

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

WRIT PETITION NO.2470 OF 2014

**Mr. Girish Chandrakant Gosavi]
aged 36 yrs., R/o A/401, Railwaymens Apnagar]
Co-op Hsg. Soc. Ltd., Near Shankarwadi,]
Jogeshwari (E), Mumbai 400 060]..... Petitioner.**

Versus

**1] The Chief Secretary,]
Law and Judiciary Department]
Government of Maharashtra]
Mantralaya, Mumbai]
2] The Registrar General of Bombay High Court]
Bombay High Court, Mumbai]
3] Mr. Kishor Kalesh Sonawane]
(Principal District Judge, Thane)]
District and Sessions Court,]
Thane.]..... Respondents.**

**Ms. Neeta Karnik i/by Mr. Ajit Kocharekar for the Petitioner.
Mr. Rohan Sawant, AAGP, for the Respondent No.1.
Mr. P. S. Dani, Senior Advocate, i/by Ms. Rebecca Gonsalvez for the
Respondent Nos.2 and 3.**

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
Reserved On :- 12th April 2018
Pronounced on :- 03rd May 2018**

JUDGMENT [PER R. M. SAVANT, J.]

1 Rule, having regard to the challenge raised, made returnable
forthwith and heard with the consent of the learned counsel for the parties.

2 The vexed issue as to whether the allegations against a probationer are the “motive” or “foundation” for discharge of the probationer from service has once again engaged the attention of this Court in the above Writ Petition.

3 The above Writ Petition has been filed by the Petitioner who was a Judicial Officer being a Civil Judge Junior Division and Judicial Magistrate First Class challenging the communication dated 18/11/2013 issued by the Respondent No.3 discharging him from service. The Petitioner also challenges the communication dated 12/11/2013 issued by the Legal Adviser and Joint Secretary, Government of Maharashtra which is also to the same effect. Incidentally the Petitioner also seeks quashing and setting aside of the recommendation orders dated 28/08/2013, 31/08/2013 and 02/09/2013 passed by the Probation Committee of this Court constituted for evaluating the probation of the probationers and for taking appropriate action as regards confirmation, continuation or extension of the probationary period of the probationers.

4 The factual matrix involved in the above Writ Petition can be stated thus :-

 The Petitioner went through the process for the selection to the post of Judicial Magistrate First Class and Civil Judge Junior Division (for short

“JMFC and CJJD”) pursuant to the advertisement which was issued in that regard by the Maharashtra Public Service Commission (for short “MPSC). As per his overall ranking in the said selection process the Petitioner was selected and appointed as the JMFC and CJJD. In terms of the appointment letter the Petitioner was to be on probation for a period of two years and was to be confirmed only on an order being passed in that regard. The Petitioner's initial probation period of two years was therefore to come to an end on 06/06/2012. The Petitioner underwent training at the Maharashtra Judicial Academy, Uttan (for short “MJA), and ultimately took charge of the post of Joint Civil Judge Junior Division and Judicial Magistrate First Class, Ulhasnagar, Dist. Thane. The Petitioner was also detailed for induction training of the MJA between 1st week of November and 2nd week of December 2011.

5 Since the Petitioner was on probation, the Petitioner's Annual Confidential Reports as JMFC and CJJD for the said period were written by the Reporting Officers who were the Joint Director of MJA, Uttan (for the period of his training), by the learned Principal District Judges, Thane for the period 2010-2011 and 2011-2012. In so far as the Principal District Judges are concerned, it was Shri S D. Mohod for the period 2010 to 31/03/2011 and thereafter Shri K. K. Sonawane, who is now a learned Judge of this Court. The reports of the Principal District Judge as per the procedure are kept before the learned Guardian Judges appointed by the Hon'ble the Chief Justice for Thane

District from time to time. In so far as Thane District is concerned for the tenure of the Petitioner since his appointment till April 2012 the Hon'ble Guardian Judge remained the same. However, the Guardian Judges were changed in April 2012 and a new set of Guardian Judges were appointed for Thane District in the reshuffle that took place of the Guardian Judges.

6 Before adverting to the contents of the Annual Confidential Reports of the Petitioner which are part of the above Writ Petition, it would be necessary to make a reference to the anonymous complaint dated 18/10/2011 which was received by the Registry of the District Court. It was stated in the said complaint that the Petitioner though presiding over as a Judicial Magistrate of Ulhasnagar was staying at Andheri, Mumbai and comes to the Court at around 11.30 a.m. to 12.00 noon. He does the work of the Morning Court after 11.30 a.m. He calls the advocates in his chamber and chit-chats with them, thereby undermining the confidence of the litigants. It was further alleged that the Petitioner discusses about other judges in the presence of the lawyers. He discusses about different articles/commodities. He sits in chamber and carries out Court work. He sits at 12.00 noon for the Morning Court and thereby creates difficulties for the staff, lawyers and litigants as reports cannot be prepared. In view of the said anonymous complaint as also in view of the oral complaints which were received by the learned Principal District Judge, Thane a discreet enquiry as regards the punctuality of the

Petitioner was carried out through the District Judge-3 at Kalyan. The learned District Judge-3 gave a visit to the Morning Court on 21/04/2012 and on such visit he was found on dais. The learned District Judge-3 thereafter to inquire about the punctuality of the Petitioner checked the attendance register of the Morning Court from the month of February 2012 till the day of visit. It was found that the Petitioner was absent for six days in February 2012, for six days in March 2012 and also for six days in April 2012. The learned Principal District Judge thereafter stated in his report that on inquiries with the ministerial staff and police officials attending the Morning Court it was revealed that the Petitioner remains absent from duty in the Morning Court though he used to attend the regular Court.

7 It is required to be noted that prior to the said discreet enquiry the learned Principal District Judge in view of the oral complaints received as regards the punctuality of the Petitioner had paid a surprise visit on 01/02/2012 when the Petitioner did not arrive in the Court till 11.30 am to 11.45 am and that there was no intimation about his absence from duty on that day i.e. 01/02/2012. However at about 12.00 noon the concerned staff of the Court informed that a message was received from the Petitioner that he would not attend the Court as he was not keeping well.

It would now be necessary to refer to the Annual Confidential

Reports of the Petitioner for the relevant period (gist of which is as under) :-

(I)	<u>From 07th June 2010 to 14th August 2010</u>
	Performance was held to be good but needed improvement. Behaviour was said to be good.
(II)	<u>From 11th October 2010 to 31st March 2011</u>
	<u>(Report of Principal District Judge Shri S.D.Mohod)</u>
	The remark was “Good” in respect of behaviour, reputation, judicial ability, and the overall assessment was “Good”.
	<u>REMARKS OF THE GUARDIAN JUDGE</u>
	The learned Guardian Judge agreed with the remark of the learned Principal District Judge and his assessment.
(III)	<u>Report Dated 11th May 2012 of the</u>
	<u>Principal District Judge Shri K. K. Sonawane</u>
	It is in this report that the remarks “not free from doubt”, “unpunctual”, “suspicious”, “integrity doubtful”, “apathetic, unenthusiastic” are appearing in respect of the conduct, relations with staff, integrity, interest in administrative matters against the said columns. However, in respect of judgment writing, marshalling of evidence, dealing with material points, reference to rulings and legal language, nothing adverse is recorded against the Petitioner. The learned Principal District Judge has along with the report submitted a separate sheet in respect of reputation, integrity to which reference would be made. The learned Principal District Judge has not recommended the Petitioner for completion of the probationary period and used the words “Not at all”.

The learned Principal District Judge Shri K K Sonawane in his separate sheet/letter of the same date i.e. 11/05/2012 has stated that he has had sufficient opportunity to supervise and monitor the conduct and demeanour of the concerned Judicial Officer. He has further stated that his performance while discharging the judicial work appears to be “good and considerable one”,

his conduct and demeanour being Judicial Officer is “suspicious and doubtful”, his integrity is also observed not free from blemish, he is mischievous and not punctual while attending the duty. The learned Principal District Judge has in the said letter referred to his surprise visit on 01/02/2012 and the anonymous complaint dated 17/10/2011. The learned Principal District judge has concluded that the Petitioner was not fit for being continued as a judicial officer..

(IV) <u>From 02nd June 2011 to 31st March 2012</u> <u>(Report of the learned Principal District Judge Shri K K Sonawane)</u>
Not punctual in observing dais timing, habituated to leaving head-quarters without permission, unfair and indifferent, suspicious and doubtful, dubious, found irresponsible and unreliable. The learned Principal District Judge has also remarked adversely in respect of judgment writing, quality of judgments, capacity to marshall facts, and the overall assessment was “very poor”. The learned Principal District Judge has also opined that the Petitioner “was not fit to continue as judicial officer for discharging the noble function of administration of justice”.

(V) <u>REMARKS OF THE GUARDIAN JUDGE</u>
The learned Guardian Judge has disagreed with the learned Principal District Judge. He has observed that he did not find, in the material annexed, any allegation of corruption. The learned Guardian Judge observed that the learned Principal District Judge is rather harsh in his comments and that the judicial officer can be counselled and that he deserves a chance.

The said Annual Confidential Report for the said period was placed before the earlier learned Guardian Judge on 18/04/2013 though he had ceased to be the Guardian Judge of Thane District as a change had taken place

in April 2012 but since the Annual Confidential Report was covering the period during which he was the Guardian Judge, the same was placed before him who whilst reviewing has made the remarks which are in the box as above. The said Annual Confidential Report was also placed before the learned succeeding Guardian Judge, as the Petitioner's case for confirmation or otherwise was to be taken up for consideration. The learned succeeding Guardian Judge had directed the material to be placed before him on the basis of which the comments were made by the learned Principal District Judge in the Annual Confidential Report of the year 2011-2012. The same was communicated to the learned Principal District Judge by the Registrar General of this Court by letter dated 11/02/2013. The learned Principal District Judge accordingly by his letter dated 15/02/2013 replied to the Registrar General of this Court in response to the said letter. In the said letter dated 15/02/2013 the learned Principal District Judge informed that he had ventured to draw the inference from the attending circumstances and forwarded a report to that effect. He mentioned in the said letter that he had received several oral complaints from the members of the Bar, litigants and staff of the Court about the mode and manner in which the Petitioner used to discharge the judicial functions. The learned Principal District Judge has further mentioned that the judicial officer used to attend the Court late and during the enquiry it was revealed that he used to commute from his residence at Andheri, Mumbai to Ulhasnagar, Thane District, without any permission. He has further mentioned in the said letter

about his visit to the Court of the Judicial Officer on 01/02/2012 on which day the Judicial Officer was found absent in the Court till 11.45 am. He has further mentioned that there was no previous intimation about his absence from duty on that day. The learned Principal District Judge has also adverted to the fact that despite the Judicial Officer residing at Andheri, Mumbai, he had accepted the responsibility of the Morning Court at Ulhasnagar since 21/03/2011 on account of which it was difficult for him to attend the Court at 8.30 am in the morning from his residence at Andheri, Mumbai. The learned Principal District Judge has further mentioned that he has received the information that he used to do the entire work of Morning Court in the second half after 3.00 pm by keeping aside the work of the regular Court. The learned Principal District Judge has thereafter mentioned that during his interaction with other Judicial Officers posted at Ulhasnagar, it transpired that the Judicial Officer always used to make comments that he would earn more in Corporate Sector than the Judiciary and that there was a gossip that the Judicial Officer joined the judiciary only for earnings and nothing else. The learned Principal District Judge has further referred to the fact that a judicial quarter was allotted to him at Bhiwandi with a pool car facility but he refused to occupy the same on the ground that he has procured the premises on rent at Kalyan after payment of deposit amount and that the deposit was a non-refundable one. The learned Principal District Judge was of the view that the said circumstances lead to a conclusion that the Judicial Officer is reluctant to

reside within the campus of the Court premises accompanied with other Judicial Officers. The learned Principal District Judge has thereafter concluded that taking into consideration all the above circumstances it is revealed that the integrity of the Judicial Officer appears to be doubtful, suspicious and does not inspire confidence. He has further commented that he had ventured to indulge in illegal activities at the threshold of his career and also attempted to mislead his colleagues as well as superiors. The learned Principal District Judge requested that his said report dated 15/02/2013 be placed before the learned succeeding Guardian Judge for consideration.

8 As indicated above, since the case of the Petitioner was required to be taken up for consideration as regards continuation of his probation or discharge from service, his case was placed before the learned Guardian Judge for his recommendation along with the office submission, and the letter of the learned Principal District Judge dated 15/02/2013. The learned Guardian Judge made the following recommendation :-

“As per Principal District Judge, Shri Gosavi may be discharged by extending his probation till the date on which Government's order is to be served on him”

Thereafter in terms of the procedure the case of the Petitioner was kept before the Probation Committee consisting of three Hon'ble Judges of this Court on 22/08/2013. The Hon'ble Judges of the Probation Committee reached a

unanimous conclusion that the services of the Petitioner were required to be discharged by extending his probation till the date on which the order of the Government is served on him. However only in so far as one of the members of the Probation Committee is concerned, one of the options, out of the options which were stated in the submission made by the office, was chosen by circumscribing as 'A' approved "in view of the report of the learned Principal District Judge dated 15/02/2013". The follow up action pursuant to the decision of the Probation Committee was thereafter taken. The learned Principal District Judge has thereafter issued the order dated 18/11/2013 discharging the Petitioner which was preceded by the order passed by the State Government dated 12/11/2013. As indicated above, it is the said orders dated 18/11/2013 and 12/11/2013 which are taken exception to by way of the above Writ Petition.

9 The above Writ Petition has been replied to by the Respondent Nos.2 and 3 by filing an Affidavit in Reply of the learned Registrar (Legal and Research). It is stated in the said Reply that as per the procedure the case of every judicial officer is placed before the Guardian Judge for the purpose of confirmation of probation. For the said purpose, ACRs, special report of the Reporting Officer along with his recommendations for suitability, critical comments, his judgments, 3 judgments delivered contesting civil and criminal cases, leave record, disposal statistics, vigilance report and other relevant

material are scrutinized by the learned Guardian Judge. It is further stated that the case of the probationary judicial officer is thereafter placed before the Probation Committee of the Hon'ble Judges which is constituted for the said purpose by the Hon'ble the Chief Justice. The recommendations of the learned Guardian Judge pertaining to the suitability of the probationer is also placed before the Probation Committee. The Committee on the basis of the material thereafter recommends about the suitability of the probationary judicial officer. It is further stated in the reply that the case of the Petitioner was placed before the learned Guardian Judge in or about July 2012, the learned Guardian Judge on 06/07/2012 passed an order directing that the material on the basis of which the learned Principal District Judge has drawn his conclusion regarding the integrity of the officer be called for. It is further stated that accordingly the Registrar General vide his letter dated 10/07/2012 and reminder letter dated 11/02/2013 requested the learned Principal District Judge, Thane to forward material as directed. The learned Principal District Judge accordingly submitted his report vide letter dated 15/02/2013 which has been termed as a critical report. It is further stated that after the receipt of the said letter dated 15/02/2013 of the learned Principal District Judge, vigilance report was called for from the Registrar (Vigilance Department) in March 2013. As per the vigilance report, one complaint was received against the Petitioner which was pending. The case of the Petitioner was once again placed before the learned Guardian Judge for consideration along with copies of the judgments, ACR,

critical comments of the learned Principal District Judge, letter of the learned Principal District Judge dated 15/02/2013, report of the Registrar (Vigilance Department), statement of leave record of the Petitioner. The learned Guardian Judge upon considering the entire report was pleased to approve the discharge of the Petitioner. It is further stated that the case of the Petitioner was thereafter placed before the Probation Committee for consideration. The Probation Committee recommended that the Petitioner be discharged from service by extending his probation till the date on which the government Order is served on him. This was communicated by the Registrar General to the Principal Secretary, RLA, Government of Maharashtra vide his letter dated 25/09/2013 with a request to issue necessary orders. Accordingly by order dated 12/11/2013 issued in exercise of the powers conferred by Rule 13(4)(ii) (b) of the Maharashtra Judicial Service Rules 2008, the Petitioner was discharged from services from 18/11/2013 when the order was served upon him.

10 An Affidavit in Rejoinder is filed on behalf of the Petitioner wherein the claim in the Affidavit in Reply that the entire material was placed before the Probation Committee is sought to be contested and it is sought to be reiterated that the report of the learned Guardian Judge who has disagreed with the learned Principal District Judge whilst reviewing the ACR was probably not placed before the Probation Committee.

11 In terms of the directions issued by the Division Bench as contained in the order dated 09/02/2018, an Additional Affidavit in Reply has been filed on behalf of the Respondent Nos.2 and 3. It is stated in the said Reply that as per the practice along with the submission made by the Registry as regards the probationary period of the Petitioner all relevant material in the form of ACRs, vigilance report, disposal remarks, special report of the learned Principal District Judge, recommendations of the Hon'ble Guardian Judge were placed before the Probation Committee. It is further stated that the said material includes the ACR of the year 2011-2012 which was placed before the Probation Committee. It is further stated that as per the longstanding practice the directions of the Hon'ble Judges of the Probation Committee were sought by formulating clauses "A", "B" and "C" in the said submission for administrative convenience.

12 **SUBMISSION OF MS. NEETA KARNIK THE LEARNED COUNSEL APPEARING ON BEHALF OF THE PETITIONER :-**

A] That Article 311 of the Constitution of India is not restricted to the persons who are holding substantive posts but the protection under the said Article would also be available to a probationer.

B] That the form of the order of termination is not decisive, but the

real nature of the order has to be determined by reference to the material facts preceding the said order.

- C] That if the order of discharge is challenged on the ground that it is stigmatic having regard to the attendant circumstances then it is the duty of the Court to lift the veil and see the reasons behind the impugned order.
- D] That since in the instant case the order of discharge of the Petitioner is on account of the special report of the learned Principal District Judge, Thane in which disparaging remarks as regards the conduct, character and integrity of the Petitioner are made, the same are stigmatic and therefore the Petitioner could not have been discharged without giving an opportunity to the Petitioner to explain the alleged circumstances which are against him.
- E] That the conclusion which the learned Principal District Judge, Thane has reached as regards the unsatisfactory work and conduct of the Petitioner are based upon unsubstantiated allegations.

- F] That the discreet enquiry conducted by the learned District Judge-3, Kalyan as regards the Petitioner's punctuality was behind his back and since the same is part of the material which is used against the Petitioner, the order of discharge is bad in law and liable to be set aside.
- G] That due consideration has not been given to the remarks of the reviewing authority i.e. the learned Guardian Judge who had disagreed with the views expressed by the learned Principal District Judge and had accordingly modified the assessment of the learned Principal District Judge of the Petitioner from "Very poor" to "B - Good"
- H] That the remarks of the reviewing authority that is the learned Guardian Judge who had disagreed with the views of the learned Principal District Judge do not seem to be part of the record that was placed before the Probation Committee and therefore the decision of the Probation Committee is vitiated on account of the non-consideration of the said material.
- I] That the discharge on the ground that is "undesirable" to continue, the probation would be stigmatic whereas the discharge

on the ground that it is “unnecessary to continue” him would not be stigmatic.

J] That in the absence of any material which substantiates the allegations which are appearing in the special report of the learned Principal District Judge, the discharge of the Petitioner on the basis of the said report would be arbitrary and capricious.

K] That the Petitioner in the light of the remarks of the reviewing authority deserved to be given a chance by extending the probationary period, the Petitioner therefore apart from being discharged unheard has also been discharged without being given an opportunity.

13 SUBMISSION OF MR. P. S. DANI THE LEARNED SENIOR COUNSEL APPEARING ON BEHALF OF THE RESPONDENT NOS. 2 AND 3:-

i] That it is well settled that a probationer does not have a right to continue and his appointment is governed by the Rules in question which in the instant case are the Maharashtra Judicial Service Rules, 2008 and especially Rules 13 and 14 thereof.

ii] That in terms of the Rules there is no requirement of the

Petitioner being informed during his probationary period of any adverse material against him.

- iii] That in terms of the office procedure the entire file containing the service record of the probationer is placed before the Probation Committee. In the instant case the remarks of the learned Guardian Judge wherein he had disagreed with the assessment of the learned Principal District Judge have also been placed before the Probation Committee.
- iv] That the contents of the special Report dated 15/02/2013 of the learned Principal District Judge, Thane can be said to be by way of the assessment of the learned Principal District Judge for determining the suitability of the Petitioner.
- v] That assuming that the said remarks are in the nature of allegations against the Petitioner, still it is the choice of the administration whether to enquire into the said allegations or discharge the probationer by an order of simple discharge.
- vi] That apart from the performance the conduct of the probationer assumes importance and is a relevant factor to be taken into

consideration for arriving at a decision whether the probationer is to be continued or discharged.

- vii] That since the allegations as regards the Petitioner's punctuality were received, the administration was entitled to carry out a discreet enquiry into the said allegations, which is in the nature of an input to judge the suitability of the Petitioner.
- viii] That the Probation Committee consisting of three Hon'ble Judges of this Court has arrived at a decision after taking into consideration all the relevant material which was placed before it. The contents of the said report dated 15/02/2013 of the learned Principal District Judge can therefore at the highest be said to be the motive and not the foundation for the order of discharge.
- ix] That it is for each learned Guardian Judge to make his own independent assessment and therefore even if the remarks of the learned Guardian Judge who had disagreed with the learned Principal District Judge were not before the subsequent Guardian Judge the same would not make any difference as regards the Petitioner's discharge is concerned.

- x] That the administration is entitled to adopt such measures to judge the suitability of a probationer and especially in this case a Judicial Officer, and the assessment which is done is only towards that end, and therefore it cannot be said that the discharge was on unsubstantiated allegations and therefore arbitrary and capricious.
- xi] That the judgments relied upon on behalf of the Petitioner are clearly distinguishable on facts.

14 In support of her aforesaid contentions, the learned counsel appearing on behalf of the Petitioner Ms. Neeta Karnik sought to place reliance on the following judgments of the Apex Court :-

- a] Samsher Singh V/s. State of Punjab and another; (1974) 2 SCC 831;
- b] Anoop Jaiswal v/s. Government of India and another; (1984) 2 SCC 369;
- c] Ishwar Chand Jain v/s. High Court of Punjab & Haryana and another; (1988) 3 SCC 370;
- d] The Manager, Govt. Branch Press and another v/s. D. B. Belliawppa; (1991) 2 SCC 291 : AIR 1979 SC 429
- e] Union of India & Anr. v/s. Mahaveer C Singhvi; (2010) 8 SCC 220;
- f] Registrar General, High Court of Gujrat and another v/s. Jayshree Chamanlal Buddhibhatti; (2013) 16 SCC 59

- g] Ratnesh Kumar Choudhary v/s Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others; AIR 2016 SC 467.

15 In support of his contentions, the learned Senior Counsel Shri P S Dani appearing on behalf of the Respondent Nos.2 and 3 sought to place reliance on the following judgments of the Apex Court and this Court :-

- i] Dipti Prakash Banerjee v/s Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & ors; (1999) 3 SCC 60;
- ii] Abhijit Gupta v/s S.N.B. National Centre, Basic Sciences & ors.; (2006) 4 SCC 469;
- iii] Rajesh Kohli v/s. High Court of Jammu & Kashmir & Anr.; (2010) 12 SCC 783;
- iv] State Bank of India & ors. v/s. Palak Modi & Anr.; (2013) 3 SCC 607;
- v] Rajesh Kumar Srivastava v/s. State of Jharkhand & ors. (2011) 4 SCC 447;
- vi] Girish Satyanarayan Shukla v/s. High Court of Judicature at Mumbai. (Judgment dated 4/8/2014 passed in Writ Petition No.96/2007)
- vii] Smita Rajendra Kadu v/s. State of Maharashtra & ors. (Judgment dated 23/12/2015 passed in Writ Petition No.2814/2015)
- viii] High Court of Judicature at Patna v/s. Pandey Mandan Mohan Prasad Sinha and others; (1997) 10 SCC 409.

16 At this stage it would be necessary to refer to the judgments which are relied upon on either side as they delineate the parameters within which the above Writ Petition is to be adjudicated.

JUDGMENTS RELIED UPON ON BEHALF OF THE PETITIONER BY THE LEARNED COUNSEL MS. NEETA KARNIK :-

A] ***Samsher Singh v/s State of Punjab and another*** (supra) :-

The said judgment is of the 7 Judges Bench of the Apex Court. The said 7 Judge Bench was constituted to consider whether the decision in **Sardari Lal v/s. Union of india**'s case reported in **(1971) 1 SCC 411** correctly lays down the law where the President or Governor is to be satisfied that is his personal satisfaction. The Appellants in the said case viz. Samsher Singh and Ishwar Chand Agarwal who had filed separate Civil Appeals were appointed on probation in the Punjab Civil Services (Judicial Branch). Their services came to be terminated by an order issued by the Governor of Punjab under Rule 9 of the Punjab Civil Services Rules. In the said case certain misconducts were alleged against the Appellants. The High Court in the case of Appellant Ishwar Chand Agarwal requested the Government to depute the Director of Vigilance to hold an inquiry in the said misconducts. The Director of Vigilance recorded the statements of the witnesses behind the back of the Appellants. The enquiry was conducted to ascertain the truth of the allegations of misconduct. In the said case neither the report nor the statements recorded by the Inquiry Officer were furnished to the Appellant Ishwar Chand Agarwal. Based on the Enquiry Report the services of the Appellant` were terminated. In so far as Appellant Samsher Singh was concerned, a show cause notice came to be issued to him

asking him why his services should not be terminated. In the said show cause notice four allegations were made. The Appellant Samsher Singh showed cause. The Appellants services thereafter came to be terminated. In so far as Punjab Civil Services (Judicial Branch) is concerned, Rule 9 provides that where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of the unsatisfactory record or unfavourable reports implying the unsuitability for service the probationer shall be apprised of the grounds of such proposal, and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the appointment.

The Apex Court held that if the services of a probationer are terminated on the basis of a report based on misconduct then it violates Article 311 of the Constitution of India. The Apex Court held that the substance of the order of termination and not the form would be decisive, whether it was really by way of punishment. The Apex Court also adverted to the judgment in **Champaklal G. Shah Vs. Union of India** reported in **(1964) 5 SCR 190** wherein it was held that a preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employees has been held not to attract Article 311 of the Constitution of India.

B] **Anoop Jaiswal v/s. Government of India and another** (supra)

The Appellant was a probationer in the Indian Police Service (IPS) the allegations against the Appellant was that he had instigated the other trainees not to attend the gymnasium where it was proposed to conduct PT/unarmed combat practice. An explanation was called for from the Appellant. The Director without holding an enquiry into the alleged misconduct recommended to the Government of India that the Appellant should be discharged from services. On the basis of the said recommendation the Government of India passed the order of discharge. In the said case the Appellant was singled out for punishment whereas the other trainees were let scot free . The Apex Court in the facts of the said case held that though the noting in the file of the Government was irrelevant, the cause for the order cannot be ignored. The Apex Court held that 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. On such reading if the alleged act of misconduct was the cause of the order, 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 required by Article 311(2). In the said judgment the Apex Court can be said to have carved out the distinction between the motive and foundation for the order of discharge.

C] ***Ishwar Chand Jain v/s. High Court of Punjab and Haryana and another*** (supra)

In the said case the Appellant was appointed as a Additional District and Sessions Judge on probation. Whilst he was on probation certain incidents took place as a result of which the Bar Association of Narnaul where he had been transferred, passed a Resolution against him, there were also complaints made by some advocates. The Vigilance Judge of the Punjab and Haryana High Court was directed to hold an enquiry, the Vigilance Judge after holding an enquiry did not record any finding that the Appellant was guilty of any corrupt nature or that he had acted unjudicially. The High Court terminated the services of the Appellant on the ground of they being unsatisfactory. The Apex Court set aside the said termination on the ground that some of the materials which were taken into account were non-existent, the others were not relevant, the allegations were unsubstantiated. The Apex Court observed that the resolution passed by the Bar Association was unjustified and the complaints made by the advocates were motivated which did not deserve any credit.

D] *The Manager, Govt. Branch Press and another D. B. Belliawppa*
(supra)

In the said case the employee was served with a show cause notice questioning his integrity and fidelity but the Government ultimately adhered to stand that there was no nexus between the show cause notice and termination of service. The Apex Court held that if the services of a temporary Government

Servant are terminated not on the ground of unsuitability, unsatisfactory conduct or the like which would put him in a class apart from other temporary servants who are retained then a question of unfair discrimination would arise. The Apex Court held that in such a case it would be the duty of the authority to dispel the said charge by disclosing to the court the reason or motive which impelled him to take the decision.

E] ***Union of India and others v/s Mahaveer C Singhvi*** (supra)

The Respondent was appointed to the Indian Foreign Services (IFS) and was deployed in East Asia Division of the Ministry of External Affairs. The Respondent was not allotted the language of his choice for study as a compulsory foreign language but was allotted Spanish which was his last choice. The said language i.e. the choice of the Respondent was allotted to an officer who was lower in rank in the merit list than the Respondent. The Respondent represented against the same but was asked to remain silent on the said issue. It seems that an enquiry was conducted in relation to a complaint alleged to have been made by one "N" regarding threatening, abusive and sexually explicit remarks allegedly made by the Respondent to her daughter. The Respondent was served with the order of discharge on 13/06/2002. The Respondent challenged the said order on the ground that it was not simpliciter discharge but was a result of the enquiry conducted against him behind his back. In the said case the State itself admitted that the

discharge order of the Respondent probationer was on account of the Respondent's misconduct. The High Court set aside the discharge order on the ground that the entire object was to camouflage the intention of the Petitioners, which was to remove the Respondent for something about which they had convinced themselves but did not think it necessary to give the Respondent an opportunity to clear his name. The Apex Court affirmed the judgment of the High Court as the enquiry conducted formed the foundation of the said order discharge.

F] ***Registrar General, High Court of Gujarat and another v/s Jayashree Chamanlal Buddhhatti*** (supra)

In the said case the Respondent was appointed as a Civil Judge Junior Division on probation. In the said case the Respondent had complained to the District Judge against her subordinate staff of which no cognizance was taken by the learned District Judge. The Respondent was communicated the adverse remarks, against which she represented. A discreet enquiry and later a preliminary enquiry was conducted into the adverse allegations against her without affording an opportunity of hearing to the Respondent. The said enquiry was conducted by the learned District Judge who had refused to take cognizance of the complaint made by the Respondent against her subordinate staff. The services of the Respondent came to be terminated. The High Court set aside the termination as the same being in breach of Article 311 of the

Constitution of India inasmuch as she was not informed about the charges against her nor she was given an opportunity of being heard in respect thereof. The High Court came to a conclusion that the same was not a case of termination simpliciter of a probationary officer. The Apex Court upheld the order of the High Court having regard to the facts on record. The Apex Court observed that the preliminary inquiry conducted against the Respondent in the said case cannot be said to be an innocent one only to assess her suitability. It is apparent that certain aspersions were cast on the character of the Respondent during the course of the conduct of the inquiry on her suitability.

G] ***Ratnesh Kumar Choudhary v/s. Indira Gandhi Institute of Medical Sciences, Patna Bihar and others*** (supra)

In the said case a complaint was received by the Vigilance Department, Government of Bihar on 03/11/2004 relating to the illegal appointment of the Appellant on the post of Chest Therapist on the ground that the Appellant did not possess the qualification required for the said post. In pursuance of the said complaint, an enquiry was conducted by the Deputy Superintendent of Police who submitted a report to the Deputy Inspector General of Police, Hibar, Patna. The reports reflected on various aspects and pointed out that the appointment was illegal. On the basis of the said report the Joint Secretary in the Department of Health requested the Director IGIMS to initiate a proceeding for termination of the services of the Appellant by giving a show cause notice. On the basis of the said communication, a show cause notice came to be issued

to the Appellant. The Appellant sent his reply on 20/03/2005 and asked for the copy of the complaint as well as the entire report submitted by the Vigilance Department. Despite the said request made by the Appellant all the documents were not supplied to him which the Appellant considered vital. However, the Appellant submitted his reply. The said reply was found to be unsatisfactory and the services of the Appellant came to be terminated. It appears that in the report which was submitted comments on his behaviour, knowledge of working, his conduct, his mis-behaviour, imposition of earlier punishment and disobedience shown by him to his seniors were made. It was therefore concluded that the termination of the Appellant was not termination simpliciter. Under the guise of passing an order of termination simpliciter, the authorities have in many a way, attached stigma which makes the order absolutely stigmatic. The Apex Court did not agree with the view expressed by the Division Bench that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. The Apex Court was of the view that had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. The Apex Court accordingly set aside the order passed by the Division Bench of the High Court and directed reinstatement of the Appellant in service.

JUDGMENTS RELIED UPON ON BEHALF OF THE RESPONDENT NOS. 2 ND. 3 BY THE LEARNED SENIOR COUNSEL SHRI P. S. DANI :-

- i] ***Dipti Prakash Banerjee v/s Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & others*** (supra)

The said judgment of the Apex Court is an exposition as regards the criterion for differentiating between “foundation” and “motive”. The Apex Court held that if findings are arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, simple order of termination is to be treated as “founded” on the allegations and will be bad. If however enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similarly if employer did not want to enquire into truth of allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence, the allegations would be motive and not foundation and simple order of termination would be valid. In the facts of the said case wherein during the first one year of probation, a letter dated 11/12/1995 was served on the Appellant. The said letter states that the Appellant has been preparing false bills and that he has misbehaved with women academic staff members. But in the impugned order terminating the services of the probationer it was stated that the order of termination was being passed because of the conduct, performance, ability and capacity of the Appellant during the whole period.

The Apex Court was of the view that the same would clearly take in the facts stated in the letter dated 11/12/1995. The Apex Court further observed that it would be noticed that the letter dated 11/12/1995 does not merely say that there are such complaints against the appellant but it says conclusively that the appellant had "prepared false" bills and "misbehaved" with women academic staff members. The Apex Court observed that if these were referred to as mere allegations, it would have been a case of motive, but as these definitive conclusions of misconduct are evident on the face of this letter dated 11/12.1995 and this letter falls within the "whole period", the conclusion is inescapable that these findings were part of the foundation of the impugned order and it is not a case of mere motive.

ii] *Abhijit Gupta v/s S.N.B. National Centre, Basic Sciences & others*
(supra)

In the above case in the order of termination reference to earlier letters, in which the probationer had been called a person of "perverted mind" and "dishonest, duffer having no capacity to learn", the Apex Court held that despite the use of such intemperate language, the order read as a whole, in the said case indicated that the reason for termination was the absence of hope for improvement in the probationer. The Apex Court upheld the view of the High Court that the reference to earlier letters, although unnecessary, did not reflect any malice or bias, and hence the contention of the probationer that his termination was stigmatic and not simpliciter was rejected by the Apex Court.

iii] ***Rajesh Kohli v/s. High Court of Jammu & Kashmir & Another (supra)***

The Apex Court in the facts of the said case wherein the Full Court of High Court after assessment of work and conduct of the Probationer had extended his probation period from 24/08/2000 to 05/05/2003 but recommended his case for termination as the personal record of the petitioner revealed that (1) there was a criminal complaint against him for his conduct when he was an advocate; (2) complaint of misbehaviour and problem causing in District of posting; and (3) that the Petitioner had not joined his place of posting for certain period for which an explanation had been sought from him. The Apex Court rejected the contentions urged on behalf of the probationer that the termination order was illegal and without jurisdiction as no opportunity of hearing was given to him prior to passing of the order of termination. The Apex Court held that the services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance but also on the probity as to how one has conducted himself.

iv] ***State Bank of India & others v/s. Palak Modi & another (supra)***

The Apex Court in the said case held that for judging the suitability of the probationer or for his further continuation in service for confirmation, if an enquiry is the basis for taking a decision to terminate his services, then the action of the competent authority cannot be castigated as punitive. However,

where allegation of misconduct continues foundation of action taken, then ultimate decision taken by competent authority can be nullified on ground of violation of rules of natural justice.

v] ***Rajesh Kumar Srivastava v/s. State of Jharkhand & others*** (supra)

In the said case a complaint was received as regards the integrity of the Appellant as it was alleged against him that he had discharged some accused persons despite rejection of the Revision Application by the High Court earlier. The High Court on receipt of the said complaint called for a report from the District and Sessions Judge, Dhanbad. On receipt of the said communication, the District and Sessions Judge, Dhanbad, sent a letter to the Appellant directing him to offer his remarks, which were submitted by the Appellant. The said remarks and report along with confidential report of the Appellant were submitted by the District and Sessions Judge, Dhanbad before the High Court. Thereafter the Zonal Judge concerned referred the matter to the Standing Committee for further action. In terms of the decision of the Zonal Judge, the then Chief Justice of the High Court also referred the matter to the Standing Committee by way of recording an order on 01/05/2003. The matter was considered in the meeting of the Standing Committee held on 08/07/2003. After considering the performance and the suitability of the Appellant, it was resolved that the matter be referred to the Full Court for consideration and a decision as to whether or not the continuation of the service of the Appellant

was required. Consequent thereupon the matter was placed before the Full Court wherein it was resolved by the Full Court that the continuation of the service of the Appellant was no longer required and that he should be discharged. Consequent thereupon the resolution of the Full Court was sent to the Government. The Government of Jharkhand accordingly issued an order of discharge. The said order of discharge was challenged on behalf of the Appellant as the same having been passed without holding an enquiry which amounts to violation of the principles of natural justice and also amounting to casting a stigma in the career of the Appellant. The said contention was negatived by the Apex Court. The Apex Court held that the High Court had taken a decision considering the Appellant's overall performance, conduct and suitability for the job. Whilst taking a decision in this regard neither any notice was required to be given to the Appellant nor he was required to be given an opportunity of hearing. The Apex Court held that it was not a case of removal as sought to be made out by the Appellant, but was a case of simple discharge from service.

vi] ***Girish Satyanarayan Shukla v/s. High Court of Judicature at Mumbai.*** (supra)

The Division Bench of this Court in the said case was concerned with the discharge of a Civil Judge, Junior Division and Judicial Magistrate First Class who was appointed on probation. The Division Bench in the facts of the said case wherein the probationary period of the judicial officer was extended and

no improvement was shown in the said extended period held that the order discharging him from services cannot be said to be punitive. The Division Bench has referred to the judgments of the Apex Court in 1] Samsher Singh v/s. State of Punjab; 2] State Bank of India and others v/s. Palak Modi and another; 3] Rajesh Kumar Srivastava v/s. State of Jharkhand and others, amongst others to come to a conclusion that the termination of the Petitioner on the ground of he being unsuitable to continue as a judicial officer cannot be said to be a stigmatic based on any misconduct and misdemeanor.

vii] ***Smita Rajendra Kadu v/s. State of Maharashtra & ors.*** (supra)

The Division Bench of this Court in the said case held that the High Court performs a solemn duty to evaluate and appraise the services of a judicial officer before confirming him or her in service. The facts of the said case were that there were allegations against the Petitioner in respect of her integrity as well as judgment writing was said to suffer from 4 basic infirmities. The Division Bench rejected the contention raised in the said case that merely because something is written in bold in the ACR would not mean that High Court has been influenced by that portion alone or it has based its decision on the same without taking into consideration the entire record and assessing it in a overall manner. The Division Bench thereafter referred to the decision making process ultimately leading to the order of termination. The Division Bench has observed that the Probation Committee comprising of 4 learned

Judges of this Court had in its ultimate order expressed its agreement with the remarks of the learned Guardian Judge.

viii] High Court of Judicature at Patna v/s. Pandey Mandan Mohan Prasad Sinha and others; (supra)

The Apex Court in the said case held that uncommunicated adverse material can be taken into consideration for assessment of suitability of the probationer and forming decision to terminate his services. The Apex Court further held that consideration of the complaints regarding integrity, character and morality of the probationer and his alleged indulgence in drinking and gambling, in taking a decision to terminate his services does not show that the decision is punitive. The Apex Court had made the said observations in the Appeal which was filed by the High Court after the Writ Petition in the High Court filed by the Respondent was allowed on the ground of non-communication of adverse remarks prior to the decision dated 19/06/1985 vitiated the order of termination of the services of the Respondent. The order of termination was passed by way of punishment without complying with the requirements of Article 311(2) of the Constitution of India.

CONSIDERATION

17 We have heard the learned counsel for the parties and have bestowed our anxious consideration to the rival contentions. We have already

prefaced the instant judgment by observing that in the instant case the vexed question of whether the allegations are the “motive” or “foundation” for the discharge has once against engaged the attention of this Court. Ingrained in the said issue is the issue as to whether the discharge of the Petitioner in the instant case is by way of simple discharge or is punitive in nature.

18 Before proceeding to decide the said issue it would be necessary to make a reference to the Rules which are applicable in so far as appointment of the Petitioner on probation is concerned. The relevant Rules are Rule 13 and Rule 14 of the Maharashtra Judicial Service Rules, 2008. The same read thus :-

“PROBATION AND OFFICIATION

- 13 ***Probation and Officiation.***: (1) All appointments to the service by nomination shall be on probation for a period of two years.
- (2) All appointments by promotion shall be on officiating basis for a period of two years.
- (3) The period of probation or officiation, as the case may be, for reasons to be recorded in writing, may be extended by the Appointing Authority by such period not exceeding two years.
- (4) Six months before the end of the period or extended period of Probation or Officiation, as the case may be, the Appointing Authority shall consider the suitability of the person so appointed or promoted to hold the post to which he was appointed or promoted; and
- (i) if found suitable, issue an Order declaring him to have 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;

(ii) if the Appointing Authority finds that the person is not suitable to hold the post to which he was appointed or promoted, as the case may be, it shall by Order,

a) if he is a promotee, revert him to the post which he held prior to his promotion;

(b) if he is a probationer, discharge him from service.

(5) No person shall be deemed to have satisfactorily completed the period of Probation or Officiation, as the case may be, unless so declared by a specific Order to that effect.

14 ***Discharge of a Probationer during the period of Probation:*** Notwithstanding anything contained in rule 13, the Appointing Authority may, at any time during the period of probation, discharge from services, a probationer on account of his unsuitability for the service.”

A reading of Rule 13 therefore indicates that all appointments by nomination shall be on officiating basis for a period of two years. The Rule provides for extension of the probationary period by such period not exceeding two years. The suitability of the person appointed on probation would have to be considered six months before the end of the probationary period or extended period. The Appointing Authority on such consideration can revert the person if he is a promotee and if he is a probationer, discharge him from service. There has to be specific order as regards the satisfactory completion of

probationary period.

In so far as Rule 14 is concerned, it confers powers on the Appointing Authority, notwithstanding anything contained in Rule 13, at any time during the period of probation, to discharge from service, a probationer on account of his unsuitability for service.

19 There is no dispute about the fact that in the instant case the Petitioner has been discharged under Rule 13(4)(ii)(b) of the said Rule as above on consideration of his suitability.

20 It would also be necessary, at this stage, to refer to the order discharging or terminating the services of the Petitioner. The said order reads thus :-

“Hon'ble High Court had taken decision to dispense with the service of Girish Chandrakant Gosavi, 5th Jt. Civil Judge, Jr. Div. And Judicial Magistrate FC, under chapter 4 Rule 13(4)(ii)(b) of Maharashtra Judicial Service Rules 2008, extending his probation till the date of discharge of his service.

Accordingly, the service of Girish Chandrakant Gosavi, 5th Jt. Civil Judge, Jr. Div. and JMFC, is dispensed with since 18/11/2013 a.n.

The official charge of 5th Jt. Civil Judge, Jr. Div. And JMFC, Ulhasnagar is entrusted with 4th Jt. Civil Judge and JMFC, Smt. S G Jawadwar, till further order.

All concerned to take note of the said order and

handing over charge report be sent to this office forthwith. (in 4 copies).”

Hence the order of discharge only refers to the decision of the High Court to discharge the Petitioner by taking recourse to Rule 13(4)(ii)(b) of the said Rule.

21 Though in the earlier part of this Judgment we have culled out what has been held by the Apex Court in *Samsher Singh V/s. State of Punjab* and another (supra); *Rajesh Kohli v/s. High Court of Jammu & Kashmir & Anr.* (supra), *State Bank of India & ors. v/s. Palak Modi & Anr.* (supra) and *Gujarat Steel Tubes Ltd. v/s. Gujarat Steel Tubes Mazdoor Sabha, reported in AIR 1980 SC 1896* (as referred in *Ratnesh Kumar Choudhary v/s. Indira Gandhi Institute of Medical Sciences*). It would also be necessary to refer to the relevant paragraphs of the said judgments :-

In Samsher Singh v/s. State of Punjab :-

“64 Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved, in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the

probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, 838 the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. In ***Gopi Kishore Prasad v. Union of India A.I.R. 1960 S.C. 689*** it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer.

65 The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. (***See State of Orissa v. Ramnarain Das [1961] 1 S.C.R. 606***). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance, (***See Madan Gopal v. State of Punjab [1963] 3 S.C.R. 716***). In ***R. C. Lacy v. State of Bihar & Ors. (Civil Appeal No. 590 of 1962 decided on 23 October, 1963)*** it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2). (***See R. C. Banerjee v. Union of India [1964] 2 S.C.R. 135.***) A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311. (***See Champaklal G Shah V/s. Union of India [1964] 5 S.C.R.190***)

(Emphasis supplied)

On the other hand, a statement in the order of termination that the temporary servant is undesirable has been held to import an element of punishment (*See Jagdish Mitter v. Union of India A.I.R. 1964 S.C. 449*).

66 If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive. (*See K. H. Phadnis v. State of Maharashtra. [1971] Supp. S.C.R. 118*).

67 An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct. (*See State of Bihar v. Shiva Bhikshuk Mishra; (1971) 2 SCR 191*).

(Emphasis supplied)

In Rajesh Kohli v. High Court of Jammu and Kashmir

18 During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself.

(Emphasis supplied)

28 In the present case, the order of termination is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such satisfaction even if recorded that his service is unsatisfactory would not make the order stigmatic or punitive as sought to be submitted by the petitioner. On the basis of the aforesaid resolution, the matter was referred to the State Government for issuing necessary orders.

(Emphasis supplied)

32 Upright and honest judicial officers are needed not only to bolster the image of the judiciary in the eyes of litigants, but also to sustain the culture of integrity, virtue and ethics among judges. The public's perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct.

In State Bank of india v/s. Palak Modi :-

25 The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

(Emphasis supplied)

In Gujarat Steel Tubes Ltd. v/s. Gujarat Steel Tubes Mazdoor Sabha :-

“54 On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.”

(Emphasis supplied)

What flows from the aforesaid judgment is that if there is a suspicion of misconduct, the discretion is of the employer to go into it or he may not go into the guilt of the probationer but would not like to keep a man he is not happy with.

In the said judgments it has also been held that if an enquiry is held by the Competent Authority for judging the suitability of the probationer or for his further continuation in service or for confirmation, and such an enquiry is the basis for taking decision to terminate his service, then the action of the Competent Authority cannot be castigated as being punitive.

22 Now coming to the facts of the instant case, as indicated above,

the Petitioner's initial period of probation was come to an end on 06/06/2012. In so far as Annual Confidential Report of the year 2010-2011 is concerned, we have already adverted to the contents thereof. In so far as the Annual Confidential Report of the year 2011-2012 is concerned, the learned Principal District Judge, who had by then changed, had assessed the judgment writing, language etc of the Petitioner and nothing adverse against the Petitioner was recorded in so far as the said aspect is concerned. It is in respect of his punctuality and integrity that the learned Principal District Judge has, by his accompanying sheet, mentioned the reasons for the remarks that he had made in the Annual Confidential Report. The said Annual Confidential Report was placed before the learned Guardian Judge who had disagreed with the learned Principal District Judge and had changed the overall assessment from "Very Poor" to "B-Good".

In so far as the Annual Confidential Report for the period 2011-2012 is concerned, since by that time the learned Guardian Judge had changed, and the learned Guardian Judge, who had come in place of the learned Guardian Judge who had disagreed with the learned Principal District Judge, had asked for the material in respect of the remarks made by the learned Principal District Judge, since he was required to make the recommendation in respect of the Petitioner. The Registrar General of this Court vide his letter dated 10/07/2012 and reminder letter dated 11/02/2013

requested the learned Principal District Judge, Thane to furnish the said material. The learned Principal District Judge by his report letter dated 15/02/2013 had replied to the said letters and had mentioned therein that the remarks made by him were made on the basis of the attendant circumstances. The learned Principal District Judge has virtually reiterated in the said letter dated 15/02/2013 what he has been stated in his letter dated 11/05/2012 and described the conduct, integrity of the Petitioner in a particular manner.

23 It is required to be noted that since oral complaints were received by the learned Principal District Judge as regards the punctuality of the Petitioner, the learned Principal District Judge, as mentioned in his letter dated 11/05/2012 had made a surprise visit to the Court of the Petitioner at Ulhasnagar on 01/02/2012 on which day the Petitioner was not found sitting on dais until 11.45 am and then a message was received from the Petitioner at about 12.00 noon that the Petitioner was unwell and hence would not attend the Court on the said day. The learned Principal District Judge has also found that though the Petitioner was posted at Ulhasnagar, District Thane, he was residing at Andheri in Mumbai and was commuting between Andheri and Ulhasnagar without obtaining permission. He was also found that though the Petitioner was allotted service quarters, he continued to reside in a flat at Kalyan which he had obtained on leave and license basis and the explanation given by the Petitioner was that he had given a non-refundable deposit.

In view of the anonymous complaint which was received as regards the Petitioner's punctuality in attending the Court a discreet enquiry was conducted through the learned District Judge-3, Kalyan. The learned District Judge-3, Kalyan had visited the Court of the Petitioner on a particular day when the Petitioner was found sitting on the dais but during the course of the said discreet enquiry it was revealed that the Petitioner was doing the work of the Morning Court in the afternoon which resulted in creating difficulties for the litigants, advocates and the staff. The learned District Judge-3, Kalyan on checking the muster roll found that the Petitioner was on leave for six days each in February, March and April 2012.

24 Now coming to the submission of the learned counsel for the Petitioner that the report of the reviewing authority i.e. the learned Guardian Judge who had disagreed with the learned Principal District Judge was probably not placed before the Probation Committee and therefore the Probation Committee had taken a decision without taking into consideration the said report. In view of the said submission, we had directed the learned Senior Counsel appearing for the Respondent Nos. 2 and 3 to make available to us the file of the Petitioner which was placed before the Probation Committee. The learned Senior Counsel had accordingly placed the file of the Petitioner before us and highlighted the material in the file by flagging the same. We have

perused the file in our chamber. On such perusal we found that the reviewing report of the learned Guardian Judge who had disagreed with the learned Principal District Judge is part of the file which was placed before the Probation Committee as also the recommendation of the learned succeeding Guardian Judge was also part of the file. Hence the entire record was before the Probation Committee when it took the decision on 22/08/2013 for discharging the Petitioner. Hence we do not find any substance in the said contention of the learned counsel for the Petitioner.

25 It was also sought to be contended on behalf of the Petitioner that the reviewing report of the learned Guardian Judge who had disagreed with the learned Principal District Judge was not placed before the learned succeeding Guardian Judge before whom the Annual Confidential Report for the year 2011-2012 was placed for the purposes of his recommendation. It is true that the report of the earlier Guardian Judge was not placed before the learned succeeding Guardian Judge, the same, as we were informed, was for the reason that the earlier Guardian Judge had made the reviewing report in January 2013 whereas the file was placed before the learned succeeding Guardian Judge in July 2012 for his recommendation after there was a change in the Guardian Judges for different Districts in April 2012

In our view, assuming that the report of the earlier learned

Guardian Judge was not before the learned succeeding Guardian Judge, the same would not make any difference as the learned succeeding Guardian Judge has made his own recommendation, which he was required to do as per the procedure. Secondly the decision as to whether to discharge or confirm is ultimately the decision of the Probation Committee before which Committee as indicated above the entire file was placed by the administration.

26 Though the learned counsel for the Petitioner advanced submissions having different hues, the said submissions can ultimately be crystallized into one submission namely that the order of discharge is stigmatic and therefore the Petitioner was required to be given an opportunity. The said submission is principally founded on the language used by the learned Principal District Judge in his letter dated 11/05/2012 and the critical report dated 15/02/2013 and the discreet enquiry which was held against the Petitioner which according to the learned counsel was behind the back of the Petitioner.

 In so far as the letter dated 11/05/2012 and the critical report dated 15/02/2013 are concerned, as indicated above, the learned Principal District Judge has reiterated what he has stated in his letter dated 11/05/2012. It is required to be noted that the said letter dated 11/05/2012 is an accompaniment to the Annual Confidential Report of the Petitioner for the year

2010-2011. A perusal of the said report would indicate that in so far as the judgment writing, language, recording of evidence is concerned, the remarks of the learned Principal District Judge can be said to be positive. It is in respect of his relations with Bar, conduct and integrity, that the learned Principal District Judge has used the words like mischievous, dubious, unpunctual, integrity not free from doubt, unfair and indifferent, irresponsible and unreliable in the said report which he has reiterated in the critical report dated 15/02/2013. Mere use of the said words by the learned Principal District Judge in his letters would not take away the fact that by the said letters the learned Principal District Judge had communicated to the High Court his assessment as regards the suitability of the Petitioner for continuation or otherwise, and hence cannot be termed as stigmatic and therefore the termination taking into consideration the said letter being punitive. Though we are of the view that whilst carrying out the exercise of assessing the suitability of the Petitioner, use of the said words could have been avoided. The question arises is whether the used of the said words in his report dated 15/02/2013 makes the order stigmatic and punitive in nature, the answer has to be in the negative.

27 It is required to be borne in mind that the learned Principal District Judge of a particular district is the person on the spot, he has an opportunity to see the judicial officers who are working in the district . Hence it is required to be presumed that the remarks which have been made by the

the learned Principal District Judge are on the basis of the information which he had gathered and after watching the conduct and performance of a particular judicial officer, though in the instant case the use of particular words as we have observed could have been avoided. Hence mere use of the said words would not impinge upon the conclusion of the learned Principal District Judge that the Petitioner is not fit for continuation in judicial service. In the instant case there is only a faint allegation that the learned Principal District Judge was biased against the Petitioner. The said allegation seems to have been made on hindsight in the context of the letters of the learned Principal District Judge. In fact as mentioned earlier, the learned Principal District Judge on an earlier occasion has made fair comments in respect of the judgment writing, language and consideration of evidence in so far as the Petitioner is concerned. There can be no dispute about the fact that the report of the learned Principal District Judge is concerned, the said report is an input before the Probation Committee which takes a decision on an overall assessment of a candidate. The said report of the learned Principal District Judge as regards the suitability of the Petitioner in the instant case as indicated above was placed before the Probation Committee along with the other material which we have already referred to the earlier part of this judgment.

Now coming to the discreet enquiry, the same was only as regards the allegations made against the Petitioner as regards his punctuality. The

learned Principal District Judge was entitled to conduct the said discreet enquiry in view of the fact that the Petitioner was a probationer and the issue of his suitability was in question. The said discreet enquiry was in fact preceded by a surprise visit made by the learned Principal District Judge on 01/02/2012 to the Court of the Petitioner on which occasion the Petitioner was not found on dais till about 11.45 am and a message was thereafter received at 12.00 noon that the Petitioner would not be attending the Court as he was unwell.

In our view the discreet enquiry as regards punctuality is also a part of the exercise which is required to be carried out so as to see the conduct of a probationer during the probationary period, the principles of natural justice therefore cannot be said to be violated.

28 As indicated herein-above, the decision to discharge the Petitioner was that of the Probation Committee which was consisting of three Hon'ble Judges of this Court. The entire file of the Petitioner was placed before the Probation Committee and therefore it would have to be presumed that the Probation Committee on the basis of the overall assessment based on the material on record has reached the conclusion that the Petitioner was required to be discharged from service. There can be no gain saying in the fact that the overall suitability of a probationer is to be considered and just because in

respect of some aspect a probationer has fulfilled the parameters or has an explanation to offer, his termination cannot be termed as stigmatic and punitive, if on an overall assessment he is not found suitable. It is well settled that apart from the performance the conduct of a judicial officer is also relevant. In the backdrop of what has been stated herein-above it also cannot be said that the discharge of the Petitioner is arbitrary or capricious.

29 In so far as the judgments relied upon on behalf of the Petitioner are concerned, the facts involved in the said cases can be said to have common thread inasmuch as in all the cases either an explanation was called for or enquiry was conducted and a report was submitted against the probationer. The facts of the said cases were such that having regard to the allegations which were made against the probationers in each of the said cases and having regard to the fact that an enquiry report was on record, the discharge of the probationers in the said cases was found to be as and by way of punishment as being in violation of the principles of natural justice. In fact in one of the cases i.e. ***Samsher Singh's case***, the Rules provided that the adverse material shall be placed before the probationer. It is in the facts of the said cases that the allegations of misconduct in the said cases were held not the motive but the foundation for discharge or termination of the probationer. Such is not the case in the instant matter, as in the instant case apart from the fact that there is no preliminary enquiry or vigilance enquiry into any misconduct in fact even no

explanation was called for from the Petitioner and it is on the basis of the overall assessment of the material on record that the decision was arrived at by the Probation Committee to discharge the Petitioner from service.

30 At the cost of repetition it would have to be said that the Apex Court has in terms held that having regard to the allegation or suspicion of misconduct that the master/employer may have against the probationer, the employer may not choose to hold an enquiry to discharge the probationer whom the employer is not desirous of keeping. (*See Gujarat Steel Tubes Ltd. v/s. Gujarat Steel Tubes Mazdoor Sabha*).

It is also trite that the enquiry conducted to go into the suitability of a probationer cannot attract the provisions of Article 311 of the Constitution of India. Hence even assuming that the tenor of the letters of the learned Principal District Judge would amount to casting aspersions or suspicion against the Petitioner, the administration was entitled to take a decision to discharge the Petitioner without choosing to go into the allegations. Since the Petitioner was not found to be suitable for continuation by the Probation Committee, the contention of the learned counsel for the Petitioner founded on the basis of the letters of the learned Principal District Judge that the Petitioner is found to be undesirable and therefore amounts to a stigma cannot be accepted. We therefore conclude that the order passed against the Petitioner is

a simple order of discharge, on being found not suitable for continuation, and is therefore not stigmatic.

31 For the view that we have taken no interference is called for with the impugned orders dated 18/11/2013 and 12/11/2013 as well as with the recommendations of the Probation Committee. The above Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]