

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CWP-20375-2013 (O&M)
Date of Decision: 03.12.2020

Parveen Bali

... Petitioner

VS.

State of Punjab and Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Puneet Bali, Sr.Advocate with
Ms. Kannu Sharma, Advocate for the petitioner

Ms. Lavanya Paul, AAG Punjab

Mr. Rohit Kapoor, Advocate for respondent No.3

GIRISH AGNIHOTRI, J.

The petitioner Parveen Bali, Ex-Additional District & Sessions Judge, has filed the present writ petition *inter alia* praying for quashing of the impugned order dated 14.06.2011 (P13) communicated on 24.06.2011 whereby her services as member of the Punjab Superior Judicial Service were dispensed with by respondent No.2 on the recommendation of the Punjab and Haryana High Court, Chandigarh. Accordingly, a direction is prayed for to reinstate her in service from the date when her services were dispensed with; along with all consequential benefits.

2. For the facts noticed hereinafter and for the reasons as noticed hereinunder, we are of the view that the present writ petition deserves to be allowed and is so ordered.

3. Learned senior counsel based upon the pleadings in the writ petition submits that the petitioner had completed her Bachelors Degree in Law in the year 1994. In the year 1999, she had taken the Punjab Civil Service (Judicial Branch), Examination. It is pleaded and only to be noticed as fact but not relevant with the present controversy, that the petitioner could not secure 50% marks in the combined written examination and *viva voce* which was not the condition for the reserved category candidates. She challenged the said action by way of filing the writ petition i.e. CWP No.10220 of 2001 (Surinder Kumari & Anr. vs. State of Punjab & Ors.). In the meantime, the petitioner again appeared for PCS (JB) Examination in the year 2001. In this examination, she is stated to have secured 8th position in written exams in general category and 10th position in general category after *viva voce* and 58 % marks in aggregate of written and *viva voce*. She is stated to have secured first position in the reserved category of Scheduled Caste to which the petitioner belongs. It is pleaded that the petitioner was offered appointment letter. Although she did not fall amongst the tainted candidates yet her appointment was quashed.

4. In the meantime, in the year 2008, 21 posts of Additional District & Sessions Judge under the Punjab Superior Judicial Service against quota of direct recruitment were advertised. As per the break-up, 10 posts were meant for General category and 6 posts for the reserved category of Scheduled Caste.

5. In this selection process also, by securing 461 marks in the written examination and 125.6 marks in *viva voce*, the petitioner was at Sr. No.5 in the overall combined merit list and secured 1st position in order of merit in her category i.e. of Scheduled Caste. Accordingly, vide order dated

28.11.2008, the petitioner was offered appointment as Additional District & Sessions Judge. It was, *inter alia*, stated therein that the appointment is subject to successful completion of probation period as per Rules. In the appointment letter, it was further mentioned that she was to report to the Registrar General of the Punjab and Haryana High Court (in short, the Registrar General) and further orders relating to training/posting will be issued accordingly.

6. It is further the pleaded case of the petitioner that she joined as Additional District & Sessions Judge under the orders of the competent authority at Sub-division Sri Muktsar Sahib, District Faridkot on 10.12.2008. Vide notification dated 23.12.2009, Government of Punjab has formed new Sessions Division as 'Muktsar' Sessions Division. It has been the positive case of the petitioner that Sri Muktsar Sahib Sessions Court was created out of District Court, Faridkot on 08.01.2010. It is a matter of record that the Sessions Courts at Sri Muktsar Sahib started functioning w.e.f. 16.01.2010.

7. The petitioner has further positively pleaded that in fact she joined the service on 10.12.2008 at District & Sessions Court, Faridkot and thereafter reported for duty at Sub-division Sri Muktsar Sahib courts, on the same day. Sri Muktsar Sahib District Court was newly established and the petitioner was offered the charge of newly created Court Complex.

8. Vide letter dated 19.02.2010, the petitioner was conveyed by the Registrar General the inspection remarks *qua* her for the period 10.12.2008 to 31.03.2009. Learned senior counsel submits that on one hand in column-3 of the letter (P2) against the heading "*Capacity of management, leadership, Initiative, planning and decision making*", it has

been recorded as “*no comments as no independent responsibility yet given*”. He further emphasizes that against column-7 “*Integrity*”, it has been recorded as “*no complaint*”. He then refers to para 3(IX) to submit that the fact that the paucity of time for court work during the period under reference has gone unnoticed while evaluating the work and conduct of the petitioner. He further submits that it was neither humanly possible nor could be expected of a person to complete the units in 9 days, for which otherwise 22 days would have been available in routine month. It is submitted that the work assigned to the person including bail application etc. during the month of December, 2008 was disposed of by the petitioner during the 9 effective days of work available to the petitioner. He then refers to para 3(X) to say that for the reasons mentioned therein, the court work was constrained. It is submitted that the petitioner earned 3 units but sufficient time was consumed on disposal of 9 bail applications which as per norms could not be counted. By making reference to para 3(XI), the month of February, 2009 saw disposal of 20 cases earning 49½ units excluding the disposal of 8 bail applications. In para 3(XII), it has been, *inter alia*, pleaded that had the petitioner been given advisory note in time, there was possibility of further improvement but all the same, the petitioner had actually made all efforts to improve the quality and quantity of work.

9. Learned counsel then refers to the letter dated 28.10.2010 (P3) whereby the petitioner was conveyed the inspection remarks for the period 01.04.2009 to 31.03.2010. He submits that against column-1 “*quality of work...and quality of judgment*”, it has been recorded as “*satisfactory*”. It is submitted that in comparison to previous ACR of 3 months *qua* this year against column-3 *inter alia*, “*capacity of management etc.*”, it has been

recorded as “*satisfactory*”. Columns 4, 5 & 8 also record remarks as “*satisfactory*”, “*good*” and “*satisfactory*”, respectively. In column-7 against “*integrity*”, it has been recorded as “*no complaint*”. Importantly, in grading column-9, it has been recorded “*B-Average/satisfactory*”.

10. Learned counsel by making reference to para 3(XIV) submits that in the year 01.04.2010 to 22.02.2011, the petitioner had shown tremendous improvement as is evident from the table prepared and the same is reproduced hereunder:-

SrNo.	Month	Cases disposed of	Units claimed	Working days
1	April '10	37	81 1/2	23
2	May'10	33	77 1/2	18
3	June '10	10	10 1/2	6
4	July '10	49	88	26
5	August '10	55	88	24 1/2
6	September '10	47	84	19 1/2
7	October '10	34	83	20 1/2
8	November '10	30	103	21
9	December '10	37	103 1/2	18 1/2
10	January '11	40	105 1/2	19
11	February '11 (upto 22nd Feb.)	20	59	17
	TOTAL	392	883 1/2	213

11. From the table above, it is evident that the petitioner, for the months from April 2010 to November 2010, has earned/claimed more than 75 units per month, except the month of June 2010, when there is Court vacations. For the months of November 2010 to January 2011, she has earned/claimed more than 100 units per month and even for the month of February with 17 working days she has earned more than 50 units. This is as per norms for disposal of work by ADJs which was refixed vide letter dated 29.11.2010 (copy of which is placed on record as 'Mark A'), issued by

Registrar General of Punjab and Haryana High Court.

12. Learned counsel then submits by making reference to the letter dated 06.07.2012 (P12) that the petitioner was conveyed inspection remarks for the year 2010-2011. In column-4 against the heading "*inter personal relationship and team work*", it has been *inter alia*, recorded as "*....however, the Bar and the Bench speak good of her*". It has also been recorded that "*at the time of inspection, the Officer was not holding the Court since her work was withdrawn w.e.f. 22.2.2011*". Against column-7 "*integrity*", it has been recorded as "*no complaint*". Against column-8 "*general assessment*" it has been, *inter alia*, recorded as "*no prominent shortcoming observed*". In column-9 grading had improved and it was recorded "*B+ (Good)*". In the remarks of the Administrative Judge, it has been recorded as "*the officer enjoyed good reputation*".

13. However, in spite of the above factual position, vide impugned order dated 14.06.2011, the petitioner's services were dispensed with. In the order, it was recorded that the said order was on the recommendations of the Hon'ble Punjab and Haryana High Court, Chandigarh dated 22.02.2011 and 27.05.2011 and in exercise of powers under Rule 13 (3) of the Punjab Superior Judicial Service Rules, 2007.

14. The perusal of letter dated 22.02.2011 (Annexure P-9) also referred to in the impugned order, would show that the Registrar General of High Court of Punjab and Haryana had written to the Secretary to Government of Punjab, Department of Home Affairs *inter alia* that the services of the petitioner be dispensed with. The petitioner has then attached a copy of report submitted by the then Inspecting Judge of Sri Muktsar Sahib, Sessions Division and the orders of the then Acting Chief

Justice as Annexure P-10 dated 27.05.2011. A perusal of the same would show that it has been firstly mentioned in the said report that the recommendations dated 22.02.2011 sent by the Registrar General of Punjab and Haryana High Court to the State Government, were returned with a request to reconsider/review the orders and grant her an opportunity of personal hearing before taking final decision. Secondly, it has been mentioned that during annual inspection of the Courts at Sri Muktsar Sahib, on 01.04.2011, the then Hon'ble Inspecting Judge had also inspected the Court of the petitioner and perused few judgments delivered by the officer. It is also stated in the report that the same were found to be in 'simple language', reasoned and does not smack of any mala fide. No complaint was received from the members of the Bar with regard to work and conduct, rather it was apprised that she had been discharging her duties honestly and diligently. The learned District and Sessions Judge, Sri Muktsar Sahib, also endorsed the aforementioned facts. Thirdly, it has been noticed that the petitioner had also submitted a representation for reconsideration/reviewing the order passed by this Court. It was noticed that according to her, in the initial months of her appointment, there was less disposal but it was due to reason that in the cases which were received by transfer, longer dates were already given. Forthly, in the report, the then Hon'ble Inspecting Judge had recorded that it would be in fitness of things if the matter is reconsidered by affording opportunity to the Officer/petitioner. However, it is further noticed that the then Hon'ble Acting Chief Justice had recorded *inter alia* that no further consideration is necessary at any level in this Court. It is pleaded case of the petitioner with specific reference to sub para xxii that on the same day, the Registrar General of Punjab and Haryana

High Court, vide letter dated 27.05.2011 again requested respondent No.2-Secretary to Government of Punjab, to dispense with the services of the petitioner. This Court is therefore of the view that *inter alia* on the first count the original recommendations dated 22.02.2011 sent by Registrar General of Punjab and Haryana High Court, which were returned by the Government with a request to reconsider, have not been brought to the notice of the Full Court which renders the impugned order arbitrary and liable to be set aside. On the second count it is worth noticing that the recommendations/report (Annexure P-10) of the Inspecting Judge of the then Hon'ble Inspecting Judge, which apparently were in favour of the petitioner, were also not placed before the Full Court which renders the impugned order arbitrary and liable to be quashed. On the third count, it further becomes evident from documents at Annexure P-10 that neither the returning by the Government and report of the Hon'ble Inspecting Judge nor the request of the petitioner for personal hearing, were placed before the Full Court. It is thus a case where inspite request by her, inspite report by the Hon'ble Inspecting Judge and inspite recommendations by the Government, the petitioner was not granted opportunity of personal hearing.

15. The records of the case show that on 16.09.2013, notice of motion was issued. On behalf of respondents No.1&2, short reply/short affidavit has been filed by Sh. Harchand Singh, Under Secretary to Govt. of Punjab, Department of Home Affairs and Justice, Chandigarh wherein it has been, *inter alia*, submitted that the impugned order dated 14.06.2011/24.06.2011 was passed on the recommendations of the Registrar General. It is then submitted that respondents No.1&2 are only *pro forma*

parties in this case.

16. On behalf of respondent No.3, Sh. Shatin Goyal, Officer on Special Duty (Rules & Protocol), Punjab and Haryana High Court, Chandigarh has filed the written statement. It has been, *inter alia*, submitted therein that the services of the petitioner were dispensed with in accordance with the provisions of Rule 13(3) of the Punjab Superior Judicial Service Rules, 2007. In the reply, reference has been made to the letters dated 19.02.2010 and 09.10.2010 whereby the petitioner was conveyed the inspection remarks *qua* her for the periods 10.12.2008 to 31.03.2009 and for the financial year 2009-2010, respectively. In the written statement, reference has also been made to the fact that the service record of the petitioner was considered by the 'REVIEW OF WORK AND CONDUCT OF PROBATIONER JUDICIAL OFFICERS COMMITTEE' in its meeting held on 07.12.2010. It is then submitted that the recommendations of the Committee were approved by the Full Court in the meeting held on 16.02.2011 and thereafter the Government was requested to dispense with her services.

17. Petitioner has filed replication as a counter to the written statement filed by respondent No.3. It is, *inter alia*, submitted that the reliance on the letter dated 19.02.2010 (whereby inspection remarks *qua* the period from 10.12.2008 to 31.03.2009 were conveyed), is misconceived and can, in no way, be taken as a ground to dispense with the services of the petitioner. It is then pleaded by the petitioner in her replication that the petitioner was not given an appropriate opportunity. The specific pleadings in para 3(ii) & (iii) of the replication are reproduced hereunder:-

“That the contents of these para are admitted to the

extent that the recommendation of Committee was approved by the full court in the meeting held on 16.02.2011 and the work of the petitioner was withdrawn on 22.02.2011. It is, pertinent to mention here that the Government vide letter ref.No.1/20/2011-3AD-(1)/765 dated 14.03.2011 has requested to re-consider the order of dispensing of service of the petitioner and to give her personal hearing before finalizing the order. It is also pertinent to mention here that as per Annexure P-10, the administrative Judge, Muktsar after making personal inspection had in his speaking order considered the present case fit for reconsideration/review. Neither appropriate opportunity was given to the petitioner nor her case was reconsidered.”

18. Learned counsel for the petitioner has drawn attention of this Court to a letter dated 06.06.2012 from the Joint Registrar-cum-Public Information Officer to the petitioner which is appended as Annexure P-16. Learned senior counsel makes reference to para 6 of the said communication to submit that for the years 2008 to 2010, the units earned by each Officer have been tabulated and the same is reproduced as under:-

S.No.	Name of the Officers	Year	Month	Units Earned
1	Sh. J.S. Klar, D&SJ	2009-2010	Jan.2010	30
	(From 16.01.2010)		Feb.2010	99.5
			March 2010	89.5
		Total		219
2.	Smt. Ramesh Kumari,	2008-2009	Dec.2008	89.5
	AD & SJ		Jan. 2009	76
			Feb. 2009	76.5
			March 2009	81.5
		Total		323.5
2.	Smt. Ramesh Kumari,	2009-2010	April 2009	80.5
	AD & SJ			
	(01.04.2009 to		May 2009	76
	15.01.2010)			

			June 2009	6.5
			July 2009	75.5
			August 2009	81.5
			Sept. 2009	102.5
			Sept. 2009	102.5
			Oct. 2009	108
			Nov. 2009	102
			Dec. 2009	90
		(Jan. 1 to 15)	Jan. 2010	13.5
			Feb. 2010	--
			March 2010	--
		Total		736
3.	Sh. G.R. Banyal, AD & SJ	2008-2009	Dec. 2008	80.5
			Jan. 2009	75
			Feb. 2009	60.5
			March 2009	90.5
		Total		306.5
	(1.4.2009 to 1.6.2009)	2009-2010	April 2009	50.5
			May 2009	38.5
			June 2009	2
		Total		91
4.	Sh. B.S. Sodhi, AD & SJ		June 2009	50
	(3.6.2009 to 31.3.2010)		July 2009	27.5
			August 2009	91
			Sept. 2009	107
			Oct. 2009	102.5
			Nov. 2009	79
			Dec. 2009	96.5
			Jan. 2010	113.5
			Feb. 2010	99.5
			March 2010	86
		Total		852.5
5.	Mrs. Parveen Bali, AD & SJ	2008-2009	Dec. 2008	NIL
			Jan. 2009	3
			Feb. 2009	49.5
			March 2009	53.5
		Total		106
		2009-2010	April 2009	42.5
			May 2009	36.5
			June 2009	5.5
			July 2009	77

			August 2009	78
			Sept. 2009	76.5
			Oct. 2009	77
			Nov. 2009	55
			Dec. 2009	52.5
			Jan. 2010	75.5
			Feb. 2010	79.5
			March 2010	80
		Total		735.5

19. This Court in view of the above notices that though the period slightly varies *vis-à-vis* other Officers but broadly the petitioner had also earned reasonable units.

20. Learned counsel then refers to the pleadings in the petition in para 3(XXIII) to the effect that in the inspection remarks for the year 2010-2011, the Administrative Judge of the Muktsar Sahib Sessions Division was pleased to record that her grading is B+/Good and also that “*the Officer enjoyed good reputation*”. He submits that, however, these inspections remarks were conveyed to the petitioner vide communication dated 06.07.2012 i.e. after the impugned order dated 14.06.2011. He, however, submits that the said remarks were well in the notice of the concerned Administrative Judge who had actually seen her work upto 22.02.2011 (i.e. prior to the impugned order dated 14.06.2011).

21. Learned senior counsel then makes specific reference to para 6 (e) of the writ petition to submit that the probationer is entitled to certain protection and that the services of the probationer cannot be terminated arbitrarily and punitively without complying with the principles of natural justice. He then submits that the action also is discriminatory as is evident from the fact that another Judicial Officer, namely, Jatinder Kaur, (who was posted in another District i.e. Ferozepur) whose quality of work was mentioned to be ‘not upto the mark’ has been retained by extending the

period of probation. As depicted in the communication in Annexure P-16 (Colly), units earned by Jatinder Kaur for the years 2008-2009 and 2009-2010, are as under:-

Name	Year	Month	Units Earned
Ms. Jatinder Kaur, ADJ, Ferozepur	2008-2009	December 2008	5
		January 2009	26
		February 2009	76
		March 2009	86.5
		Total	189
	2009-2010	April 2009	87
		May 2009	82.5
		June 2009	46.5
		July 2009	105
		August 2009	81.5
		September 2009	90.5
		October 2009	82
		November 2009	86.5
		December 2009	78.5
		January 2010	78.5
		February 2010	81.5
		March 2010	85
		Total	985

Learned counsel submits with emphasis that in comparison to the said Officer whose quality of work was said to be not upto the mark, has been retained in service whereas petitioner whose work was satisfactory and only advisory remarks (that too at initial stage) were given that it needs improvement, yet her services have been dispensed with vide the impugned order.

22. Learned counsel then makes reference to Rule 13 of 2007 Rules with specific reference to sub-Rule (3) to submit that it has been specifically provided in the sub-Rule that the services of the probationer can be

dispensed with if the work has been found to be not satisfactory. To support his submission, learned counsel, at the sake of repetition, again makes reference to the letter dated 19.02.2010 (P2), letter dated 28.10.2010 (P3) which are the inspection remarks for the years 2009-2010 wherein in every column, petitioner's work has been stated to be 'satisfactory', except column-2 where reference has been made to the effect that she has given less than the prescribed norms for the work. He, therefore, submits that once for a short period of approximately three months from December, 2008 to March, 2009, no adverse remarks were conveyed except advisory remarks which have shown sufficient improvement in the next year as her work and conduct has been found to be satisfactory. He further submits that even for eleven months from 01.04.2010 to February, 2011, the petitioner has further improved her work and her grading was found to be B+/Good (higher than satisfactory) as is evident from the letter dated 06.07.2012 (P12). It is therefore evident from above that petitioner's work could not be said to be 'the work has been found to be not satisfactory'.

23. Learned counsel for the petitioner then makes reference to para 3(XXI) of the writ petition to submit that the petitioner had submitted a representation/mercy petition on 04.03.2011 for reconsideration/review of the order withdrawing work from her. In this para, the remarks of the Administrative Judge have been reproduced which are again reproduced hereunder:-

"...It is apposite to mention here that during annual inspection of Courts at Sri Muktsar Sahib on 1.4.2011, I also inspected the Court of Ms. Parveen Bali and perused few judgments delivered by the officer. The same was found to be in simple language, reasoned and does not smack of any

malafide. No complaint was received from the members of the Bar with regard to the work and conduct, rather it was apprised that she had been discharging her duties honestly and diligently. The learned District & Sessions Judge, Sri Muktsar Sahib also endorsed the aforesaid facts.

Now she has represented for reconsideration/reviewing the orders passed by this Court withdrawing the work as Additional District & Sessions Judge Sri Muktsar Sahib. The representation made by the Officer is self-explanatory. According to her in the initial months of her appointment, there was less disposal, but it was due to the reason that in the cases which were received by transfer, longer dates were already given. In the representation she has given adequate reasons for not achieving the norms in terms of units, fixed by this Court in initial months of her appointment and November, 2009. It transpired from the statements that later her disposal had gradually increased. Even in some months, the unit crosses 100 figure marks.

In the circumstances, in my considered view, it would be in the fitness of things if the Hon'ble Committee constituted for 'Review of Work & Conduct of Probationer Judicial Officers', may re-consider the matter of the aforesaid Officer, by affording an opportunity of hearing to her."

24. He however, submits that the request of the petitioner and the recommendations of the Administrative Judge were, however, summarily rejected without giving opportunity to the petitioner to put forth her defence. Learned counsel for the petitioner further submits that in the reply filed by respondent No.3 to the specific plea of discrimination, there has been no denial pleaded by respondent No.3 in para 6(e)&(f) of written statement filed by respondent No.3.

25. Learned counsel for respondent No. 3 cites ***H.F.Sangati Vs.***

Registrar General, High Court of Karnataka and others, (2001) 3

Supereme Court Cases 117, to contend that there was no requirement to comply with the principles of natural justice, much less to hold any formal proceedings of enquiry before passing the order. The petitioner was appointed on probation in Punjab Superior Judicial Service and the appointment was subject to successful completion of probation period as per rules. She joined the service on 10.12.2008. The review of work and conduct of probationer Judicial Officers Committee in its meeting held on 07.12.2010 took into consideration all the relevant material and recommended as to unsuitability of the petitioner to hold the post of Additional District & Sessions Judge. The said recommendations of the Committee were duly approved by the Full Court on 16.02.2011. Pursuant thereto the State Government issued the impugned order for discharge from service. Learned counsel further submits that the impugned order neither cast any stigma on the petitioner nor is it punitive.

26. Learned counsel for respondent No. 3 further submits that the Inspection Remarks on the work and conduct of the petitioner for the year 2009-2010 work conveyed vide this Court's Memo No. 1857-RH(2) dated 28.10.2010 but she did not prefer any representation against that. Thus, the petitioner now cannot allege that she was not afforded any opportunity and that her services have been ordered to be dispensed with without complying with the principles of natural justice. It is specifically denied that the services of the petitioner were dispensed with in a discriminatory manner.

27. It is further contended that this Court while exercising the powers under Article 226 of the Constitution of India does not act as a Court of Appeal and the scope of the judicial review in such like cases is very limited. He refers to a decision of Hon'ble the Supreme Court in '**High**

Court of Judicature, Patna V. Shiveshwar Narayan, (2011) 15 SCC 317'

wherein it was observed as under:

“19. Unfortunately, the Division Bench considered the matter as if it was sitting in appeal over the decision of the High Court on administrative side which, in our view, was not permissible. The consideration of the matter by the Division Bench shows that it has gone into the correctness of the decision itself taken by the High Court on the administrative side and not the correctness of the decision-making process.”

28. Learned counsel further states that the ground of discrimination raised by the petitioner with regard to another Judicial Officer, namely, Ms. Jitender Kaur, is highly misconceived and irrelevant as the entire work and conduct of the different probationers was examined and assessed on their own respective merits. Without prejudice to the same, it was incumbent upon the petitioner to implead the said Judicial Officer as a respondent before raising the ground of discrimination.

29. Referring to the Inspection Remarks recorded by the Administrative Judge of Faridkot Sessions Division on the work and conduct of the petitioner for the period from 10.12.2008 to 31.03.2009, learned counsel for respondent No. 3 submits that no representation was filed by the petitioner against these inspection remarks. The concerned Administrative Judge after examining the overall work and conduct of the petitioner for the entire year recorded special remarks 'Needs overall improvement'. The overall grading for the said year was accorded as 'B-Average'. No representation was filed by the petitioner against these inspection remarks also. The decision of this Court to dispense with the services of the petitioner during the period of probation was taken strictly in accordance

Service Rules, 2007.

30. There is no dispute about the proposition of law laid down in **Shiveshwar Narayan's** case (supra). This Court in its writ jurisdiction is not acting as a Court of Appeal, but where there is violation of the law, discrimination or patent arbitrariness this Court can certainly intervene. Hon'ble the Supreme Court in ***Rajindra Singh Verma (Dead) through Lrs vs. Lieutenant Governor (NCT of Delhi), (2011) 10 SCC 1*** held that where the Administrative Judge has recorded reasons, the legality of such reasons can be tested in exercise of the powers of judicial review by this Court. The purpose of writing of annual confidential reports and also the scope of interference in exercise of the power of judicial review has been recently reiterated in **Rajindra Singh Verma's** case (supra), where the Court said to the following effect:-

“147. Writing the confidential report is primarily and essentially an administrative function. Normally tribunals/courts are loath to interfere in cases of complaints against adverse remarks and to substitute their own judgment for that of the reporting or reviewing officers. It is because these officers alone are best suited to judge the qualities of officials working under them and about their competence in the performance of official duties entrusted to them. Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officer.”

We agree with the learned counsel for the petitioner that the petitioner neither got appropriate time/circumstances to improve her work nor was given sufficient time to make any representation. Even the second ACR of the petitioner shows that she had improved her working. The Government vide letter dated 14.03.2011 had requested to re-consider the

order of dispensing the services of the petitioners and to give her personal hearing before finalizing the order. As per Annexure P-10, the Administrative Judge, after making personal inspection had in his speaking order considered the present case fit for reconsideration/review. Neither appropriate opportunity was given to the petitioner nor her case was reconsidered. The 3rd ACR i.e. for the year 2010-2011 was conveyed to the petitioner after one year from the date whereas the service of the petitioner was dispensed on 24.06.2011.

31. The argument raised by learned counsel for respondent No. 3 that no representation was made by the petitioner against the inspection remarks for the period from 10.12.2008 to 31.03.2009 and from 01.04.2009 to 31.03.2010, is not tenable in view of the fact that the inspection remarks in those ACRs were containing advisory remarks for performing better in future, which cannot be taken as a ground to dispense with the services of the petitioner.

32. Since, the petitioner is not claiming any seniority over the judicial officer, namely, Jatinder Kaur, we feel that impleadment of the said judicial officer is not warranted and the petitioner cannot be non- suited on this ground.

33. The academic record of the petitioner manifests that she has been a bright aspirant for judicial services. She secured 586.6 (461+125.6) marks, with overall merit at serial no. 5 and with First position in the order of merit in the Scheduled Caste category. The petitioner was the only candidate, under Scheduled Caste Category, to get selected and placed in the order of merit; securing better & higher marks in the written examination, even more than the candidate placed at serial no. 1 in the

overall order of merit. Consequently, in pursuance to the recommendations made by the Punjab & Haryana High Court, the petitioner was appointed to Punjab Superior Judicial Services, as an Additional District and Sessions Judge, on probation, by the Government of Punjab, Department of Home Affairs & Justice.

34. One of the candidates, Jatinder Kaur received remarks in her ACR for the period from 10.12.2008 to 31.03.2009 as 'not upto the mark' but her probation was extended, however, similar benefit was not extended to the petitioner in whose ACR the remarks were 'Satisfactory'. 'Average' and 'Satisfactory' remarks are the same as per Full Court Decision dated 29.01.1987, the relevant extract thereof reads thus:

“The matter regarding conveying of 'B' (Average) or 'B' (Satisfactory) or 'B' (Average/Satisfactory) inspection remarks-soliciting orders from the Hon'ble Inspecting Judges was considered in the light of report dated 12.12.1986 of Hon'ble Mr. Justice D.S. Tewatia, along with the note of the Registrar and it was decided that only points 1 to 3 of the report, modified as under, be accepted:-

“(1) That there is, in fact, no distinction between 'B' (Average) or 'B' (Satisfactory) grading. In order to obviate any confusion in the uniform practice of evaluating grading for the satisfactory performance of an Officer, only 'B' grading be given with further mentioning of (Satisfactory). Full Court grading in such like cases be recorded in the same manner henceforth.

(2) XXXXX

(3) XXXXX

35. The petitioner was meritorious in written examination also and had a better ACR. One of the ACRs was for three months alone from

10.12.2008 to 31.03.2009 when the Officer had just joined. The Sessions Division was new and number of cases were less. The Sessions Division having been recently created and this was the initial period of the Officer's career and the number of cases were also less. As per the record, for the purpose long dates had already been assigned to the cases. So the Officers had the opportunity to take up fewer number of cases.

36. Considering all these factors, the Officer ought to have been counselled, guided and deserved to have been given an opportunity to enhance her potential and performance. We also feel that at the initial stage, young officers need to be encouraged so that he or she performs his/her best and the same is utilized for the general good of the Society.

37. The argument of learned counsel for respondent No.3 that the primary deficiency noticed in the officer is, her simple language, as per the then Hon'ble Inspecting Judge (as noticed in Annexure P-10 dated 27.05.2011) is to be treated as demerit and ground for her dispensing with services, deserves to be rejected. We feel that simplicity of the expression is an ornament of any language as the same is understood by the common man. In writing the complex sentences, sometimes essence of the subject is lost. The subject should be guided by simple and constructive thought and not by complicated/complex language. That does not serve the purpose of anybody. Many of the officers in the cadre come from the country schools who do not have exposure to this foreign language. Therefore, we do not consider the same as a ground for drawing any adverse inference against the officer, rather that is the strength of any writer.

38. This Court while recording its conclusion sums up to record that the impugned order and the procedure so adopted, both deserve to be

quashed because inspite request by the petitioner, recommendations by the Hon'ble Inspecting Judge, matter returned/referred by the Government for re-consideration, the petitioner was neither given an opportunity of hearing nor the above three facts were brought to the notice of the Full Court. The impugned order also deserves to be quashed as the same suffers from discrimination. It appears that comparative facts as noticed in the foregoing paragraphs i.e. regarding the working of the petitioner, her achieving/earning units as per norms *vis-a-vis* others who were posted at the same place of posting with the petitioner were not brought to the notice of the Full Court. It is briefly noticed that this Court cannot close its eyes from the fact that the petitioner in her 3 ACRs was found to be having overall grading as 'B-Average', 'B-Average/Satisfactory' & 'B+(Good)', whereas, as per the pleaded case, not denied by respondent No.3, the other officer(s) for example-Ms. Jatinder Kaur, reference can be made to Para 6(e) with remarks as 'Not upto the mark', implies 'unsatisfactory', has been retained in service. Apart from this, as is evident from the table reproduced above, the number of units earned by other officers in the same District are also broadly at the same level. Thus the petitioner could not be discriminated with.

39. Thus the impugned orders suffers from discrimination. It is also worth noticing that the impugned order has been stated to have been passed under Rule 13(3) of Punjab Superior Junior Services Rules 2007. A perusal of Rule 13(3) reads as under:-

“.....(3) The High Court in consultation with the Government, may at any time during the period of probation or the extended probation, as the case may be, dispense with the Services of a direct appointee if the same have been

found to be not satisfactory, without assigning any reasons therefore.”

40. From the above, it is evident that it has been clearly mentioned in the Rule that the High Court may recommend dispensing with the services of direct appointee if the same have been found to be not satisfactory. In none of the ACRs, the petitioner has been found to be given remarks as 'not satisfactory'. Thus the order is liable to be quashed being violative of Rule 13(3) of the aforementioned rules. Before concluding, it also needs to be noticed that a perusal of document (Annexure P-6) which are minutes of the meeting of the Review Committee would only show that the petitioner's services were recommended to be dispensed with, whereas, probation period of other officers was treated to have been cleared except two officers including Ms. Jatinder Kaur, whose probation was extended in these proceedings, there are no specific observations qua the petitioner.

41. In view of the facts noticed above, peculiar circumstances and the reasons so recorded, the present writ petition is allowed. The impugned order dated 14.06.2011 is set aside. This Court has given consideration to the fact that all the 3 ACRs clearly reflect that the petitioner had shown substantial improvement in her work. The respondents have not placed any adverse material except the fact that she had not achieved the units as per norms by disposing of the matters. This Court finds that in peculiar facts and circumstances where the district in which she was posted for the first time, was a newly created District/Sessions Division, the volume of work could not be the only basis much less justified to dispense with her services.

Therefore, it is ordered that the petitioner be reinstated in service within six

weeks from the date of receipt of certified copy of this judgment. She shall also be entitled to all the consequential benefits, like continuity in service, seniority, further promotions, arrears of pay and all other service benefits.

42. With these observations, the writ petition is allowed.

(Jitendra Chauhan)
Judge

(Girish Agnihotri)
Judge

03.12.2020

vvishal/anju rani

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No