finding him unsuitable for continuation in service any further discharging him from service. It is a termination simpliciter.

18. Once we reach the above conclusion, legal principles as laid down by the decisions relied upon by Mr. Arjunwadkar about which there can never be any quarrel or dispute but their applicability to the facts and circumstances of the present case, is not established. They are clearly distinguishable. In the case of *Jayshree Chamanlal Buddhhatti* (supra) which is the last in point of time, according to Mr. Arjunwadkar, the performance of the Judicial Officer was exemplary. When nothing was found and in the possession of the Registrar (Vigilance), there was a discreet inquiry and eventually, it was established that being a

lady officer she was in a way victimised. Her superiors did not treat her fairly and impartially and that is how the Hon'ble Supreme Court and the High Court interfered with the order of termination or discharge and directed reinstatement of the Judicial Officer in service. Having found that such is not the case before us, we are unable to agree with Mr. Arjunwadkar.

19. For the reasons aforesaid, the writ petition fails. It is dismissed. The rule is discharged.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)