

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2017

DELIVERED ON : 22.12.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.29895 of 2015

Tmt.S. Umamaheswari Petitioner

Vs.

1. The High Court of Judicature at Madras,
Rep. By its Registrar General,
Chennai-600104.

2.State of Tamil Nadu
Rep.by its Secretary to Govt.,
Home (Courts-I) Department,
Secretariat, Chennai 600009.

3.Tamilnadu Public Service Commission,
Rep. by its Secretary,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai 600003.

... Respondents

PRAYER: Writ petition has been filed under Article 226 of the Constitution of India to call for records relating to the proceedings of show cause notice of the 1st respondent in R.O.C.No.16648-A/2014/B1 dated 09.03.2015 and consequential order of discharge from service of the 2nd respondent in G.O.(4D) No.47 Home (Courts-1) Department dated 17.08.2015 and quash the same consequently direct the respondents to declare the probation of the petitioner as completed and deemed to have become full member of service and reinstate the petitioner in service and grant all the consequential service and attendant benefits.

For Petitioner : Mr. P. Wilson
Senior Counsel for
M/s A.Edwin Prabakar

For Respondents : Mr. B. Vijai [for R1]
Ms. C.N.G.Niraimathi [for R3]
No appearance [for R2]

O R D E R

(Order of the Court was made by N. SATHISH KUMAR, J)

1. The writ petitioner has assailed the validity of the order passed by the State Government in their order vide G.O. (4D)No.47 Home (Courts-1) Department dated 17.08.2015 discharging the service of the writ petitioner on the consequential proceedings of show cause notice in R.O.C.No.16648-A/2014/B1 dated 09.03.2015 issued by the Registrar General, High Court of Madras/1st respondent.

2. Brief facts leading to filing this writ petition are as follows:

2.a. The writ petitioner was selected provisionally as a Civil Judge vide G.O.(4D) No.71 Home (Courts-I) dated 10.09.2012. She was appointed as Civil Judge (Junior Division) on 11.10.2012. She was posted as Principal District Munsif-cum-Judicial Magistrate, Vandavasi, Thiruvannamalai District on 12.10.2012. Thereafter, she was transferred to Additional District Munsif, Alandur, and took charge on 12.07.2013. When the matter stood thus, the 1st respondent issued show cause notice in R.O.C.No.16648-A/2014/B1 dated 09.03.2015 to show cause as to why she should not be discharged from Tamil Nadu Judicial service as contemplated under Rule 26 of Tamil Nadu State and Subordinate Service Rules (hereinafter referred to as "TNSSS Rules").

2.b. On 17.3.2015 vide Notification No.37 of 2015, the writ petitioner was transferred from the post of Additional District Munsif, Alandur and placed under compulsory wait. The writ petitioner also gave a detailed reply to the show cause notice on 18.3.2015. on 17.08.2015, the second respondent herein passed an order in G.O.(4D) No.47 Home (Courts-I) Department, discharging the petitioner from the Tamil Nadu State Judicial Service in terms of 27(c) of TNSSS Rules with immediate effect, without conducting any enquiry in violation of Article 311 of the Constitution of India.

2.c. It is the further case of the petitioner that the probation period was two years as per Rule 11 of the Tamil Nadu Judicial Service Rules, which was completed by the petitioner on 11.10.2014. After expiry of 2 years of probation period, six months period is given for the respondents either to discharge

the petitioner or to declare the petitioner as confirmed as full member of service. The petitioner had completed two years period of probation and further six months period was over on 10.04.2015. However, no order either confirming or discharging the petitioner was passed by the respondents. Therefore, the petitioner has become a full member of service on 12.04.2015, as per deeming clause in 27(c) of TNSSS Rules.

2.d. The show cause notice issued by the 1st respondent is only an empty formality and it does not contain any reason or allegation or material particulars for discharging the petitioner from service. The impugned show cause notice and order of discharging the petitioner from service are issued in gross violation of Articles 14 and 311 of the Constitution of India. Hence, assailing the proceedings of the first and second respondents, the petitioner has filed the present writ petition.

2.e. The first respondent filed counter inter alia contending that the petitioner was appointed temporarily as Civil Judge in the Tamil Nadu State Judicial Service vide G.O. (4D) No.71 Home (Courts-I) Department dated 10.09.2012. It is the further contention of the 1st respondent that originally 178 candidates were appointed as Civil Judges (2009 batch), vide G.O.Nos.71, 25, 77 and 98 Home (Court I) Department, dated 10.09.2012, 19.4.2013, 18.07.2013 and 06.09.2013 respectively. The candidates appointed as Civil Judges in the year 2012 were considered for declaration of their probation, by the Honourable Administrative Committee in the meeting held on 24.02.2015. In the above meeting, it was resolved to declare the satisfactory completion of probation in respect of 175 Civil Judges in terms of Rules 11(3) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 and to recommend the discharge of the services of 1. Thiru.V. Karthikeyan, formerly Judicial Magistrate - VI, Coimbatore, 2. Thiru.S.Thangaraj, formerly Judicial Magistrate, Fast Track Court, Coonoor, now Assistant Editor, Tamil Law Journal, High Court, Madras and 3. Tmt.S. Umamaheswari - II, formerly Additional District Munsif, Alandur, the petitioner herein, in terms of 27(c) of TNSSS Rules and also resolved to place the matter before the Honourable Full Court.

2.f. Accordingly, the said matter was placed before the Honourable Full Court on 28.04.2015 and the Honourable Full Court has resolved to approve the minutes of the Honourable Administrative Committee dated 24.02.2015 declaring the satisfactory completion of probation in respect of 175 Civil Judges appointed in the year 2012 except Thiru S. Thangaraj, formerly Judicial Magistrate, Fast Track Court, Coonoor, now Assistant Editor, Tamil Law Journal, High Court, Madras and further resolved to recommend to discharge the services of 1. Thiru V. Karthikeyan formerly Judicial Magistrate - VI,

Coimbatore and 2. Tmt.S. Umamaheswari-II, formerly Additional District Munsif, Alandur. Accordingly, on the recommendations of the High Court, Madras, the Government of Tamil Nadu have issued orders in G.O.(4D) No.47 Home (Courts-I) Department, dated 17.08.2015, discharging the services of the writ petitioner i.e., Tmt.S. Umamaheswari-II and one Thiru. V. Karthikeyan and the said Government Order has been served on 21.08.2015 and 22.08.2015 respectively. Aggrieved over the Government Order G.O.(4D) Home (Courts-I) Department, dated 17.08.2015, the writ petitioner has preferred the present writ petition.

3. Heard Mr.S. Wilson, the learned Senior Counsel for Mr.A.Edwin Prabakar, appearing for the writ petitioner, Mr.B. Vijai, the learned counsel appearing on behalf of the 1st respondent and also Ms.C.N.G.Niraimathi, learned counsel appearing on behalf of the 3rd respondent.

4. Mr.P. Wilson, learned Senior Counsel, has vehemently submitted that the impugned order passed by the second respondent as per Rule 27(c) of the General Rules for TNSSS is not valid in law, as the petitioner was not a probationer at the time of passing of the impugned order. The petitioner had become a full member as on 10.04.2015 itself as per rule 27(b) of TNSSS Rules. The petitioner deemed to have been become full member after completion of two years of probation and six months period thereafter. As per Rule 11 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, the period of probation prescribed for a direct recruited Civil Judge is two years within a continuous period of three years including the period of training as may be prescribed by the High Court. Therefore, two year period of probation got over on 10.10.2014. During the period of probation from 11.10.2012 to 10.10.2014, no order was passed by the 1st respondent extending the period of probation. Therefore, any order proposed to be passed under Rule 26 of TNSSS Rules ought to have been passed before the expiry of period of probation.

5. It is the further contention of the learned Senior Counsel that only appointing authority can issue show cause notice under Rule 26 of TNSSS Rules, for discharging the petitioner at any time before the expiry of the prescribed period of probation or extended period of probation. Whereas, in this case, show cause notice was issued under Rule 26 of TNSSS Rules not by the second respondent, i.e., the appointing authority; but only by the 1st respondent. Hence, the impugned order is unsustainable.

6. Rule 11(2) of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, which is a special rule prescribes the period of two years within continuous period of three years

including the period of training. The above rule also confers the powers on the High Court to extend the period of probation, if it is not satisfied with the performance of the appointee. Further, the above rules also stipulates declaration as to completion of probation shall be issued by the High Court. Whereas, the first respondent has not extended the period of probation as per Rule 11(2) of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, nor any order passed declaring the completion of probation. Hence, according to the learned Senior Counsel, there is no deemed extension of probation under either Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 or TNSSS Rules. Rule 27(b) of TNSSS Rule specifically states that if no such order declaring probationer have satisfactorily completed is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his/her probation on the date of expiry of prescribed period of probation. If the above rule is applied to the writ petitioner, the writ petitioner completed the probation period of two years on 10.10.2014 the date on which she become entitled for declaration of completion of probation. Thereafter, within six months the authorities concerned ought to have passed orders either declaring completion of probation or extending the probation period of the writ petitioner. The period of six months also expired on 10.4.2015. On that date, the writ petitioner deemed to have satisfactorily completed probation and become full member of service. Hence, the discharging of the petitioner by issuing show cause notice cannot be sustained in law.

7. It is the further contention of the learned Senior Counsel that show cause notice also not contained material particulars. The petitioner was in a disadvantageous position as to what the explanation or the reason was asked to be given and she was handicapped from giving effective and efficient reply or explanation. Therefore, the principles of natural justice were not followed.

8. The learned Senior Counsel also submitted that as per Rule 27(b) of TNSSS rules, the writ petitioner deemed to have satisfactorily completed the probation and therefore, without specific enquiry as to the charges, she could not have been discharged by invoking Rule 27(c) of TNSSS.

9. In support of his contention, the learned Senior Counsel placed much reliance upon the following decisions:

1. Dayaram Dayal vs. State of M.P. reported in (1997) 2 SCC 443
2. Anoop Jaiswal vs. Government of India reported in (1984) 2 SCC 369

3. Samsheer Singh vs. State of Punjab reported in (1974 2 SCC 831
4. Jagdish Mitter vs. Union of India reported in AIR 1964 SC 449
5. State of Bihar vs. Gopi Kishore Prasad reported in MANU/SC/0213/1959 and
6. Paramjit Singh and others Vs. Ram Rakha and others reported in (1979) 3 SCC 478

10. The learned counsel appearing for the first respondent submitted that though the petitioner was appointed temporarily as Civil Judge vide G.O.(4D) No.71 Home (Courts-I) Department dated 10.09.2012, she joined as Civil Judge on 11.10.2012. As per Rule 11 (2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, she shall be on probation for a period of two years within a continuous period of three years including the period of training as may be prescribed by the High Court. The above rule also confers the powers on the High Court to extend the period of probation if it is not satisfied with his/her work or conduct. Orders declaring the completion of probation shall be issued by the High Court. As per the above rule, a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of service, unless the rules under which he/she is appointed expressly provide for such a result.

11. Rule 11(2) of Tamil Nadu Judicial Service (Cadre and Recruitment) Rules, under which petitioner was appointed does not contain any such provision for acquiring status of permanent member automatically. In the absence of specific rule that at the end of the period of probation, the appointee will acquire a substantive right to the post even without an order of confirmation. There cannot be automatic confirmation to the substantive post, even after the period of probation, the appointee is allowed to continue in the post without an order of confirmation. The only possible view to be taken is that by implication, period of probation has to be extended. It cannot be stated that an appointee was deemed to have confirmed to the substantive post merely because she was allowed to continue after the end of the probation period. Rule 11 (2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, an express order of confirmation is necessary to give him/her such a right to the post. Therefore, the contention of the writ petitioner that there was an automatic confirmation to the substantive post cannot be countenanced.

12. In the service rules, at a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of

probation and the officer who is continued beyond the prescribed or extended period, cannot claim deemed confirmation. Therefore, it is the contention of the learned counsel for the 1st respondent that the writ petitioner squarely comes within the purview of Rule 11 (2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules.

13. It is the further contention of the learned counsel for the first respondent that there is no specific rule with regard to issuance of show cause notice to discharge the probationer under Rule 11(2) of the Tamil Nadu Judicial Service (Cadre and Recruitment) Rules, 2007. The General Rules provided under Rule 26 of the TNSSS Rules, were invoked in issuing the show cause notice. Therefore, it cannot be stated that the petitioner has acquired substantial right to the post even under Rule 27 of the TNSSS Rule.

14. According to the learned counsel for the 1st respondent, admittedly, the petitioner was appointed in service on 11.10.2012. The period of two years probation shall be calculated after exclusion of the leave, if any, taken during the period of probation. The writ petitioner availed 21 days leave during the probation period. The above leave period has to be calculated in reckoning the period of two years. As per the explanation of Rule 27 of the TNSSS Rules, if the above leave is excluded, the period of two years was expired only on 01.11.2014. Whereas the Administrative Committee meeting was held on 24.02.2015, i.e., within the period of six months from the date on which the writ petitioner was eligible for regularisation, has recommended the discharge of the services of the writ petitioner which was also confirmed by Full Court in its meeting held on 28.04.2015. Meanwhile, the show cause notice was issued to the writ petitioner on 09.03.2015 as to why she should not be discharged on the ground of suitability. Therefore, it cannot be stated by the writ petitioner that no order was issued within six months from the date on which she was eligible for such declaration as per Rule 27(b) of the TNSSS Rules.

15. It is the firm contention of the learned counsel for the 1st respondent that when the recruitment rules which are specific in nature, stipulates specific order to confirm the probation, only rule which governs the service condition of the writ petitioner will prevail over. Merely because show cause notice was issued under General Rule i.e., under TNSSS Rules, as there is no provision under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, it cannot be stated that the petitioner deemed to have satisfactorily completed the probation on the date of expiry of the probation. It is the

further contention of the learned counsel for the 1st respondent that the High Court is the competent authority to recommend for discharge of the writ petitioner during the probation period on account of general incapacity without the need for enquiry into specific charges. The High Court, being a competent authority, also can discharge the petitioner under General Rules 27 of the TNSSS Rules. The High Court considered the service of the judicial officer and took note of her judicial performance and also other relevant materials, recommended for discharge of the petitioner from service. Hence, he submitted that the writ petitioner cannot assail the orders of the High Court and Government.

16. In support of his contention, the learned counsel for the 1st respondent placed reliance to the following decisions:

- 1.Registrar (Admn.), High Court of Orissa vs. Sisir Kanta Satapathy [AIR 1999 SC 3265].
- 2.Registrar, High Court of Gujarat v. C.G.Sharma [(2005) 1 SCC 132]
- 3.High Court of M.P. vs. Satya Narayan Jhavar [(2001) 7 SCC 161]
- 4.Rajesh Kohli vs. High Court of Jammu and Kashmir and another. [(2010) 12 SCC 783]
- 5.Kazia Mohammed Muzzammil v. State of Karnataka and another [(2010) 8 SCC 155]
- 6.H.F.Sangati vs.Registrar General, High Court of Karnataka and others. [(2001) 3 SCC 117]

17. The learned counsel appearing for the respondent no.3 also reiterated the contention of the High Court and submitted that the Government has acted on the basis of the recommendations made by the High Court and passed the order of discharge of the petitioner. It is only, the High Court, which has superintendence over the subordinate judiciary and therefore can recommend such action which is required to be accepted by the Government. Such recommendations of the High Court are binding on the Government.

18. In the light of the above submissions, now point which arise for consideration is whether the order passed by second respondent is not according to law.

19. Admittedly, the petitioner was appointed as a Civil Judge temporarily vide G.O.(4D) No.71 Home (Courts-I) Department dated 10.09.2012. In the above Government Order, the petitioner is one among 185 candidates appointed to act temporarily as Civil Judge in the Tamil Nadu Judicial Service. She was appointed and posted as Principal District Munsif cum Judicial Magistrate, Vandavasi on 12.10.2012. Thereafter she was transferred and posted as Additional District Munsif, Alandur on 12.07.2013. In the meanwhile, the Administrative Committee of the High Court, on 24.02.2015 directed the Registry to issue show cause notice to the writ petitioner and another as per Rule 26 of TNSSS Rules. Accordingly, show cause notice was issued to the writ petitioner on 09.03.2015 as to why she should not be discharged from service as contemplated under Rule 26 of TNSSS Act, called upon her to reply to the notice within 15 days on receipt thereof. Thereafter, on 28.04.2015 the Full Court has resolved to approve the resolution of the Administrative Committee and recommended for discharge the service of the petitioner and another one Mr.Karthikeyan, Judicial Magistrate-VI, Coimbatore. Based on the recommendations of the High Court, the 2nd respondent passed a Government Order in G.O.(4D) No.47 Home (Courts-I) Department dated 17.08.2015. This fact is not in dispute. In this regard, it is relevant to extract Rule 11 of the Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 2007:

11. Probation:-

(1) Every person appointed to the post of District Judge (Entry Level) by direct recruitment shall from the date on which he/she joins duty be on probation for a total period of two years on duty within a continuous period of three years, including the period of training as may be prescribed by the High Court. The High Court shall be competent to extend the period of probation of a District Judge (Entry Level) if it is not satisfied with his/her work or conduct. Orders declaring the completion of probation shall be issued by the High Court.

(2) Every person appointed to the post of Civil Judge by direct recruitment, shall from the date on which he/she joins be on probation for a period of two years within a continuous period of three years, including the period of training as may be prescribed by the High Court.

(3) The High Court shall be competent to extend the period of probation of Civil Judge if it is not satisfied with his/her work or conduct. Orders declarating the completion of probation shall be issued by the High Court.

20. This rule is specific rule, governing the service recruitment, service conditions of the appointees to the Tamil Nadu State Judicial Service. Though the rule stipulates two years period of probation within a continuous period of three years, it is not specifically stated that at the end of the period of probation, in the absence of any order contrary, the appointee will acquire substantive right to the post even without an order of confirmation.

21. In this regard it is useful to refer the judgment of the Constitution Bench of the Honourable Supreme Court in State of Uttar Pradesh v. Akbar Ali Khan [AIR 1966 SC 1842], which ruled that if the order of appointment itself states that at the end of the period of probation, in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation, an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication, the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed on the mere fact that he is allowed to continue after the end of the period of probation.

22. Similarly, in State of Punjab v. Dharam Sing [AIR 1968 SC 1210] the Constitution Bench, after scanning the anatomy of the Rules in question, addressed itself to the precise effect of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 and held that when a first appointment or promotion is made on probation for specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. Under these circumstances, an express order of confirmation is imperative to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is difficult to hold that he should be deemed to have been confirmed. When the

service rules fixed a certain period of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. It is so as such an implication is specifically negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it.

23. The judgment in *Dayaram Dayal vs. State of M.P.* and another reported in (1997) 2 SCC 443 dealing with the Madhya Pradesh Subordinate Judicial Services (Classification, Recruitment and Conditions of Service) Rules, the Honourable Supreme Court has held as follows:

"6. We have already set out the facts and the contentions. We shall now set out the rule which both sides tried to interpret in their favour. Rule 24 of the Rules reads as follows:

"24. (1) Every candidate appointed to the cadre shall undergo training for a period of six months before he is appointed on probation for a period of two years which period may be extended for a further period not exceeding two years. The probationers may, at the end of the period of their probation be confirmed subject to their fitness for confirmation and to having passed by the higher standard, all such departmental examination as may be prescribed.

(2) During the period of probation, he shall be required to do magisterial work and acquire experience in office routine and procedure.

(3) If during the period of probation he has not passed the prescribed departmental examinations, or has been found otherwise unsuitable for the service, the Governor may, at any time, therefore, dispense with his service."

It will be noticed that the rule does not merely fix a period of probation but also fixes a maximum period beyond which the probation cannot be

continued and if that be so, the question is whether by implication the officer who is continued beyond the said maximum period must be deemed to have been confirmed by implication?

7. An examination of the rulings of this Court on the question of probation and confirmation shows that in some cases this Court has held that mere continuation beyond the period of probation does not amount to confirmation unless the order of appointment or the rule contains a deeming provision while in some other cases, it has been held that in certain exceptional situations, it is permissible to hold that the services must be deemed to be confirmed. We shall show that there is no real conflict between the two sets of decisions and it depends on the conditions contained in the order of appointment and the relevant rules that are applicable.

8. One line of cases has held that if in the rule or order of appointment a period of probation is specified and a power to extend probation is also specified and the officer is continued beyond the prescribed period of probation, he cannot be deemed to be confirmed, and there is no bar on the power of termination of the officer after the expiry of the initial period of probation. In the case before a Constitution Bench of this Court in Sukhbans Singh v. State of Punjab³ Rule 22 of the relevant rules provided a period of probation and contained a provision for extension of probation, Rule 23 for termination during probation and Rule 24 for substantive appointment on completion of probation. It was held that:

"A probationer cannot ... automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. The rules governing the Provincial Civil Services of Punjab do not contain any provision whereby a probationer at the end of the probationary period is automatically absorbed as a permanent member of the Civil Service."

At the end of the probation, he is merely qualified or eligible for substantive permanent appointment. Thus termination after expiry of initial power of probation was held not invalid. Another Constitution Bench followed the above judgment (vide) G.S. Ramaswamy v. Inspector General of Police to say that Rule 486 of the relevant Hyderabad Rules did not provide for automatic confirmation after 2 years of probation unless the officers "have given satisfaction". Similar was the position in the case before another Constitution Bench in State of U.P. v. Akbar Ali Khan. Here also the Court held that on completion of 2 years of probation as per rules, the officer continued to be a probationer until an order of confirmation was passed. Sukhbans Singh case was followed and it was stated that unless the order of appointment or the rule said that at the end of the probationary period, if no order was passed, the officer is to be deemed to have been confirmed, the officer continued to be on probation. We may state that the facts in Kedar Nath Bahl v. State of Punjab decided by a three-Judge Bench are also similar and the earlier rulings set out above were followed. In Dhanjibhai Ramjibhai v. State of Gujarat also the period of probation fixed under the Rules was two years and there was also provision for extension but no maximum was prescribed. The termination was after the expiry of the period of 2 years of probation. A three-Judge Bench took the view that there could be no automatic confirmation at the end of two years and that the termination after 2 years was valid.

9. The other line of cases are those where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. A question as to its effect arose before the Constitution Bench in State of Punjab v. Dharam Singh. The relevant rule there provided initially for a one-year probation and then for extension thereof subject to a maximum of three years. The petitioner in that case was on probation from 1-10-1957 for one year and was continued beyond the extended period of three years (in all four years) and terminated in 1963 without any departmental inquiry. A Constitution Bench of this Court referred Sukhbans Singh, G.S. Ramaswamy and Akbar

Ali cases and distinguished the same as cases where the rules did not provide for a maximum period of probation but that if the rule, as in the case before them provided for a maximum, then that was an implication that the officer was not in the position of a probationer after the expiry of the maximum period. The presumption of his continuing as a probationer was negated by the fixation of a maximum time-limit for the extension of probation. The termination after expiry of four years, that is after the maximum period for which probation could be extended, was held to be invalid. This view has been consistently followed in *Om Parkash Maurya v. U.P. Coop. Sugar Factories' Federation*; *M.K. Agarwal v. Gurgaon Gramin Bank* and *State of Gujarat v. Akhilesh C. Bhargav* which are all cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as the officer must be deemed to have been confirmed.

12. Thus, even though the maximum period for extension could lead to an indication that the officer is deemed to be confirmed, still special provisions in such rules could negative such an intention.

13. It is, therefore, clear that the present case is one where the rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore the case squarely falls within the second line of cases, namely, *Dharam Singh* case and the provision for a maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. It is also significant that in the case before us the effect of the rule fixing a maximum period of probation is not whittled down by any other provision in the rules such as the one contained in *Samsher Singh* case or in *Ashok Kumar Misra* case. Though a plea was raised that termination of service could be effected by serving one month's notice or paying salary in lieu thereof, there is no such provision in the order of appointment nor was any rule relied upon for supporting such a contention."

24. In *Anoop Jaiswal vs. Government of India* and another (1984) 2 SCC 369 the Honourable Supreme Court has observed as thus:

11. On behalf of the Union of India reliance has been placed on State of Punjab v. Shri Sukh Raj Bahadur; Union of India v. R.S. Dhaba; State of Bihar v. Shiva Bhikshuk Mishra; R.S. Sial v. State of U.P.; State of U.P. v. Ram Chandra Trivedi and I.N. Saksena v. State of M.P. We have gone through these decisions. Except the case of Ram Chandra Trivedi all other cases referred to above were decided prior to the decision in Shamsher Singh case which is a judgment delivered by a Bench of seven Judges. As pointed out by us in all these cases including the case of Ram Chandra Trivedi the principle applied is the one enunciated by Parshotam Lal Dhingra case which we have referred to earlier. It is urged relying upon the observation in Shri Sukh Raj Bahadur case that it is only when there is a full scale departmental enquiry envisaged by Article 311(2) of the Constitution i.e. an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any termination made thereafter will attract the operation of Article 311(2). It is significant that in the very same decision it is stated that the circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial. As observed by Ray, C.J., in Samsher Singh case the form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2).

13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the gymnasium and acting as one of the ringleaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ringleaders were not seriously

taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution."

25. In *Samsher Singh vs. State of Punjab* [1974 SCC 831] the Apex Court has held as follows:

68. The appellant Ishwar Chand Agarwal contended that he completed his initial period of two years' probation on November 11, 1967 and the maximum period of three years' probation on November 11, 1968 and by reason of the fact that he continued in service after the expiry of the maximum period of probation he became confirmed. The appellant also contended that he had a right to be confirmed and there was a permanent vacancy in the cadre of the service on September 17, 1969 and the same should have been allotted to him.

69. Rule 7(1) states that every Subordinate Judge, in the first instance, be appointed on probation for two years but this period may be extended from time to time expressly or impliedly so that the total period of probation including extension, if any, does not exceed three years. The explanation to Rule 7(1) is that the period of probation shall be deemed to have been extended if a Subordinate Judge is not confirmed on the expiry of his period of probation.

70. Counsel for the appellant relied on the decision of this Court in *State of Punjab v. Dharam Singh* where this Court drew an inference that an employee allowed to continue in the post

on completion of the maximum period of probation is confirmed in the post by implication. In Dharam Singh case the relevant rule stated that the probation in the first instance is for one year with the proviso that the total period of probation including extension shall not exceed three years. In Dharam Singh case he was allowed to continue without an order of confirmation and therefore the only possible view in the absence of anything to the contrary in the Service Rules was that by necessary implication he must be regarded as having been confirmed.

71. Any confirmation by implication is negatived in the present case because before the completion of three years the High Court found prima facie that the work as well as the conduct of the appellant was unsatisfactory and a notice was given to the appellant on October 4, 1968 to show cause as to why his services should not be terminated. Furthermore, Rule 9 shows that the employment of a probationer can be proposed to be terminated whether during or at the end of the period of probation. This indicates that where the notice is given at the end of the probation the period of probation gets extended till the inquiry proceedings commenced by the notice under Rule 9 come to an end. In this background the explanation to Rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation. This implied extension where a Subordinate Judge is not confirmed on the expiry of the period of probation is not found in Dharam Singh case. This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh case and that a probationer is not in fact confirmed till an order of confirmation is made.

72. In this context reference may be made to the proviso to Rule 7(3). The proviso to the rule states that the completion of the maximum period of three years' probation would not confer on him

the right to be confirmed till there is a permanent vacancy in the cadre. Rule 7(3) states that an express order of confirmation is necessary. The proviso to Rule 7(3) is in the negative form that the completion of the maximum period of three years would not confer a right of confirmation till there is a permanent vacancy in the cadre. The period of probation is therefore extended by implication until the proceedings commenced against a probationer like the appellant are concluded to enable the Government to decide whether a probationer should be confirmed or his services should be terminated. No confirmation by implication can arise in the present case in the facts and circumstances as also by the meaning and operation of Rules 7(1) and 7(3) as aforesaid."

26. In Jagadish Mitter vs. Union of India reported in AIR 1964 SC 449 the Constitution Bench of Honourable Supreme Court held thus:

21. Let us now revert to the facts of the present case. We have already stated that before the services of the appellant were terminated, some enquiry was held on the complaint of one Sham Lal and at this enquiry it transpired that Vishwa Mitter, the brother of the appellant, had used a reply-paid post card sent by Sham Lal without scoring the address of Sham Lal written on it by him. In fact, it appears that Vishwa Mitter admitted that he had illegally used the said card. But we do not know when this enquiry was held, how it commenced and what was the final order passed as a result of it. Unfortunately, the paper-book filed by, the appellant who has been allowed to appeal as a pauper does not include the relevant papers, and so, it would not be possible to hold that the enquiry in question was held with a view to take disciplinary action against the appellant, or that the order of discharge which was ultimately passed against him flowed from the finding made at the said enquiry. It is quite possible that even if the respondent intended to hold a formal enquiry with a view to take disciplinary action against the appellant, it may have thought that a preliminary, investigation in that behalf may first be conducted and then a decision may be taken as to whether a formal enquiry should be held or not. If that was the

scope of the enquiry which was apparently held in this case, the appellant cannot rely upon the said enquiry in support of his plea that his discharge amounts to dismissal."

27. In the judgment *The state of Bihar vs. Gopi Kishore Prasad* [AIR 1960 SC 689] the Apex Court has held thus:

"6. It would thus appear that, in the instant case, though the respondent was only a probationer he was discharged from service really because the Government had on enquiry come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of Art. 311 (2) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersion on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any Court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist upon the protection of Art. 311 (2) of the Constitution. That protection not having been given to him, he had the right to seek his redress in Court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by Art. 311(2) of the Constitution. His removal from the service, therefore, was not in accordance with the requirements of the Constitution." (Emphasis supplied)

28. In *Paramjit Singh and others v. Ram Rakha and others* reported in (1979) 3 Supreme Court Cases 478 it is stated as follows:

9. It was contended on behalf of the direct recruits that once a specific period of probation is fixed and a fetter is put on the power of the Government to extend probation only by a specific period, at the end of such extended period either the service of the direct recruit is to be dispensed with on the ground that he was unfit for appointment or if he is continued thereafter he must be deemed to have been confirmed and the date next after the day of expiry of his ordinary or extended period of probation would be the date of his confirmation. This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation he should be deemed to continue in his post as a probationer only in the absence of any communication to the contrary in the original order of appointment or promotion or the Service Rules. In such a case an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specific period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in *S. Sukhbans Singh v. State Of Punjab* AIR 1962 SC 1711; *G.S Ramaswamy v. Inspector-General of Police, Mysore State, Bangalore* AIR 1966 SC 175; and *State of U.P. v. Akbar Ali*. This view was founded upon the relevant rules which permitted extension of the probationary period for an indefinite time. In fact there was no negative rule in these cases prohibiting the Government from extending the probationary period beyond a certain maximum period. However, where the Rules provide for a fixed period of probation with a power in the Government to extend it up to a specific period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post. This Court in *State Of Punjab v. Dharam Singh* AIR 1968 SC 1210 after taking into consideration rule 6(3) of the Punjab educational service (provincialised cadre) class iii rules, 1961, which provided for either

dispensing with the services of the person appointed to the post on probation if his work was found to be unsatisfactory or to extend the period of probation for such period as may be deemed fit or revert him to his former post if he was promoted from some lower post, provided that the total period of probation including the extensions if any, shall not exceed three years, held that the Service Rules fixed a certain period of time beyond which the probationary period cannot be extended and if an employee appointed or promoted to a post is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation he cannot be deemed to continue in that post as a probationer by implication. In such a case the Court held it is permissible to draw an inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication. rule 8 of the service rules prescribes the period of probation of two years and the proviso confers power to extend the period of probation by not beyond one year meaning thereby that in any case the Government would not have the power to extend the period of probation beyond a period of three years. In this situation the ratio in Dharam Singh case would mutatis mutandis apply and it will have to be held that the direct recruit who completed the period of probation of two years and in the absence of an extension of probationary period, would be deemed to be confirmed by necessary implication. Respondents 5 to 8 direct recruits have accordingly been confirmed on expiry of the period of probation of two years. Now if seniority is to be reckoned from the date of confirmation and if promotees are not confirmed for years together in some cases, to wit, Respondents 1 and 2 who were promotees of February and January 1961 respectively, were not confirmed till they filed the writ petition in 1972 while direct recruits who came much later got confirmed and ipso facto became senior to the promotees, if quota rule is only applied, as is contended on behalf of the appellants and the State of Punjab, at the time of initial recruitment, this undesirable result is wholly unavoidable."

(Emphasis supplied)

29. In the judgment *Head Master, Lawrence School Lovedale v. Jayanthi Raghu & Another* reported in CDJ 2012 SC 202 the Apex Court held as follows after considering various Constitution Bench judgments and other judgments of the Apex Court:

18. Regard being had to the aforesaid principles, the present Rule has to be scanned and interpreted. The submission of Mr. Viswanathan, learned senior counsel for the appellant, is that the case at hand comes within the third category of cases as enumerated in para-11 of *Satya Narayan Jhaver (supra)*. That apart, it is urged, the concept of deemed confirmation, ipso facto, would not get attracted as there is neither any restriction nor any prohibition in extending the period of probation. On the contrary, the words "if confirmed" require further action to be taken by the employer in the matter of confirmation.

19. On a perusal of Rule 4.9 of the Rules, it is absolutely plain that there is no prohibition as was the rule position in *Dharam Singh (supra)*. Similarly, in *Om Prakash Maurya (supra)*, there was a restriction under the Regulations to extend the period of probation. That apart, in the rules under consideration, the said cases did not stipulate that something else was required to be done by the employer and, therefore, it was held that the concept of deemed confirmation got attracted.

20. Having so observed, we are only required to analyse what the words "if confirmed" in their contextual use would convey. The Division Bench of the High Court has associated the said words with the entitlement of the age of superannuation. In our considered opinion, the interpretation placed by the High Court is unacceptable. The words have to be understood in the context they are used. Rule 4.9 has to be read as a whole to understand the purport and what the Rule conveys and means. In *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* and others¹¹, it has been held as follows: -

"(1987) 1 SCC 424 "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, -

context is what gives the colour. Neither can be ignored. Both are important. The interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

Keeping the said principle in view, we are required to appreciate what precisely the words "if confirmed" contextually convey.

Regard being had to the tenor of the Rules, the words "if confirmed", read in proper context, confer a status on the appointee which consequently entitles him to continue on the post till the age of 55 years, unless he is otherwise removed from service as per the Rules.

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7. 21. It is worth noting that the use of the word "if" has its own significance. In this regard, we may usefully refer to the decision in S.N. Sharma v. Bipen Kumar Tiwari and others¹². In the said case, a three-Judge Bench was interpreting the words "if he thinks fit" as provided under Section 159 of the Code of Criminal Procedure, 1898. It related to the exercise of power by the Magistrate. In that context, the Bench observed thus: -

"The use of this expression makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative. If the expression "if he thinks fit" had not been used, it might have been argued that this section was intended to give in wide terms the power to the Magistrate to adopt any of the two courses of either directing an investigation, or of proceeding himself or deputing any Magistrate subordinate to him to proceed to hold a preliminary enquiry as the circumstances of the case may require.

Without the use of the expression "if he thinks fit", the second alternative could have been held to be independent of the first; but the use of this expression, in our opinion, makes it plain that the power conferred by the second (1970) 1 SCC 653 clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable."

22. In *State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.*¹³, the Court, while interpreting the words "if the offence had not been committed" as used in Section 10-A(1) of the Central Sales Tax Act, 1956, expressed the view as follows: -

"In our opinion the use of the expression 'if' simpliciter, was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell under sub-section (2) of Section 8 of the Act."

23. Bearing in mind the aforesaid conceptual meaning, when the language employed under Rule 4.9 is scrutinised, it can safely be concluded that the entitlement to continue till the age of superannuation, i.e., 55 years, is not absolute. The power and right to remove is not obliterated. The status of confirmation has to be earned and conferred. Had the rule making authority (1986) 3 SCC 91 intended that there would be automatic confirmation, Rule 4.9 would have been couched in

a different language. That being not so, the wider interpretation cannot be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as - that would defeat the basic purpose and intent of the Rule which clearly postulates "if confirmed". A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed. The Division Bench has clearly flawed by associating the words 'if confirmed' with the entitlement of the age of superannuation without appreciating that the use of the said words as a fundamental qualifier negatives deemed confirmation. Thus, the irresistible conclusion is that the present case would squarely fall in the last line of cases as has been enumerated in paragraph 11 of Satya Narayan Jhaver (supra) and, therefore, the principle of deemed confirmation is not attracted.

24. In the result, the appeal is allowed and the judgment and order passed by the High Court are set aside to the extent that the first respondent had acquired the status of confirmed employee and, therefore, holding of enquiry is imperative. As far as the conclusion recorded by the Division Bench that no stigma was cast on the respondent is concerned, the same having gone - unchallenged, the order in that regard is not disturbed. The parties shall bear their respective costs."

(Emphasis supplied)

30. In *Rajesh Kohli vs. High Court of Jammu and Kashmir and Another* [(2010) 12 Supreme Court Cases 783], it is held as follows:

4. The petitioner was also given his increments in terms of the Rules. However, while the petitioner was so serving as an Additional District and Sessions Judge, a complaint was received against him, filed by one Mr Babu Ram, which was duly supported by an affidavit dated 6-8-2001, contending inter alia that the petitioner while acting as a counsel for him fraudulently withdrew an amount of Rs. 2.6 lakhs deposited with the Registrar (Judicial), High Court of Jammu and

Kashmir which was payable to the complainant Babu Ram.

5. The aforesaid complaint was enquired into by the Chief Justice of the High Court through the Registrar (Vigilance) of the High Court. On conclusion of the enquiry, a report was submitted stating inter alia that Mr Rajesh Kohli, the petitioner herein, who was engaged by Mr Narain Dutt, the attorney holder of Babu Ram, identified someone else as Babu Ram before the Registrar (Judicial), Jammu and Kashmir High Court and received an account payee cheque in the name of Babu Ram. In the said report, it was also alleged that the petitioner besides identifying the impersonator as Babu Ram, also introduced him to Vijay Bank at the time of opening of the bank account and thereby managed to unlawfully receive an amount of Rs. 2.6 lakhs, while the real beneficiary-Babu Ram neither appeared before the Registrar (Judicial) or before Vijaya Bank nor did he receive the said amount.

6. The aforesaid report of the Registrar (Vigilance) dated 24-12-2001 was placed before the Chief Justice of the Jammu and Kashmir High Court who directed that the matter be referred to the Chairman, Disciplinary Committee for necessary action. The Registrar (Judicial) of the High Court was asked to file a criminal complaint against the petitioner before the SHO of the police station concerned.

7. Further, during the period when the petitioner was posted to District Kargil as the Principal District and Sessions Judge, he did not join there w.e.f. 24-12-2001 to 18-1-2002 and an explanation was sought from him in that regard. Even thereafter, a complaint from a judicial employee of District Kargil was received wherein it was alleged that the petitioner had been abusing the employees and had created a lot of problems at District Kargil. These matters are recorded in the personal records of the petitioner.

22. In our considered opinion, none of the aforesaid two orders could be said to be a stigmatic order as no stigma is attached. Of course, the aforesaid letters were issued in view of the resolution of the Full Court meeting where

the Full Court of the High Court held that the service of the petitioner is unsatisfactory. Whether or not the probation period could be or should be extended or his service should be confirmed is required to be considered by the Full Court of the High Court and while doing so necessarily the service records of the petitioner are required to be considered and if from the service records it is disclosed that the service of the petitioner is not satisfactory it is open for the respondents to record such satisfaction regarding his unsatisfactory service and even mentioning the same in the order would not amount to casting any aspersion on the petitioner nor could it be said that stating in the order that his service is unsatisfactory amounts to a stigmatic order.

(Emphasis supplied)

29. One of the issues that were raised by the petitioner was that he was granted two increments during the period of two-and-a-half years of his service. Therefore the stand taken by the respondents that his service was unsatisfactory is belied according to the petitioner because of the aforesaid action even on the part of the respondents impliedly accepting the position that his service was satisfactory.

30. The aforesaid submission of the petitioner is devoid of any merit in view of the fact that since the petitioner was continuing in service, therefore, the case for granting increment was required to be considered which was so granted. The mere granting of yearly increments would not in any manner indicate that after completion of the probation period the Full Court of the High Court was not competent to scrutinise his records and on the basis thereof take a decision as to whether or not his service should be confirmed or dispensed with or whether his probation period should be extended.

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.

(Emphasis supplied)

31. In Registrar (Administration) High Court of Orissa, Cuttack v. Sisir Kanta Satapathy reported in AIR 1999 SUPREME COURT 3265 (Constitution Bench), it is held as follows:

"15. On going through the judgments of this Court right from Shyam Lai v. State of U.P., [1955] 1 SCR 26 down to High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal & Anr, [1998] 3 SCC 72, one cannot but reach one conclusion regarding the power of the High Court in the matter of ordering compulsory retirement. That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the Members of the Judicial Service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the Members of Judicial Service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor [vide para 18 in Inder Prakash Anand's case (supra)]. (Emphasis supplied)

16. We are clearly of the view that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer, on any count whatsoever, the High Court

becomes only the recommending authority and cannot itself pass such an order [vide Inder Prakash Anand's case and Rajiah's case (supra)].

32. From the various judgments of Honourable Apex Court referred above, it is clear that deemed confirmation or extension period of probation would depend upon the concerned service Rules. In the above back ground, when we look at the Rule which governs the writ petitioner, particularly Rule 11(2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, though service rules provide two years period of probation within continuous period of three years, power to extend the probation vest with High Court, if it is not satisfied with work or conduct of the appointee. Admittedly, Rule 11(2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules confers power to High Court to provide maximum period of probation. Even after the probation period, one continues his/her service, he/she cannot automatically acquire the right to be confirmed. Further, service rules also require specific act on the part of the High Court for issuing order of confirmation. Admittedly, the High Court has not passed any order of confirmation. Therefore, the writ petitioner cannot contend that her service is deemed to be confirmed after two years period of probation.

33. We are of the view that Rule 11 of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules is specific which governs the service condition of the writ petitioner. Therefore, the writ petitioner cannot take shelter under the General Rule 27 of the TNSSS Rules. Therefore, merely because show cause notice was issued under Rule 26 of the General Rule of the TNSSS Rules, it cannot be stated that the Service Rules 26 and 27 will apply. However, we may say that even if Rule 27 is applied, it should be established that no order was issued within six months from the date on which the writ petitioner became eligible for declaration. Only then the deemed probation will come into operation. As already discussed, probation period shall be calculated excluding the period of leave the writ petitioner availed. The writ petitioner had availed 21 days of leave during the probation period of two years which got over on 01.11.2014 and after that, within six months period i.e., on 09.03.2015 show cause notice was issued, based on the recommendation of the Administrative Committee's resolution dated 24.2.2015. Therefore, issuance of show cause notice within six months period after the period of two years probation itself was an indicative of the fact that her probation has not been confirmed and the process has been commenced for discharge of petitioner.

34. Similarly, Explanation III to Rule 27(c) of TNSSS Rules also deals with the power of competent authority, which proposes to terminate the services of a probationer for general unsatisfactory work or incapacity without the need for enquiry into specific charges. That power also could be exercised by the competent authority under General Rules 26 and 27 of the TNSSS Rules, as the case may be. The High Court being the competent authority has every power to invoke the General Rule i.e., TNSSS Rules also.

35. Therefore, considering the general rules viz., Rule 27 of the TNSSS Rules as well as the specific Rule under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, we are of the view that specific order of High Court, is necessary for confirmation for declaring the probation of the writ petitioner until and unless such order is passed by the High Court, the person who was appointed and put on probation cannot acquire automatic right to declare completion of his/her probation. The Administrative Committee passed a resolution on 24.2.2015 and found that the writ petitioner was not suitable to continue in service and recommended for her discharge. The recommendations of the Administrative Committee to discharge service of the writ petitioner also approved by the Full Court. Full Court took a collective decision to discharge the service of the writ petitioner. A combined reading of Rules 26 and 27 of the TNSSS Rules and Rule 11(2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, we are of the view that the High Court being a disciplinary authority which has superintendence power over the subordinate judiciary, can very well recommend discharge from service of a probationer during the period of probation or at the end of probation. At the risk of repetition, the Explanation III to General Rule 27 (c) the competent authority without the need for enquiry into specific charges, can recommend for termination of a probationer. Administrative Committee and Full Court by their opinion and collective wisdom, taking into consideration of general reputation as to the honesty, integrity and impartiality of a member of judicial service, took a decision that the petitioner's continuance in the service was not for the interest of the institution. The High Court having administrative and disciplinary control over the Tamil Nadu Subordinate judiciary is well within its ambit to take appropriate action against the officers.

36. A Constitution Bench of the Honourable Supreme Court in Registrar (Administration), High Court of Orissa v. Sisir Kanta Satapathy [AIR 1999 SC 3265] has clearly laid down the principle with regard to the powers of the High Court in the matter of disciplinary control over subordinate judiciary including power to initiate disciplinary proceedings, suspend them pending

enquiries and impose punishment on them. It is also further clarified that the High Court becomes the recommending authority when it comes to the question of dismissal, removal, reduction in rank or termination of the service of the judicial officer, on any count whatsoever.

37. In view of the above, we find no merit in the contention of the writ petitioner. The High Court has rightly recommended the removal of the petitioner and the Government has acted upon the recommendation and passed the Government Order. Therefore, we do not see any merit in the present writ petition and the same is liable to be dismissed.

38. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS -VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar General,
High Court of Judicature at Madras,
Chennai-600104.
 - 2.The Secretary to Govt.,
Home (Courts-I) Department,
Secretariat, Chennai 600009.
 - 3.The Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road,
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Chennai 600003.
 4. The Registrar Judicial, High Court, Madras.
 5. The Section, High Court, Madras.
- + 1 cc to MR. A. Edwin Prabakar, Advocate SR.92501
W.P.No.29895 of 2015
PVS (CO) EU 22.1.18