

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.19807 of 2013

% Date: 04-12-2018

Smt. K.Manjusree W/o Krishna Murthy, Aged 55 years,
Occ: Former District and Sessions Judge,
R/o Plot No.122A, C.S.R. Residency, M.L.A. Colony,
Road No.12, Banjara Hills, Hyderabad-500 034

... Petitioner

Vs.

\$ 1. The High Court of Judicature at Hyderabad
for the State of Telangana and the State of A.P.,
Rep. by its Registrar (Vigilance), Hyderabad

2. The State of A.P. & State of Telangana,
Rep. by its Chief Secretaries,
Secretariat, Hyderabad

... Respondents

! Counsel for Petitioner: Mr. D.V. Sitharam Murthy, Senior
Counsel, representing
Mr. K.Satyananarayana Murthy

Counsel for Respondents 1&2: Mr. S.Sri Ram, S.C. for High Court

< Gist:

> Head Note:

? Cases referred:

1. AIR 1974 SC 2192
2. (1999) 2 SCC 21
3. (2002) 1 SCC 520
4. (200) 5 SCC 152

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI**

Writ Petition No.19807 of 2013

Order: *(per V.Ramasubramanian, J.)*

Aggrieved by an order of discharge from probation, a Judicial Officer has come up with the above writ petition.

2. Heard Mr. D.V. Sitharam Murthy, learned Senior Counsel appearing for the petitioner and Mr. S.Sri Ram, learned Standing Counsel for the Registry.

3. As destiny would have it, the petitioner has been made to play the role of a lawyer, the litigant and a Judge, alternatively in the past more than a decade. After a prolonged legal battle on an issue of principle as to whether a minimum qualifying mark can be prescribed in the viva voce, when the notification did not stipulate so, the petitioner was appointed as a District Judge (Entry Level) by the method of direct recruitment on 24-10-2008. She was initially posted as the III Additional District and Sessions Judge in Kadapa District. From 01-12-2008 to 31-01-2009, she underwent basic judicial training in the Andhra Pradesh State Judicial Academy.

4. While working as II Additional Metropolitan Sessions Judge, Hyderabad, the petitioner pronounced judgment in a criminal case in S.C.No.310 of 2009 on 12-07-2010, finding two accused guilty of an offence under Section 302 read with Section 34 IPC, but sentenced both of them to undergo rigorous imprisonment for a period of ten years. When the accused filed an appeal and sought enlargement

on bail, a Division Bench of this Court directed the Registry by its order dated 02-8-2010, to place the copy of the judgment before the Administrative Committee. The order passed by the Division Bench on 02-8-2010 in CrI.M.P.No.1386 of 2010 in CrI.A.No.905 of 2010 reads as follows:

"When the petitioner/2nd appellant is found guilty for the offence punishable under Section 302 r/w 34 IPC, though minimum sentence prescribed under Sec.302 IPC is death or imprisonment for life and also fine, sentencing him to suffer imprisonment for a period of 10 years by the II Additional Metropolitan Sessions Judge, Hyderabad appears to be in total ignorance of law.

We do not see any ground to enlarge the petitioner/ A-2 on bail.

The Registry is directed to place the judgment under appeal before the Administrative Committee."

5. After discreet enquiries that revealed that the petitioner was not dictating judgments, but having the judgments prepared through her Personal Assistant, the High Court directed the explanation of the petitioner to be called for. Accordingly, a Memo dated 12-8-2010 was issued calling upon the petitioner to offer an explanation both about her judgment in S.C.No.310 of 2009 and about the allegation that she was not dictating judgments. In fact, the Memo dated 12-8-2010 not merely called for an explanation from the petitioner but also called upon the petitioner to send the shorthand note books of the Personal Assistant, along with the draft orders/judgments dictated on that date.

6. The petitioner submitted an explanation on 27-08-2010, enclosing certain documents including the draft judgment in S.C.No.310 of 2009.

7. Thereafter, the petitioner was placed under suspension on 31-12-2010 and a charge memo was issued on 02-02-2011. The petitioner submitted a written statement of defence on 24-3-2011. Not satisfied with the written statement of defence, the High Court ordered a regular departmental enquiry under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. A full-fledged enquiry followed and the Enquiry Officer submitted a report on 28-12-2011.

8. But in the meantime, the cases of all officers who were appointed directly along with the petitioner in October, 2008 by way of direct recruitment and placed on probation, came up for consideration on the administrative side, for confirmation of probation. To enable the Hon'ble Committee of Judges to take a decision, two judgments on the civil side and two judgments on the criminal side of all the probationers were called for. After a perusal of the same, the Administrative Committee of the High Court passed a resolution on 13-02-2012 directing the declaration of successful completion of probation of all others except the petitioner. By the same resolution, the petitioner was directed to be discharged from probation.

9. The resolution of the Administrative Committee was placed before the Full Court. The Full Court by its resolution dated 27-02-2012, approved the decision of the Administrative Committee. The same was forwarded to the Government and thereafter the Government passed G.O.Ms.No.56, Law Department, dated 07-6-2013, discharging the petitioner from probation on payment of one

month's pay in lieu of one month's notice on the ground that she could not successfully complete her probation. A consequential order was issued by the High Court on 13-06-2013. It is against the said order that the petitioner has come up with the above writ petition.

10. As a matter of fact, before issuing G.O.Ms.No.56, dated 07-6-2013, the State Government sought a clarification from the High Court, by the letter of the Law Secretary, dated 05-9-2012. One of the two clarifications sought by the Government was as to whether the proposed action of discharge of the officer from probation in terms of Rule 11 of the Andhra Pradesh State Judicial Service Rules, 2007 was an independent one or in continuation of the disciplinary proceedings. By a reply dated 10-9-2012, the High Court clarified to the Government that the recommendation for the discharge of the petitioner from probation was an independent one and not in continuation of the disciplinary proceedings.

11. The main submissions of Mr. D.V. Seetharam Murthy, learned Senior Counsel appearing for the petitioner, are – (i) that the petitioner is the 6th girl child among 7 girl children born to her parents; (ii) that she is a gold medallist in LL.M.; (iii) that the charges framed against her in the disciplinary proceedings formed the foundation for the impugned order of discharge from probation; (iv) that an order of discharge from probation, even if termed as a discharge simpliciter without casting a stigma, will nonetheless be punitive in nature, if charges were framed, enquiry conducted and

findings are recorded about the guilt of the delinquent; (v) that the whole disciplinary proceedings proceeded on the basis of statements made allegedly by the Personal Assistant, against whom the petitioner had issued several Memos and who had therefore become inimical to the petitioner; and (vi) that the mistake that occurred in the judgment in S.C.No.310 of 2009, had already been corrected in the draft judgment by the petitioner, but the same was not carried out by the Personal Assistant, resulting in the Division Bench of the High Court referring the matter to the Administrative Committee and that all the hard work that the petitioner put in, had been wiped out by the order of discharge passed after finding the petitioner guilty of misconduct.

12. In response, it is contended by Mr. S. Sri Ram, learned Standing Counsel for the Registry, that the charges framed in the departmental enquiry never formed the foundation for the order of discharge simpliciter and that the whole sequence of events that happened on parallel lines would establish very clearly that the impugned order of discharge was one passed simpliciter. In a lucid manner, the learned Standing Counsel for the Registry explained as to how without reference to the disciplinary proceedings, a note was circulated to the Hon'ble Chief Justice on 15-12-2011 (even before the Enquiry Officer submitted his report) for the declaration of satisfactory completion of probation of the entire batch of officers to which the petitioner belonged and as to how a decision was arrived at by the Administrative Committee in its meeting held on 13-02-2012. Relying upon the old adage that witnesses may lie but the

circumstances may not, the learned Standing Counsel for the Registry pointed out that the disciplinary proceedings as well as the action for confirmation of probation of all the officers of the batch, proceeded on completely different planes. Therefore, the learned Standing Counsel submitted that the petitioner cannot take advantage of the disciplinary proceedings and project the same as the foundation for a discharge simpliciter.

13. The learned Senior Counsel for the petitioner as well as the learned Standing Counsel for the Registry relied upon several decisions revolving around “motive” and “foundation”. But all decisions actually turned on the applicability of settled principles of law to fact situations. Keeping this in mind, we shall first look at the Rules.

14. Rule 9 (a) of the Andhra Pradesh State Judicial Service Rules, 2007, prescribes that every person appointed to the category of District Judges by direct recruitment, shall be on probation for a period of two years from the date on which he joins duty. Clause (d) of Rule 9 states that the period of probation or officiation may be extended by the High Court by such period not exceeding the period of probation.

15. Rule 10 speaks about declaration of satisfactory completion of probation. Rule 11 speaks about discharge of unsuitable probationers. Rule 11 reads as follows:

“11. Discharge of unsuitable probationers: If at the end of the period of probation or the period of extended probation, the Appointing Authority on the recommendation of the High Court, considers that the probationer is not suitable to the post to which he has been appointed, may by order

discharge him from service after giving him one month's notice or one month's pay in lieu thereof."

16. In view of the provisions of Rule 11, there is no controversy as to the power of the High Court to discharge the petitioner from probation, on the ground of unsuitability to the post.

17. Several cases have come up before the Apex Court on the question of discharge of probationers by orders simplicitor, in the backdrop of disciplinary proceedings either on the anvil or pending at some stage. Some of them related to Judicial Service itself. Therefore, we shall focus mainly on those decisions which arose out of Judicial Service, but shall also take note of cases arising out of other services.

18. In ***Samsher Singh v. State of Punjab***¹, the termination of services of a few Judicial Officers in the Punjab Civil Services (Judicial Branch) came up for consideration, before a Constitution Bench of 7-Judges of the Supreme Court. But the Supreme Court was concerned in that case with Rule 9 of Punjab Civil Services (Punishment and Appeal) Rules, 1952 and Rule 7 (3) of Punjab Civil Services (Judicial Branch) Rules, 1951. Rule 9 of the Punishment and Appeal Rules provided for an opportunity to the probationer to show cause against the proposed termination. But Rule 7(3) of the Punjab Civil Services (Judicial Branch) Rules, 1951, empowered the Governor on the recommendation of the High Court to dispense with the services of the officer, if his work or conduct was reported by the High Court to be unsatisfactory. After reiterating the law laid down in

¹ AIR 1974 SC 2192

Purshottam Lal Dhingra v. Union of India (AIR 1958 SC 36), that the termination of probation will not by itself be a punishment, the Supreme Court in ***Samsher Singh*** noted the development of the concepts of motive and foundation by Das, C.J., in ***Purshottam Lal Dhingra***. The Court noted in ***Samsher Singh*** that if a right exists under a contract or Service Rules to terminate the services of a probationer, the motive operating on the mind of the government was wholly irrelevant. On the other hand, if the termination is founded on misconduct, then it is a punishment. The Court explained that the reason why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible.

19. Taking a survey of few decisions rendered earlier, the Supreme Court, in ***Samsher Singh***, culled out in paragraph-65 of its decision, the principles that emanated from them. They can be summarised as follows:

(i) The fact of holding an enquiry is not always conclusive, but what is decisive is whether the order is really by way of punishment (***State of Orissa v. Ramnarain Das AIR 1961 SC 177***);

(ii) 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 (***Madan Gopal v. State of Punjab AIR 1963 SC 531***);

(iii) 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 of the Constitution of India (***Champaklal G. Shah v. Union of India AIR 1964 SC 1854***);

(iv) The substance of the order and not the form would be decisive (***K.H. Phadnis v. State of Maharashtra AIR 1971 SC 988***); and

(v) Where a departmental enquiry is contemplated, but an enquiry is not in fact proceeded with, Article 311 of the Constitution of India will not be attracted unless it can be shown that the order, though unexceptionable in form, is made following a report based on misconduct (***State of Bihar v. Shiva Bhikshuk AIR 1971 SC 1011***).

20. On facts, the Supreme Court found in ***Samsher Singh*** that the High Court entrusted the task of conducting an enquiry against the Judicial Officer, to the Director of Vigilance of the State Government and thereafter accepted the report of the Enquiry Officer and recommended the discharge of the officer from probation. Therefore, the Supreme Court came to the conclusion in ***Samsher Singh*** that the termination of services of one of the officers, was clearly by way of punishment.

21. It may be of interest to note at this juncture that in a separate but concurring judgment, Justice V.R. Krishna Iyer noted with sarcasm the shift from the factum of enquiry to the object of the enquiry and the membranous distinctions evolved between an enquiry merely to ascertain unsuitability and the one held to punish the delinquent. Quoting from Dr. Tripathi, in his "Spotlights on Constitutional Interpretation", where he questioned the so-called "Freudian" frontiers of motive and foundation, Justice Krishna Iyer observed that between unsuitability and misconduct "thin partitions do their bounds divide". In his inimitable style, Justice Krishna Iyer in

the penultimate paragraph, before concurring with the majority opinion in ***Samsher Singh*** held that over the years, in the rulings of the Court, the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling. But, nevertheless, the learned Judge concurred with the conclusion reached by the majority.

22. In the context of the discharge of a probationer, working in an Industrial Establishment, the Supreme Court considered this question once again in ***Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha***. Taking the vexed question that he raised in ***Samsher Singh*** to the next level, Justice V.R. Krishna Iyer indicated in ***Gujarat Steel Tubes Ltd*** that the anatomy of a dismissal order is not a mystery, once it is agreed that substance, not semblance, governs the decision. After holding that masters and servants cannot be permitted to play hide and seek with the law of dismissal, the Court pointed out in ***Gujarat Steel Tubes Ltd*** that a termination, effected because the master is satisfied of the misconduct and on the consequent desirability of permitting the service of the delinquent, it is a dismissal. Wherever there is a live nexus between a misconduct and the termination of service, the conclusion is dismissal, even if non-injurious terminology is used.

23. Therefore, it can be safely concluded that the law that was developed from ***Purshottam Lal Dhingra to Gujarat Steel Tubes***, alone got fine tuned in later cases. Hence, it may not be necessary to multiply the decisions on the point, except two subsequent decisions on which Mr. D.V. Sitharam Murthy, learned Senior

Counsel, places reliance and one decision on which Mr. S. Sri Ram, learned Standing Counsel for the Registry, places on reliance.

24. In **Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd.**² on which heavy reliance is placed by Mr. D.V. Sitharam Murthy, learned Senior Counsel for the petitioner, the Court drew a distinction between an order of discharge simpliciter, passed even before the commencement of the enquiry and an order of discharge passed after holding of a departmental enquiry. In **Radhey Shyam Gupta**, the Court took note of the difficulty expressed in **Samsher Singh** about finding out what was motive and what was foundation. But the Court noted that the said difficulty was removed by the Supreme Court in its subsequent decision in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha (1980) 2 SCC 593**. After recording the observations of the Court in paragraphs-53 and 54 of **Gujarat Steel Tubes Ltd.**, the Court recorded an opinion in paragraph-27 of its decision in **Radhey Shyam Gupta** that if the master, after gathering some prima facie facts does not really wish to go into their truth, but decides merely not to continue a dubious employee, it will only be a case of motive. But if he conducts an enquiry for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation.

25. After so holding in paragraph-27, the Court in **Radhey Shyam Gupta** analysed the decisions in – (i) **State of U.P. v. Ram Chandra Trivedi (1976) 4 SCC 52**, (ii) **State of Maharashtra v.**

² (1999) 2 SCC 21

Veerappa R. Saboji (1979) 4 SCC 466, (iii) Anoop Jaiswal v. Government of India (1984) 2 SCC 369, (iv) State of Punjab v. Sukh Raj Bahadur AIR 1968 SC 1089, (v) Nepal Singh v. State of U.P. (1980) 3 SCC 288, (vi) State of U.P. v. Kaushal Kishore Shukla (1991) 1 SCC 691, (vii) Commissioner, Food and Civil Supplies v. Prakash Chandra Saxena (1994) 5 SCC 177.

Thereafter, the Court gave its conclusion in paragraph-34 of the report in ***Radhey Shyam Gupta*** as follows:

“34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee – even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.”

26. Therefore, the contention of Mr. D.V. Sitharam Murthy, learned Senior Counsel, is that the ratio laid down in ***Radhey Shyam Gupta*** applies in all fours to the case on hand. This is due to the fact that the petitioner was placed under suspension on 31-12-2010, a charge memo was issued on 02-02-2011, an enquiry was held and the Enquiry Officer submitted a report on 28-12-2011. Therefore, it is contended by the learned Senior Counsel that the decision of the Administrative Committee dated 13-02-2012 and the

approval given to the same by the Full Court on 27-02-2012, had as their foundation, the misconduct alleged against the petitioner.

27. According to the learned Senior Counsel for the petitioner, the tests laid down in **Radhey Shyam Gupta**, were also reiterated in **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences**³. Paragraphs-18 to 21 of the said decision relied upon by the learned Senior Counsel for the petitioner read as follows:

“18. But the law does not rest there. In Samsher Singh v. State of Punjab (1974) 2 SCC 831 the courts were asked to look behind the form of the order to find out whether the termination was in substance punitive. So when a full-scale inquiry is held against a probationer or a temporary appointee and he is found guilty, an order terminating his services for this reason has been seen as punitive and bad. It is this search for the “substance” behind the “form” of the order of punishment which has led to some apparently conflicting decisions.

19. Thus some courts have upheld an order of termination of a probationer’s services on the ground that the enquiry held prior to the termination was preliminary and yet other courts have struck down as illegal a similarly worded termination order because an inquiry had been held. Courts continue to struggle with semantically indistinguishable concepts like “motive” and “foundation”; and terminations founded on a probationer’s misconduct have been held to be illegal while terminations motivated by the probationer’s misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.

20. As observed by Alagiriswami, J. in S.P. Vasudeva v. State of Haryana (1976) 1 SCC 236, at p. 240: (SCC para 5)

“After all no government servant, a probationer or temporary, will be discharged or reverted, arbitrarily, without any rhyme or reason. If the reason is to be fathomed in all cases of discharge or reversion, it will be difficult to distinguish as to which action is discharge or reversion simpliciter and which is by way of punishment. The whole position in law is rather confusing.”

21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has

³ (2002) 1 SCC 520

been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

28. From paragraph 21 of the decision in **Pavanendra Narayan Verma**, extracted above, it could be seen that in cases (i) where a full-fledged enquiry is conducted (ii) into allegations of misconduct and (iii) the same culminates in a finding of guilt, then the order is held to be punitive. On the contrary, even if any one of the three factors is missing, the termination has been upheld. According to the learned senior counsel for the petitioner, all these three requirements indicated in paragraph 21 of the decision in **Pavanendra Narayan Verma** are present in this case and that therefore, the misconduct formed the foundation for the order of discharge.

29. On a cursory glance, one may be tempted to think that all the three factors indicated in paragraph 21 of the decision in **Pavanendra Narayan Verma** are present in this case. There was actually a full-fledged enquiry. The enquiry was into serious allegations of misconduct and there was an enquiry report dated 28-12-2011. But the question is whether the presence of all the above three factors would make the impugned order vulnerable or not.

30. Before finding an answer to this question, we must keep in mind a crucial distinction between all other services and judicial service. Under Article 235 of the Constitution, the control over District Courts and the Courts subordinate thereto is vested in the

High Court. The High Court is construed to mean the Full Court. Therefore, unlike in all other services where the disciplinary authority vests on a single individual, the disciplinary control vests with the Full Court of the High Court in the case of judicial service. In all disciplinary matters as well as matters relating to the confirmation of probation or discharge of a probationer, a decision is first taken by an Administrative Committee also known as the First Committee and the same is placed before the Full Court for its consideration. Therefore, the command structure is not unitary. It is in this context that the subtle difference sought to be drawn by Mr. S. Sri Ram, learned standing counsel for the Registry between two different tracks in which the matters went, assumes significance.

31. Though a charge memo was issued on 02-02-2011 and an enquiry followed and the Enquiry Officer submitted a report on 28-12-2011, a note was circulated to the Hon'ble the Chief Justice on 15-12-2011 even before the submission of the enquiry report, for considering the cases of all the officers in the batch to which the petitioner belonged, for confirmation of probation. In the note submitted on 15-12-2011, it was made clear that all the 10 officers including the writ petitioner herein were called upon to produce two judgments on the civil side and two judgments on the criminal side for assessment. The judgments were also placed. Apart from this, a separate paragraph was devoted to the writ petitioner, in the note placed before the Hon'ble the Chief Justice on 15-12-2011. This paragraph reads as follows:

"It is further submitted that except Smt. K. Manjusree (Sl.No.7) there are not departmental enquiries pending against the above said officers. The High Court initiated disciplinary proceedings against Smt. K. Manjusree and also placed her under suspension in public interest vide High Court's proceedings dated 02-01-2011 and enquiry report is awaited from the Hon'ble Enquiring Judge."

32. On the note put up on 15-12-2011, for the declaration of satisfactory completion of all the 10 directly recruited District and Sessions Judges, the Hon'ble the Chief Justice made an endorsement "A.C.".

33. Thereafter, the cases of all the 10 District Judges including the petitioner was placed before the Administrative Committee for consideration of the question of declaration of satisfactory completion of probation, in a meeting held on 13-02-2012. The agenda note for the meeting would show that the question of declaration of probation of all the 10 officers was placed as Subject No.19. The Agenda Item No.19 and the resolution passed therein are extracted as follows:

Subject No.19:

PUBLIC SERVICES – District and Sessions Judges – Declaration of probation of certain Direct Recruit District and Sessions Judges subject to finalization of seniority between them – Two judgments on Civil side and two judgments on Criminal side are called for and received from the 10 Direct Recruit District and Sessions Judges Regarding (Deferred in the Administrative Committee of Hon'ble Judges in the Meeting held on 30-01-2012)

RESOLUTION:

The probation of the officers, except Smt. K. Manju Sree, is declared as successfully completed. Services of Smt. K. Manju Sree be discharged on payment of one month's pay in lieu of notice since she is not suitable to the post to which she is appointed."

34. It may be seen from the subject placed before the Administrative Committee in its meeting on 13-02-2012 that there was no reference to the Enquiry Report received against the

petitioner. The case of the petitioner appears to have been considered along with all her batch mates, in the normal route.

35. Therefore, it is clear that the decision to discharge the petitioner from probation was not taken by the Administrative Committee on 13-02-2012, on the basis of the enquiry report. On the contrary, it was taken on the basis of scrutiny of the judgments of the petitioner (irrespective of whether they were wholly authored by her or not). Hence, the two-track theory formulated by Mr. S. Sri Ram, learned standing counsel for the Registry appears to be correct. This theory is also fortified by the fact that the enquiries against Judicial Officers are dealt with by the Vigilance Section. But the question of declaration of probation is dealt with by the office of the Registrar General.

36. This is why the resolution passed by the Administrative Committee in its meeting held on 13-02-2012 was placed before the Full Court in its meeting held on 27-02-2012. After the Full Court approved the resolution of the Administrative Committee to discharge the petitioner from service, the Registrar General by a communication dated 03-03-2012 informed the Registrar (Vigilance) about the same. In the said letter, Subject No.7 placed for the consideration of the Full Court and the resolution passed by the Full Court were extracted. They read as follows:

"SUBJECT NO.7:

Minutes of Administrative Committee Meeting of the Hon'ble Judges held on 13.02.2012 with regard to discharge of Smt. K. Manjusree from service, on payment of one months pay in lieu of notice, under Rule 11 of the A.P. State Judicial Service Rules, 2007, since she is not suitable to

the post to which she is appointed – For approval of the Full Court of Hon'ble Judges – Regarding.

RESOLUTION:

Since Smt. K. Manjusree has not successfully completed her probation period and she is not suitable to the post to which she is appointed, she is discharged from service on payment of one month's pay in lieu of notice under Rule 11 of the A.P. State Judicial Service Rules, 2007."

37. Therefore, it is clear that the report of the Enquiry Officer did not form part of the agenda placed either before the Administrative Committee or before the Full Court. The case of the petitioner was not segregated from that of other officers belonging to her batch. It is not the case of the petitioner that two judgments on the civil side and two judgments on the criminal side rendered by her were not called for. The case of the petitioner was considered both by the Administrative Committee and the Full Court along with the cases of other officers of her batch for declaration of satisfactory completion of probation. Therefore, it is clear that the disciplinary proceedings, on the facts of this case, never formed the foundation for the discharge of the petitioner from probation.

38. As pointed out by the Supreme Court in **Chandra Prakash Shahi v. State of U.P. and others**⁴ relied upon by Mr. S. Sri Ram, learned standing counsel for the Registry, the whole case law was based upon the peculiar facts of each individual case. In so far as the case on hand is concerned, it is clear from the minutes of the meeting of the Administrative Committee and the minutes of the Full Court that the decision to discharge the petitioner from probation was not taken on the basis of the allegations of misconduct or the

⁴ (200) 5 SCC 152

report of the Enquiry Officer. Hence, the order of discharge cannot be termed as punitive in nature.

39. Therefore, in fine, we find no irregularities or illegalities in the impugned order of discharge, as disciplinary proceedings did not form its foundation and the discharge of the petitioner did not cast any stigma on her. Hence, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

Date: 04-12-2018

Ak/Ksn

L.R. copy to be marked

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI



Writ Petition No.19807 of 2013

(per VRS, J.)

4th December, 2018.

Ksn