

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10999 OF 2015

Milind Shridhar Jadhav	}	
Age 42 years, Occ. Advocate,	}	
R/o. Flat No. 23, Archana	}	
Building, S. N. Road,	}	
J. L. Tambe Nagar,	}	
Mulund (W),	}	
Mumbai - 400 080	}	Petitioner

versus

1. The Registrar General	}	
High Court, Mumbai	}	
	}	
2. The State of Maharashtra	}	
through the Principal	}	
Secretary, Law and	}	
Judiciary Department,	}	
Mantralaya, Mumbai.	}	Respondents

Mr. Nitin P. Dalvi with Mr. T. M. Sagari for
the petitioner.

Ms. Gauri Godse for respondent no. 1.

Ms. Sushma Bhende - AGP for respondent
no. 2.

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

DATED :- OCTOBER 6, 2016

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed on 7th August, 2015 discharging him from the judicial service.

2. The petitioner before us, an Indian citizen, was appointed as Judicial Magistrate First Class (JMFC) on the recommendation of this court with effect from October, 2010. The appointment is traceable to the Maharashtra Judicial Service Rules, 2008.

3. The petitioner states that having been appointed in the year 2010, he was expecting confirmation in service. The petitioner is relying upon the fact that upon his posting at Alibag, he has performed the duties satisfactorily. The petitioner's performance has been judged and assessed by his superiors as "good". The then learned Principal District Judge, Alibag, in relation to the Annual Confidential Report for the period 1st April, 2011 to 31st March, 2012 and during the posting of the petitioner as 5th Joint Civil Judge, Junior Division, Alibag, remarked about his judicial ability as under:-

"14. Judicial ability of the Officer

a) Knowledge of law and procedure: Good

b) Quality of Judgments

i) Reasoning, clarity and precision: clear

ii) Language and lucidity: simple

iii) Capacity to marshal and appreciate evidence: Average

iv) Application of law including case law: Proper

(Assessment to be based on review of at least ten Judgments interlocutory orders.)"

4. It is submitted that these remarks were reviewed by a learned Judge of this court, who was the Guardian Judge for Raigad (Alibag) District. He has agreed with the reporting officer insofar as the general remarks. It is submitted that independent of this, in the opinion of the Guardian Judge, the petitioner can be graded as a “good judicial officer”.

5. It is submitted that in the following year, from 1st April, 2012 to 31st March, 2013, the petitioner served at the very place as 4th Joint Civil Judge, Junior Division and JMFC, Alibag. Once again, the Principal District Judge had an occasion to comment on several aspects of the petitioner's personality, but particularly about his judicial ability, he remarked as under:-

“14. Judicial ability of the Officer

a) Knowledge of law and procedure: Not up to the mark.

b) Quality of Judgments

i) Reasoning, clarity and precision: Need improvement.

ii) Language and lucidity: Not satisfactory.

iii) Capacity to marshal and appreciate evidence: Need improvement.

iv) Application of law including case law: Not up to the mark.

(Assessment to be based on review of at least ten Judgments interlocutory orders.)”

6. The net result was, however, assessed as “good” and the learned Guardian Judge not only agreed with this result, but independent of this, even for that year, rated his performance as “good”.

7. It is stated that for a brief period from 1st April, 2013 to 11th October, 2013, the petitioner served as Civil Judge, Junior Division and JMFC, Murud. A Principal District Judge, who had no occasion to judge his performance, except for a very brief period, remarked about his judicial ability (at page 45 of the paper book) in the following terms:-

“14. Judicial ability of the Officer

- a) Knowledge of law and procedure: Needs improvement.
- b) Quality of Judgments
 - i) Reasoning, clarity and precision: Needs improvement.
 - ii) Language and lucidity: --
 - iii) Capacity to marshal and appreciate evidence: Needs improvement.
 - iv) Application of law including case law: --

(Assessment to be based on review of at least ten Judgments interlocutory orders.)”

8. However, he, in the column “Net Result”, the grading is that the petitioner is a “good” judicial officer. The petitioner then served at Murud from 31st October, 2013 to 31st March, 2014, but

under a distinct Principal District Judge. He has assessed his performance and particularly his judicial ability as “average” and further remarked that “improvement is necessary”. These remarks were also placed before the learned Judge of this court, who was guardian judge of Raigad (Alibag) District and while agreeing with the reporting officer as far as the grading of the petitioner is concerned, it was stated to be “good”.

9. The petitioner states that on 14th July, 2014, this court issued an order directing that the petitioner's probation period is extended up to 28th November, 2014. However, this retrospective extension of the probation period is contrary to the rules. Shortly thereafter, on 7th August, 2015, the impugned order is passed.

10. The learned counsel appearing for the petitioner, in impugning this order, would submit that it is contrary to law. The petitioner had a typical experience with the learned Principal District Judge, which he has set out in the writ petition. That learned Principal District Judge had a grudge against the petitioner and has deliberately, therefore, remarked negatively about his judicial ability. The judicial ability, though assessed as “good”, as regards some facets covering it, the comment is either “average” or that the petitioner “needs improvement”. Once general entry in this column is “good” and even the net result is

so remarked, then, it is not possible to agree with the High Court administration, particularly when it concluded that the performance of the petitioner is unsatisfactory. It is submitted that in the affidavit in reply, something more is relied upon and with regard to the integrity and character of the petitioner. Throughout, everybody has remarked about his integrity and character as blemish-less, but the affidavit proceeds to state that it is not so. It is in these circumstances that it is submitted that Maharashtra Judicial Service Rules, 2008 have not been followed and applied. In extending the probation period and that too retrospectively, a go-bye is given to these rules. For all these reasons, it is submitted that the respondents have failed in their duty to assess the performance of the petitioner in a fair and impartial manner and secondly, to guide him in the course of his services.

11. In support of the above submissions, reliance is placed on a judgment of the Hon'ble Supreme Court of India in the case of *Registrar General, High Court of Gujarat and Anr. vs. Jayshree Chamanlal Buddhhatti*¹. Reliance is also placed on the judgment of High Court of Delhi in the case of *Pradip Kumar Das vs. Union of India and Ors.*², decided on 27th July, 2012.

¹ 2013 Vol. 14 J. T. 297

² Writ Petition (Civil) No. 98 of 2011

12. On the other hand, Ms. Godse learned counsel appearing for the respondents, relying upon the affidavit in reply, submitted that this is a case of discharge of the petitioner during the probationary period for unsatisfactory performance. Thus, it is without casting any aspersion or stigma on his character. That is permissible in ordinary service parlance and particularly by the Maharashtra Judicial Service Rules, 2008. She submits that there is no merit in the writ petition and it should be dismissed.

13. The Maharashtra Judicial Service Rules, 2008 contains Chapter III, namely, "Recruitment". The appointing authority, for the cadre of District Judges and Civil Judge, Junior Division, shall be the Governor and for promotion to the cadre of Senior Civil Judges shall be the High Court. Rule 5 sets out the method of recruitment, qualification and age limit. One of the methods of recruitment and in relation to Civil Judge, Junior Division and JMFC is by nomination. That is dealt with by Rule 6. We need not go into these aspects and particularly the other rules for it is not the case of the petitioner that the Maharashtra Judicial Service Rules, 2008 have not been applied and followed insofar as his recruitment and appointment is concerned. He relies upon Rule 13 and in which it is stated that the appointments to the service by nomination shall be on probation for a period of two years.

This rule appears in Chapter IV under the title “Probation and Officiation”. Proviso thereto need not be looked into for the present petition. As per Sub-rule (2) of Rule 13, all appointments by promotion shall be on officiating basis for a period of two years. We are not concerned with that aspect either. Sub-rule (3) of Rule 13 states that 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. By Sub-Rule (4), it is mandated that six months before the end of the period or extended period of probtaion 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 if found suitable, issue an order declaring him to have satisfactorily completed the period of probation or officiation, as the case may be, and such an order shall have effect from the date of expiry of the period of probation or officiation, including extended period, if any, as the case may be. By clause (ii) of Sub-rule (4) of Rule 13, the appointing authority is empowered to pass an order in the event it finds the person not suitable to hold the post to which he was appointed or promoted. In the case of probationer, the order that can be passed is a discharge from service. By Sub-rule (5), it is clarified that 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. It is too well settled to require any reiteration that as far as appointment on probation is concerned, in the light of these specific rules, there cannot be any deemed confirmation. Mere inaction does not mean that the probationer can claim that he has been confirmed in service or has been conferred a permanent status. As clarified by Sub-rule (5), there has to be a specific order declaring the satisfactory completion of the probation period.

15. In the present case, the petitioner admits that he was appointed on probation and continued to be so for there was no order within the meaning of Rule 13(4)(i) read with Sub-rule (5) of Rule 13. All that has happened is that the case of the petitioner was placed for consideration and it was decided that the petitioner should be given an opportunity to improve his performance and for that purpose, his probation period was extended after the initial appointment on probation for two years. The petitioner was given several opportunities and on the own showing of the petitioner, the annexures to the petition would reveal that his judicial ability was much below the required

standards. It is not possible to agree with Mr. Dalvi that the petitioner was ill-treated or that the concerned Principal District Judge, on account of some incident, was biased or prejudiced against him. We have seen the annual confidential remarks and which must be read in their entirety. As far as the petitioner's judicial ability is concerned, the concerned Principal District Judge, in the first year of his appointment on probation, though finds that the knowledge of law and procedure is "good", the quality of judgments cannot be said to be entirely satisfactory. Even though the remark against column "Reasoning, Clarity and Precision", which is one of the crucial aspects, the quality of judgments is taken to be clear, language and lucidity is simple, but the petitioner does not attain the required standard while marshalling and appreciating evidence. That capacity is termed as "average". Even then, the superiors, who are judging the performance of the petitioner and at all levels have developed and by passage of time an attitude, by which, they encourage any judicial officer, recently appointed and young in age, to improve. By their experience, they realise the initial problems and difficulties of a new entrant in service. The superiors and seniors know that youngsters have to be groomed and prepared for hard work and sustained, selfless, performance of judicial duties. They give valuable tips and suggestions from time to time. Enough

opportunities are provided to attend workshops and training sessions. The High Court, through its administration, makes genuine and sincere attempt to equip those in district judiciary for the members of that judiciary is the foundation and that alone can be accessed easily by the litigants and clients. The court nearest to the place of residence or business at village or taluka level is accessed in case of injustice by ordinary citizens. It is, therefore, the duty of the High Court and that of the concerned Principal District Judges and their colleagues to ensure that the judicial officer at the lowest level in the hierarchy renders satisfactory service. Every assistance is, therefore, rendered. The petitioner cannot deny this as he was granted four years to better his performance. His judicial ability was not satisfactory, but below par. That is judged by the superior courts in the hierarchy while deciding appeals and revisions. The Principal District Judge has opportunity to observe the demeanour, conduct, behaviour and character of his colleague. The Principal District Judge has it on both, judicial and administrative. The petitioner does not question that power of his superior officer. The Principal District Judge assesses and judges the work and performance of almost every officer. The petitioner is not the only judicial officer in the district.

16. Thus, the petitioner was given several chances to improve and even by the learned Guardian Judge. It was expected in the given years that the petitioner makes a sincere effort and improves the quality of his judgments and his overall judicial ability. It was found that it did not happen. His knowledge of law and procedure was found not up to the mark. The quality of judgments, instead of improving, deteriorated. This continued and it is not as if the Principal District Judges made any harsh comments or remarks, which would discourage a young and recently appointed judicial officer. Rather, the remarks are to the effect that the petitioner still needs improvement. It is based on these and the earlier remarks that the administration took a decision and consciously to extend the period of probation. It is only that the communication extending the probation period was issued after the remarks of the learned Guardian Judge on 14th July, 2014. Therefore, the order passed on 14th July, 2014 was not with an intent to later on discharge the petitioner from the service. The petitioner's performance, throughout the years, was observed, assessed and in an overall manner. The probationer cannot complain and for that matter no judicial officer can complain if there are any remarks entered in the service records about his judicial ability, passed by the superior. He reports such remarks because he has opportunity to see the performance and

from close quarters. He also gathers information with regard to the same. Based on that and the general behaviour and conduct, an assessment is made by the Principal District Judge. There also, another District Judge and who had fairly large amount of experience earlier, when appointed as Principal District Judge at Raigad (Alibag), observed that the petitioner's judicial ability cannot be termed to be of the required quality and standard. It was remarked as "average".

17. One cannot lay down a general rule or prescribe a time limit for a Principal District Judge to assess the performance of a Civil Judge, Junior Division and JMFC working with him in the same district. The Principal District Judge has already put in sufficiently long years of service. He has enough experience and has administered many districts having served the institution in his capacity as a District Judge. A District Judge has appellate powers. Once he observes the performance of the judges when the orders passed by them are challenged before him in appellate proceedings and has occasion thereafter to record his opinion about their judicial ability, then, going by that and considering the entire record in an overall manner, the assessment is made by the High Court administration. It is precisely such an assessment which has been made and it was found that the petitioner has not

completed the probation period satisfactorily. He has not completed it despite several extensions. He was given opportunity to improve his performance and which he failed to avail of completely. We do not see any justification, therefore, in the contentions of Mr. Dalvi that though the High Court administration is expected to act as a parent and the immediate superiors, including the Guardian Judge, are looked upon as a father, they failed to do so in the case of the petitioner. They ought to have guided the petitioner, according to him, helped him to improve his performance. There is no warrant for this complaint for we find that at several stages, opportunity was given to the petitioner. Though the net result was assessed and graded as "good", as far as the relevant columns/items and which have definite bearing on the suitability of the petitioner for continuance in judicial service, the remarks are that his performance as an judicial officer is "average". His judicial ability has not improved in all these years. It continued to be graded as "average". It is in these circumstances that a conclusion was reached that the petitioner failed to complete the probation period satisfactorily and therefore, is not suitable for appointment as a Civil Judge, Junior Division and JMFC. This is a case of discharge simplicitor of a probationer. His performance being unsatisfactory, he was discharged and such an order does

not cast any aspersion on his character, leave alone a stigma. For all these reasons, we do not find that the order under challenge suffers from any error of law apparent on the face of the record. It does not contravene the Judicial Service Rules, 2008. It cannot be termed as perverse either. It also cannot be said that there was no material before the authorities in reaching the conclusion and in terms aforesaid.

18. The reliance placed on the two judgments is entirely misplaced.

19. The facts in the case of *Jayshree Buddhhatti* (supra) are peculiar to her case. The discharge from the duties was challenged on the ground that though the officer worked faithfully and sincerely in the course of her work, she found that some of her subordinate staff members were not conducting themselves properly and were involved in taking the court papers outside the court premises, which was something that could not be permitted. She wrote letters to the then District Judge with respect to the difficulties faced by her, due to the behaviour of the subordinate staff and amongst other things, she recorded this particular conduct on their part. There was no response to these letters, but she received adverse remarks and that is how, though extremely competent, she was discharged from judicial service.

While challenging that order and referring all these materials, she successfully assailed it before the High Court on the ground that it cast aspersions and stigma on her conduct and character. The court held that this was not a case of termination simpliciter of a probationary officer, and therefore, set aside the termination of her service. Agreeing with that conclusion of the Gujarat High Court and cautioning the High Court administration, the Hon'ble Supreme Court dismissed the appeal of the Gujarat High Court administration.

20. We have no hesitation in concluding that the very principles, which have been highlighted by Mr. Dalvi are applied to the facts and circumstances of the present case. There is no departure at all. Rather, in present case, the High Court has taken a liberal view and gave several opportunities to the petitioner to improve his performance. It is, therefore, not permissible for him to turn around and then blame his immediate superiors. In such circumstances, we do not think that this judgment or the judgment rendered by the Division Bench of the High Court of Delhi have any application.

21. In the case of *Pradip Kumar Das* (supra) as well, it was found that the petitioner, serving as Member (Judicial), received an order, firstly, extending his probation and he worked under

great stress. He tendered his resignation and on that very day, he was served with an order discharging him from his service. The facts, as noted in para 2.3 of the order of the High Court of Delhi would indicate as to how the argument was that the order of discharge, which virtually amounted to termination, was bad in law. First of all, it smacked of arbitrariness and was the product of malice in law. It was punitive in nature, inasmuch as it was stigmatic. Agreeing with the learned Judicial Member, the Delhi High Court made reference to the rules and thereafter passed an order, by which, it was held that if no notice was given in terms of Rule 9(2), the termination/discharge would be bad in law. The service of the probationary member can be terminated at any time during the period of probation and if the probationer happens to be the Judicial Member directly appointed from the bar, then, his service can be terminated only after giving him one month notice. The rules were not followed and that is how the petitioner succeeded. We do not think that this judgment would apply in the given facts and circumstances.

22. As a result of the above discussion, the writ petition fails. It is dismissed.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)