

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P NO. 29608 OF 2022 (O&M)

Reserved on : JANUARY 11, 2024

Pronounced on : FEBRUARY 29, 2024

Abhinav Kiran Sekhon

...Petitioner

Versus

State of Punjab and another

...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

**Present : Mr. R. S. Bains, Senior Advocate with
Mr. Aman Raj Bawa, Advocate,
For the petitioner.**

Mr. Arjun Sheoran, DAG, Punjab.

**Mr. Ranjit Singh Kalra, Advocate,
Mr. Randeep Singh Smagh, Advocate and
Ms. Mona Yadav, Advocate,
For respondent No.2.**

LAPITA BANERJI, J.

Under challenge in the present writ petition is, *inter alia*, an order dated April 09, 2021 (Annexure P-1) passed by Additional Chief Secretary to Government of Punjab, Department of Home Affairs and Justice, by which service of the petitioner was dispensed with being *unsatisfactory*, under Rule 7 (2) of Part-D of Punjab Civil Services (Judicial Branch) Rules, 1951. The impugned order was passed pursuant to a recommendation passed by the Full Court of this Court, communicated through the Registrar General on December 15, 2020. Rule 7 of the 1951 Rules is reproduced, at the very outset, for complete appreciation of the case. Rule 7 reads as under :

“7. (1) Whenever it shall appear to the Judges that vacancy or vacancies in the cadre of the Judicial Branch of the Punjab Civil Service, whether permanent, temporary or officiating, should be filled, they will make a selection from the High Court Register in the order in which the names have been entered in the Register under Rule 1 of this part. The name or names of the selected candidate or candidates will be forwarded to Government for appointment as Subordinate Judges under Article 234 of the Constitution of India. Every Subordinate Judge shall, in the first instance be appointed on probation for two years but this period may be extended from time to time expressly or impliedly so that the total period of probation, including extension, if any, does not exceed three years.

Explanation:- The period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of his period of probation.

(2) The Governor of Punjab may, on the recommendation of the High Court, dispense with the services of a Subordinate Judge without assigning any cause, or revert him to his Subordinate post, if any, during the period of his probation.

(3) On the completion of the period of any member of the service, the Governor of Punjab may, on the recommendation of the High Court, confirm him in his appointment, if he is working against a permanent vacancy or, if his work of conduct is reported by the High Court to be unsatisfactory, dispense with his services or revert him to his former substantive post, if any, or extend his period of probation and thereafter pass such orders as he could have passed on the expiry of the first period of probation;

Provided that the completion of the maximum period of three year's probation would not confer on him the right to be confirmed till there is a permanent vacancy in the cadre.

Provided further that if the report by the High Court regarding the unsatisfactory work or conduct of the probationer is made to the Government before the expiry of the maximum period of probation, further proceedings in the matter may be taken and orders passed by the Governor of Punjab dispensing with his service or reverting him to his substantive post even after the expiry of the aforesaid maximum period of probation.”

2. The petitioner has also prayed for quashing of the Full Court's recommendation dated December 15, 2020 (Annexure P-10) along with quashing of the Minutes of the Vigilance Committee dated

February 06, 2020 report of the OSD (Vigilance), Haryana, orders of the Hon'ble Administrative Judge dated December 20, 2019 and January 09, 2020, leading to such dispensation of his service. The petitioner has also prayed for his reinstatement to judicial service along with consequential benefits.

3. The petitioner's case briefly is that he qualified the Punjab Civil Services (PCS) Judicial Examination, 2015 and was appointed on March 08, 2016 and joined his service on April 07, 2016 and completed the training on April 08, 2017. He served as a Civil Judge (Junior Division)/Judicial Magistrate 1st Class at Ferozepur and also as Civil Judge (Junior Division)/Judicial Magistrate 1st Class at Rajpura, cumulatively for a period of more than four years till his services were allegedly illegally and arbitrarily dispensed with, vide impugned order dated April 09, 2021. It is his case that his service as a '*Probationer*' was automatically *confirmed* after maximum period of three years, inclusive of extension and could not have been dispensed with, without conducting proper disciplinary proceedings against him. The period of probation could not have been extended beyond three years and therefore, there was no question of *dispensation simpliciter*. Thus, the High Court had illegally and arbitrarily dispensed with his service for alleged/purported misconduct without any opportunity of hearing against the settled principles of service, law and in violation of the principles of natural justice.

FACTS OF THE CASE

4. Chronologically the sequence of events leading to such *dispensation* is narrated herein under: -

(i) On November 18, 2019, the Hon'ble Administrative Judge of Patiala Sessions Division randomly had checked the Case Information System and it was found that on October 23, 2019, only two cases were fixed and on October 24, 2019 only one case was fixed in the Court of petitioner who was the Civil Judge (Junior Division)-cum-Judicial Magistrate 1st Class, Rajpura, District Patiala at the relevant point of time. Explanation was sought from him for fixing such less number of cases on the said dates and also be asked whether he was on leave and if the same was answered in affirmative, the reason behind availing of such leave. The observations of the Hon'ble Administrative Judge were communicated to the then learned District and Sessions Judge, Patiala vide letter dated 21.11.2019 (Annexure R-2/1).

(ii) In response to the said query vide letter dated November 28, 2019, the petitioner intimated that since he planned to take leave on said dates, he had fixed less number of cases so that the litigants and witnesses were not harassed by unnecessarily coming to the Court. He also stated in the said reply that he had availed of earned leaves on the aforesaid dates as he had to attend some 'personal work'.

(iii) Upon perusal of the petitioner's file by the Hon'ble Administrative Judge, it transpired that an application was made on August 26, 2019 by the petitioner seeking Ex-India leave from December 22, 2019 to January 01, 2020 for visiting Canada and USA and the said leave was granted on October 24, 2019. Thereafter, the Hon'ble Administrative Judge directed the learned District and Sessions Judge, Patiala to direct the petitioner to submit a Photostat copy of his passport, visa and sponsorship documents, if any, as the same were to be kept on record. It is only on December 13, 2019 that the petitioner provided the

said documents but did not furnish complete copy of his passport inasmuch as pages of his passport numbers 24, 25 and 35 had not been annexed.

(iv) By an order dated December 16, 2019 the Hon'ble Administrative Judge, Patiala sought information from the authorities concerned as to whether the petitioner visited abroad in the month of October, 2019. In the event, the answer was in the affirmative, information regarding the country of visit and exact dates of travel were sought for. Pursuant to said order, a letter was issued to Foreigners Registration Officer, New Delhi for furnishing such information. In response vide letter dated December 18, 2019 from the Ministry of Home Affairs, Government of India, it was informed that the petitioner travelled from Delhi to Doha on October 23, 2019 and returned back from Doha to Delhi on October 29, 2019 (first period). The flight numbers were also supplied.

(v) Furthermore, it transpired that the petitioner on October 15, 2019, had applied for Ex-India leave for travel to the United Kingdom with effect from October 23, 2019 till October 28, 2019, for attending Roka Ceremony of his sister which was scheduled on October 24, 2019 (Annexure P-21). The officer also applied for earned leave for two days i.e October 23 and 24, 2019. The soft copy of application was sent by the petitioner on October 17, 2019 whereas hard copy of the said application was received on October 24, 2019. The earned leave for two days was declined along with Ex-India leave vide order dated October 22, 2019 since the period of Ex-India leave involved two working days.

(vi) The factum of said rejection was intimated by the High Court to the learned District and Sessions Judge on October 22, 2019 itself. The

same was also informed telephonically to the officer on said date. Thereafter, finally a formal order was passed on November 01, 2019 whereby refusal of Ex-India leave from October 23, 2019 to October 28, 2019 along with earned leaves on October 23 and 24, 2019 was intimated.

(vii) The Officer on Special Duty (OSD), Vigilance, Haryana, vide report dated December 19, 2019 (Annexure P-5) submitted that the officer/petitioner misrepresented and suppressed the facts before Hon'ble High Court since in his explanation dated November 28, 2019 he simply submitted that he was on earned leave on October 23 and 24, 2019 for some "personal work" and did not clarify that he had availed of Ex-India leave in October (first period) without being granted permission for the same. For the second period for travel to USA between December 22, 2019 to January 01, 2020, his Ex-India leave was granted on October 24, 2019. Furthermore, when asked for a copy of his passport for placing on record, he withheld the complete copy of his passport, despite a reminder being given by the District and Sessions Judge, Patiala. OSD (Vigilance) was of the opinion that the acts and conduct of the officer indicated that he willfully defied the direction of the learned District Judge in order to conceal his visits abroad, without grant of Ex-India leave by the Hon'ble High Court.

(viii) This report was placed before the Hon'ble Administrative Judge, who passed an order dated December 20, 2019 (Annexure P-6) holding that the officer not only defied the authority of Hon'ble High Court but also showed the audacity to misrepresent and conceal vital and material facts despite specific queries being raised from time to time, which was highly unbecoming of a judicial officer. He opined that it was a well settled position of law that even where the maximum period of

probation for a judicial officer had expired, but no specific order of confirmation was passed, he could not be *deemed* to be **confirmed** merely on the expiry of such period. Therefore, the issue of *discharge* of the officer from service during the probationary period needed to be considered. The matter was directed to be put up before the Vigilance and Disciplinary Committee for consideration, after obtaining orders from Hon'ble the Chief Justice.

(ix) Meanwhile, the petitioner vide his letter dated December 13, 2019 (Annexure P-26) qua his Ex-India leave with effect from December 22, 2019 to January 01, 2020 intimated to the High Court that his application seeking visa for travel to USA had been declined and he had been unable to apply for visa to Canada. In the changed circumstances, he stated that he now sought to visit his wife and sister in the UK and so requested that a sympathetic consideration be taken with regard to his Ex-India leave. It appears that once again without waiting for a positive response to his request, the petitioner proceeded on Ex-India leave.

(x) The learned District and Sessions Judge, by another report dated January 04, 2020 (Annexure P-7) informed the Registrar General of this Hon'ble Court that request for grant of Ex-India leave from December 22, 2019 to January 01, 2020 (second period) to visit United Kingdom and Switzerland to meet his wife and sister, was rejected by an e-mail on December 21, 2019, though initially for travelling to USA Ex-India leave was granted. The rejection of Ex-India for aforesaid period was received by the office of District and Sessions Judge on the same date at around 3:37 pm. The said e-mail was downloaded and thereafter put up before Superintendent of the office. When the said matter was brought to the notice of learned District and Sessions Judge, he immediately directed

the same to be communicated to the petitioner. A communication was sent by electronic mail to the petitioner on the same date at around 4:27 pm. Telephone calls were also made to him. Initially the same were not received by him. The petitioner thereafter called back the concerned official and was duly informed that his Ex-India leave was rejected.

(xi) Further on December 21, 2019, a Charge Relinquishing Report was received from the officer at around 4:33 pm and the Charge Assuming Report of the officer was dated January 03, 2020. From the Charge Assuming Report, it transpired that the officer visited foreign countries though his Ex-India leave was declined by the Hon'ble High Court.

(xii) The Hon'ble Administrative Judge considered the report dated January 04, 2020 and was of the view that there is continuous insubordination on the part of the officer which rendered him unsuitable for judicial service. He opined that if such acts were continued, the same might encourage other officers to act in defiance of the orders passed by the Hon'ble High Court with impunity. Therefore, immediate action was recommended to dispense with the services of the officer concerned, vide recommendation dated January 09, 2020 (Annexure P-8).

(xiii) In a Full Court meeting convened on December 14, 2020 pursuant to an order of Hon'ble the Chief Justice dated February 10, 2020, the report of the Vigilance and Disciplinary Committee dated February 06, 2020 was accepted and the service of the officer was decided to be "*dispensed with*". Consequently, a recommendation was made to the Government of Punjab to dispense with the services of officer with immediate effect. The said recommendation was accepted by the government vide letter dated April 09, 2021.

PETITIONER'S CASE

5. Mr. Bains, learned senior counsel appearing on behalf of the petitioner argued that the petitioner's services could not have been dispensed with, without holding a proper disciplinary proceedings as under Clause 7 (1) of the 1951 Rules, the period of probation could not be extended beyond three years. Therefore, even if there was a deemed extension of the period of probation, as the letter of confirmation had not been issued, the said period could not have been extended after completion of three years. Rule 7 (2) relating to dispensation of services of a subordinate judge without assigning any cause or reason was, therefore, not applicable to the petitioner as he had completed more than three years of service and could not be considered to be a probationer. He further states that the petitioner was a bright and one of the highest performing judicial officers in Patiala Sessions division for the year 2018-2019 and 2019-2020, with a good academic career. The confidential reports, Part-1 of which was filled by District and Sessions Judge, Patiala and Part-II of which was filled by Hon'ble Administrative Judge of Patiala Sessions division for the year 2018-19 also evidenced that the quality of work, quality of business in the Court and quality of judgments delivered by the petitioner were good. During the period from 2018 to 2020, the petitioner also earned annual increments indicating that his work was satisfactory.

6. The petitioner had no intention of concealing any fact and therefore, made an application on October 15, 2019 through proper channel to the Registrar General of the Hon'ble Punjab and Haryana High Court for his Ex-India leave from October 23, 2019 to October 28, 2019.

Since the petitioner was not given any intimation regarding either

approval or rejection of his leave till the Court hours on October 22, 2019, he proceeded to avail of the leave. The non-communication of his rejection was delayed to the extent that it was communicated to him telephonically when he was already at the airport at New Delhi. The said rejection was later officially communicated vide letter dated November 01, 2019 after he returned and assumed his charge on October 29, 2019.

7. The petitioner was shocked as the Charge Relinquishing Report dated October 22, 2019 was returned back to the petitioner with a note that at an appropriate time the decision on petitioner's Ex-India leave for October would be taken. Therefore, he argued that the petitioner's travel to United Kingdom was not in open defiance to the Hon'ble High Court's order but due to inordinate delay in communication of the rejection of his Ex-India leave by the authorities.

8. The learned counsel contended that the petitioner did not get any time to rethink his decision rationally nor was he in a position to get his air tickets or bookings refunded which would have caused him unavoidable financial loss, had the petitioner not travelled. The petitioner also suffered due to delay in communication by the Hon'ble High Court as on a previous occasion the petitioner had applied in April, 2019 for Ex-India leave to travel to UK for his holidays with effect from June 15, 2019 till June 30, 2019 but due sanction of his leave was intimated to him only on May 27, 2019. Consequently, the petitioner was unable to obtain his visa within time for the summer holidays, after the said sanction was intimated. The petitioner only received his visa in the last week of June, 2019 causing him monetary loss as the air tickets for his flight on June 15, 2019 were already booked.

9. As such there was no valid reason for declining the Ex-India leave along with earned leaves and he was sanguine that after calling for his explanation his leave would have been granted Ex-Post facto. The petitioner had completed his quota of cases for October, 2019 and therefore, he was confident that his earned leave would be granted as a matter of course. He had also made sure that litigants and witnesses would not be put into personal difficulty by not fixing many cases on the aforesaid two dates. However, the petitioner's Ex-India leave was rejected vide letter dated November 01, 2019 without any reason or explanation for the said rejection. Only after he filed an application under the Right to Information (RTI) Act that he was informed by the Public Information Officer that his earned leave was rejected pursuant to office communication dated December 08, 2017. The relevant clause regarding Ex-India leave of the said communication from the Registrar General to all the District and Session Judges of Punjab, Haryana and Union Territory of Chandigarh is reproduced herein below :

“3. The ex-india leave shall not be granted during working days except in emergency/exceptional cases and normally for maximum duration of 15 days.”

10. As far as his travel to UK between the period from December 22, 2019 to January 01, 2020 (second period) was concerned, learned senior counsel argued that the petitioner had already prayed for leave to travel to USA which was granted on October 24, 2019. Only because his visa to USA was declined that he made an application with regard to his change of plans to travel to UK and Switzerland to see his wife and sister during the said period. No communication was made to him regarding the rejection, within a reasonable time and since his Ex-India leave was previously granted for USA, he relinquished his charge on December 21,

2019 by forwarding the same to the learned District and Sessions Judge. The petitioner assumed his charge on January 03, 2020 as January 02, 2020 was a holiday on account of birthday of Shri Guru Gobind Singh. It was strenuously argued that there was no defiance of any order passed by the Hon'ble High Court, since Ex-India leave was already granted to the petitioner for USA, he assumed that the same would be allowed to him despite change of destination also but the same was declined without any valid reason.

11. As far as the allegations regarding non-supply and tinkering of the pages of passport were concerned, it was submitted on behalf of the petitioner the same had been based on surmises/conjectures. In case there was some deficiency in supplying the documents, the same could have been called for from the petitioner and he would have happily supplied the original passport. Without adopting such procedure, a wrong and unjustified assumption was made against him without even affording an opportunity of hearing. Perusal of page 3 of petitioner's passport by the authorities would have indicated that the petitioner arrived from abroad. Therefore, without calling for an explanation and checking the petitioner's original passport, said allegations of tinkering with the same and non-supply of pages could not be maintained. Such a course adopted by the authorities only leads to the inevitable conclusion that the sole intention was to terminate the petitioner from service, arbitrarily.

12. Mr. Bains further argued that all the documents leading to the dispensation of his services vide order dated April 09, 2021 indicate that the petitioner's termination was due to alleged misconduct on his part. It was an elementary principle of Natural Justice that once misconduct was alleged, enquiries were mandatory and only after a proper

enquiry had been conducted on the basis of evidence an order of punishment could have been imposed. Even in cases of probationers, where misconduct was alleged, an enquiry was required to be conducted. The petitioner's services have been dispensed with on the basis of opinions, surmises and conjectures without holding any proper enquiry. An order that is founded on allegations of misconduct is punitive in character and the orders of Hon'ble Administrative Judge revealed that he had made up his mind to dispense with the services of petitioner, due to alleged misconduct on his part. The said orders being punitive in nature could not have been passed without conducting full scale disciplinary proceedings.

13. Mr. Bains, learned senior counsel relied on various judgments to contend that upon expiry of maximum period of probation, an employee was *deemed* to be *confirmed* and the petitioner's case was no exception. First he cited a decision reported in *AIR 1966 SC 1842 State of Uttar Pradesh v. Akbar Ali Khan*. In that case the writ petitioner was appointed as a Naib Tahsildar and later selected for permanent promotion to the post of Tahsildar under Rule 12 of the Subordinate Revenue Executive Services (Tahsildars) Rules, 1944, and was placed on probation for a period of two years. Due to certain irregularities relating to drawing of excess travel allowance, an enquiry was sought to be held under Rule 12 of the 1944 Rules. The Hon'ble Governor terminated the services of petitioner in the promoted post on the basis of recommendation of the Board of Revenue and the petitioner was reverted to the post of Naib Tahsildar. The said case primarily dealt with Rule 12, which reads as under :

“Every listed candidate on appointment in or against a substantive vacancy shall be placed on probation. The period of probation shall be two years”.

On the facts of the case the appeal by the State was allowed.

14. Next he relied on the decision of Apex Court reported in *AIR 1968 SC 1210 State of Punjab v. Dharam Singh*, to support his contention of *deemed* extension. The said case deals with the construction of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. Proviso of Rule 6 (3) stipulated that the total period of probation including extensions, if any, shall not exceed three years.

In that case of *Dharam Singh (supra)* the writ petitioner before October 01, 1957 was a Junior Teacher in a District Board School. The said school was provincialised and services of the writ petitioner were taken over with effect from October 01, 1957. In 1961, the said Rules regulating the conditions of service of the teaching staff taken over by the State government from the local authorities came into force.

15. Next he relied on a decision reported in *AIR 1998 (SC) 1291 Wasim Beg v. State of Uttar Pradesh and others*. The appellant in the said case was an Assistant Manager in U.P State Leather Development and Marketing Corporation. The appointment was on the basis of probation for a period of one year which could be extended at the discretion of the Managing Director and his services were liable to be terminated on one month's notice or salary in lieu thereof. The appellant was appointed on November 22, 1974 and continued to work more than a decade till March 31, 1985. The services of the petitioner were terminated with three months notice which was only required to be given to the confirmed employees under Rules of the Corporation. The Apex Court

also found that the Corporation did not anywhere contend before the High Court that the order of discharge of the petitioner was on the basis of him continuing to be on probation.

16. Then he relied on *AIR 2001 (SC) 3234 High Court of Madhya Pradesh thru Registrar and others v. Satya Narayan Jhavar*. In that case the writ petitioners were Civil Judges (Trainee) Class-III, governed by Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955. Rule 24 of the said Rules is reproduced herein below :

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

(2) During the period of probation, he shall be required to 30 magisterial work and acquire experience in office routine and procedure.

(3) If during the period of probation he has not passed the prescribed departmental examinations, or has been found otherwise unsuitable for the service, the Governor may, AT ANY TIME, THEREAFTER, dispense with his service.”

The Apex Court in that case allowed the appeal of the High Court as deferring the cases of the petitioner by the Full Court for providing an opportunity to prove their worth could not be considered to be deemed confirmation.

17. Mr. Bains would argue that since the Full Court did not consider the suitability of the petitioner during his period of probation, therefore, his services should have been confirmed as he stood on a different footing.

18. In *Parshotam Lal Dhingra v. Union of India (UOI)* reported in AIR 1958 (SC) 36, relied upon by Mr. Bains, the Apex Court considered whether by reverting the petitioner from his officiating post in Class II service to his substantive post in Class III service, the provisions of Article 311 (2) of the Constitution of India were attracted. In that context the Apex Court was of the opinion that :

“xxx The use of the expression “terminate” or “discharge” is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind therein before referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

Xxx”

19. Next he relied on *Shamsher Singh v. State of Punjab* reported in AIR 1974 (SC) 2192. By an order dated April 27, 1967, services of the appellant were terminated. The order reads as follow :

“The Governor of Punjab is pleased to terminate the services of Shri Shamsher Singh, Subordinate Judge, on probation, under Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 with immediate effect. It is requested that these orders may be conveyed to the officer concerned under intimation to the Government.”

Since the appeal was allowed and the termination order was set-aside by the Apex Court, Mr. Bains would submit that the termination order of the petitioner should be set-aside.

HIGH COURT'S CASE

20. Mr. Kalra, learned advocate appearing for the High Court argued that the officer was rightfully dismissed. The sequence of events was chronologically and meticulously described in the written statement to show that proper procedure was followed leading to recommendation of the Hon'ble Administrative Judge and the decision of Full court dated December 14, 2020, based on the report of Hon'ble Vigilance and Disciplinary Committee dated February 06, 2020. Since the petitioner was terminated from service during probation by *simpliciter dispensation* of his service, the same was neither *stigmatic* nor *punitive* in nature. Therefore, he submitted that as per the settled position of law that prior to *dispensation* of the petitioner from service, no notice was required to be issued and no opportunity of hearing was required to be granted.

21. He further contended that proviso to Section 7 (3) of the 1951 Rules categorically states that mere completion of maximum period of three years of probation would not confer any right upon an employee to be confirmed in service. Therefore, the petitioner who was appointed on March 08, 2016 being successful in Punjab Civil Services (Judicial Branch) examination, joined his services on April 07, 2016 and completed one year of induction training on April 08, 2017 did not have any right to confirmation upon expiry of three years. Several judgments were relied upon to contend that at the stage of *probation*, the acts and conduct of an employee were under scrutiny and on the basis of overall performance, a decision was required to be taken whether or not the services should be continued or terminated. Mere grant of increment was not a bar for scrutinizing the records of a judicial officer for assessment of suitability, nor release of an officer from service during probationary period would attract Article 311 (2) of the Constitution of India.

22. Furthermore, even though a reply was sought for to explain why less number of cases were fixed on 22nd and 23rd October, 2019, the petitioner did not reveal the factum of prefixing the aforesaid dates of earned leave with Diwali vacation and his travel abroad during the said period, without receiving the necessary grant of the Ex-India leave.

23. Mr. Kalra also relied on ***Shamsher Singh*** (*supra*) to submit that no confirmation by implication was possible because before the completion of three years from April 8, 2017 (date of completion of induction training), the High Court prima-facie found the work and conduct of the appellant as unsatisfactory. The explanation to Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and Rule 7 (1) of the Punjab Civil Services (Judicial Branch) Rules, 1951 does not mean that the implied extension of the period of probation can only be made between two and three years. The explanation to the contrary means that the probation with maximum three years of probation is directory and not mandatory and the probationer is not in fact confirmed till such order of confirmation was passed.

24. Then he relied on a judgment of Apex Court ***Durgabai Deshmukh Memorial Sr. Sec. School & Anr. V. J.A.J Vasu Sena & Anr.***, reported in 2019 (17) SCC 157. In that case the learned Single Judge held that there was no provision for the *deemed confirmation* under Rule 105 (1) read with first proviso of the Delhi School Education Rules, 1973. The Hon'ble Division Bench in a Letters Patent Appeal held that there was *deemed confirmation* of the services of a probationer who continued in service beyond the maximum period of probation, even without issuance of an order of confirmation. Rule 105 of the 1973 Rules is reproduced herein below :

“105, Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority by another year [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory.

[Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year shall not apply in the case of an employee of a minority school:

...]

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be confirmed with effect from the date of expiry of the said period.”

The Apex Court held that there is no *deemed* confirmation after considering the said Rule.

25. The Hon’ble Apex Court in ***Durgabai Deshmukh’s case*** (*supra*) distinguished the case of ***Dharam Singh***, and held that there was no ‘*deemed confirmation*’ as in the view of the appointing authority the act and conduct during the period of probation had to be satisfactory. However, the order of Hon’ble Division Bench was moulded to the extent that the respondent/writ petitioner was compensated by way of payment of money as she spent five years of her valuable life as a probationer even though it was held that she could not claim *deemed confirmation* of her service.

26. Next he referred to the decision of Apex Court reported in ***2010 (8) SCC 155 Khazia Mohammed Muzammil v. The State of Karnataka and another***. The appellant was appointed as a District Judge under the Karnataka Judicial Services (Recruitment) Rules, 1983.

Relevant Rule that was required to be considered is Rule 3 reads as under:

“3. *Period of Probation :- The period of probation shall be as may be provided for in the Rules of recruitment specially made for any service or post, which shall not be less than two year, excluding the period if any, during which the probationer was on extraordinary leave.*”

It was held by the Hon’ble Supreme Court in no uncertain terms that where the Rule required a definite act on the part of the employer before an officer on probation can be confirmed, the question of automatic confirmation would not even arise. There may be a Rule or Regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction, pass an order of confirmation. Since by the order terminating service, the appellant was discharged *simpliciter* without any *stigma* to the appellant, it was held that the order passed by the Hon’ble High Court did not suffer from any infirmity. The Hon’ble High Court had held that even though the petitioner worked for 03 years 10 months and 10 days, he was found not suitable to hold the post and no order had been passed to show satisfactory completion of the probationary period. The probationer was discharged from his services as he was found unsuitable to hold the post, even though consideration of his Annual Confidential Reports showed ‘*Excellent*’ track record and disposal of his cases as ‘*very good*’. Still the appellant was found unsuitable for service on the basis of Police Verification Report.

27. Next Mr. Kalra relied on a judgment of Delhi High Court passed by a Co-ordinate Bench in ***Gautam Kant Nimaan v. Gncet of Delhi and others*** reported in 2010 SCC online Del 3796, to argue that Rules have to be looked into while coming to the conclusion whether or not the confirmation is *deemed* and the discharge is *stigmatic* or not. The

Division Bench of Delhi High Court held that even recording that the

performance of the officer on the whole was *not satisfactory* did not amount to *stigma*. The termination in that case was due to unsatisfactory service adjudged on the basis of overall performance and the manner in which he conducted himself.

28. In ***Gautam Kant Nimaan (supra)***, the petitioner was performing his duty as a Metropolitan Magistrate in District Court of Rohini. He was appointed vide order dated January 23, 2007. On the intervening night of 23/24.05.2010, the petitioner shared a drink with the accused persons in FIR No.787/96. The accuseds in FIR No.787 of 1996 were also held guilty vide order dated May 14, 2010 and the case was fixed for sentencing on May 26, 2010. When confronted with the President of Bar Association on May 26, 2010 about the purported meeting, the petitioner admitted the same and also tendered an apology. On June 24, 2010 when an explanation was called from the High Court, the petitioner denied the incident and reiterated that due to allegations made by the members of the Bar Association and their improper conduct, he filed complaints against them by registering an FIR. Judicial order/work was withdrawn from him on June 26, 2010 and thereafter the impugned order was passed. Even in such a case the discharge was held to be non-stigmatic.

29. A similar view was reiterated by the Division Bench of Gauhati High Court in ***Deba Kumar Das v. Gauhati High Court and others*** reported in 2007 (5) SCT 721, where the petitioner was governed by Assam Judicial Service Rules, 2003.

30. Next he referred to the judgment of Apex Court in ***Rajesh Kohli v High Court of J & K*** reported in 2010 (2) SCC 783. Rule 15 of the Jammu and Kashmir Higher Judicial Service Rules, was in

consideration for determining the issue of probation of the petitioner. The said Rule reads as under :

“15. Probation - (1) All persons shall on appointment to the service in the substantive vacancies be placed on probation. The period of probation shall, in each case, be two years; provided that the period for which an officer has been continuously officiating immediately prior to his appointment may be taken into account, for the purpose of computing the period of probation.

(2) The Governor may in consultation with the Court, at any time extend the period of probation; provided that the total period of probation shall not ordinarily exceed three years. An order sanctioning such extension of probation shall specify whether case, be two years; provided that the period for which continuously officiating immediately prior to his appointment may be taken into account, for the purpose of computing the period of probation.

(3) If it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, his service may be dispensed with immediately.

(4) A person whose services are dispensed with shall not be entitled to any compensation.”

31. In that case, the petitioner also received increments in terms of Rules while serving as Additional District and Sessions Judge, Srinagar and Jammu. Upon a complaint being received by a litigant pertaining to the petitioner (while acting as his counsel) fraudulently withdrawing a sum of Rs.2.6 lac payable to the litigant that was deposited with the Registrar (Judicial), the Hon’ble Chief Justice of the High Court through the Registrar (Vigilance) directed an enquiry to be conducted. Upon such enquiry, it was found that the petitioner impersonated himself as his client and withdrew the said amount. The Registrar (Judicial) was directed to file a criminal complaint against the petitioner. Further the petitioner did not join as a Principal, District and

Sessions Judge, Kargil with effect from December 24, 2001 to January 18, 2022 and an explanation was sought for from him in that regard. It transpired that the petitioner was abusing the employees and creating problems in the said district. The Full Court considered the petitioner's case after initial probationary period and recommended dispensation of his service to the State Government and the same was done.

32. Then he referred to ***Rajesh Kumar Srivastava v. State of Jharkhand and others*** reported in 2011 (4) SCC 447 in which again the service of a judicial officer was *simply discharged* during his period of probationer, relying on the case of ***Rajesh Kohli (supra)***. In the case of ***Registrar, High Court of Gujarat v. C.G. Sharma***, it has been held that the High Court on its administrative side and in the Full Court meeting correctly took the decision of terminating the services of the respondents and the said termination is *discharge simpliciter* and not *punitive* in nature. No opportunity was needed to be given to the respondent once the overall performance of the respondent was found to be unsatisfactory during the period of probation making him unsuitable for the post and a *simpliciter termination* order cannot be said violative of the Articles of 14, 16 and 311 of the Constitution of India. Reliance had also been placed on the decision of ***Satya Narayan (supra)*** to reiterate the view that the subordinate judiciary is the foundation on which the superstructure is built and it was the solemn duty of every authority in which administration of justice vests to see that the foundation is not shaken by allowing to adjudge unsuitable person to man the post. Unless the Rules explicitly state so, a status of *deemed confirmation* ought not to be granted by way of implication.

33. Then he referred to the decision of *Rajasthan High Court v. Ved Priya and another 2021 (13) SCC 151* to contend that even if there existed on record some allegations of extraneous consideration, the High Court was justified in *terminating* the services of the judicial officer in a *simpliciter* manner while the employee was on probation. In that case the respondent who was appointed as Civil Judge (Junior Division)-cum-Judicial Magistrate 1st Class was not confirmed in his service after the expiry of the initial period of probation since he was alleged to have granted bail in NDPS matters owing to illegal gratifications/extraneous consideration.

34. Being a judicial officer, the respondent was expected to know that under Section 36 (3) of the NDPS Act, 1985, a judicial officer below the rank of Sessions Judge or Additional Sessions Judge did not have the competence to adjudicate the matters or grant bail. Therefore, it was held by the Apex Court that the High Court on administrative side justifiably inferred that officer was prone to act negligently and had the tendency to usurp power which the law did not vest in him. The same was a relevant factor to determine the suitability of a judicial officer during the period of probation. Merely because the Annual Confidential Reports of the respondent were good could not have led to *confirmation* of his service, as a holistic assessment of respondent's service record was required to be made.

35. The decisions in *V.Karthikeyan v. Government of Tamil Nadu (Madras) (DB)* reported in 2021 SCC Online Mad 1332, *Tmt. S. Umamaheswari v. High Court of Judicature at Madras (Madras) (DB)* reported in 2018 (1) WritLR 178, *Gurunath Dinkar Mane v. State of Maharashtra (Bombay) (DB)* reported in 2016 SCC online 1072 and

Head Constable Kamaljeet Singh v. State of Haryana (P&H)(DB)

reported in 2016 SCC online P&H 6352, all indicate that there can be no *deemed confirmation* after the expiry of period of probation and order of *termination simpliciter* assessing the suitability of the judicial officer should not be the subject matter of judicial review.

FINDINGS

36. Considering the arguments of parties and the materials placed on record, this Court is of the view that the petitioner's service cannot be *deemed to be confirmed* upon expiry of maximum period of probation. The said period of three years is directory in nature and not a mandatory stipulation. Beneficial references may be made to ***Shamsher Singh (supra)***, ***G.C.Sharma (supra)***, ***Khazia Mohammad (supra)***, ***Rajesh Kohli (supra)***, ***Ved Priya (supra)***, to come to the finding that since the explanation to Rule 7(1) clearly provides that the period of probation *shall be deemed* to have been extended impliedly if a subordinate judge is not confirmed on the expiry of his period of probation. Rule 7 (1) has to be read as a whole, in conjunction with Rule 7 (3). Proviso to Rule 7 (3) also clearly stipulates that the completion of maximum period of three years probation would not confer on him any right to be confirmed till there is a permanent vacancy or if the report by the High Court regarding unsatisfactory work or conduct of the probationer was made to the government before expiry of maximum period of probation. Furthermore, explanation to 7 (1) also clarifies that the period of probation shall be implied to have been extended unless the service of a subordinate judge is confirmed.

37. Mr. Bains, learned counsel has referred to several judgments which merits a detailed discussion. The Apex Court in ***Akbar Ali Khan***

(*supra*) was of the opinion that there was no Rule that on expiry of the period of probation, a probationer *shall be deemed* to have been **confirmed** in the post which he is holding as a probationer. The scheme of 1944 Rules was clear. In that the confirmation to the post did not result merely from the expiry of period of probation and so long as the order of confirmation was not made, the holder of the post remained a probationer. This Court fails to see how the judgment in **Akbar Ali Khan** (*supra*) supports the case of petitioner as the Apex Court held that in the absence of any Rule there could be no deemed confirmation.

38. The Hon'ble Five Judge Bench of Supreme Court in **Dharam Singh** (*supra*) was of the opinion that the initial period of probation of the respondent/writ petitioner ended on October 01, 1958 and by allowing the respondent to work without any express confirmation, the probationary period could have been extended upto October 01, 1960 by implication. However, it was not possible to presume that the competent authority extended the probationary period after October 01, 1960. The authority instead of dispensing with the services immediately upon completion of the extended period of probation on October 01, 1960, allowed the respondent to continue with their services till sometime in 1963. Therefore, the Constitution Bench came to the conclusion that it should be *presumed* that the appointing authority passed the orders of confirmation by allowing the writ petitioner to continue in their posts after October 01, 1960.

39. **Dharam Singh** (*supra*) does not come to the aid of the petitioner in any manner as there was a clear finding that there was nothing on record to show that the work of the writ petitioners or conduct during the period of probation was in the opinion of the authority,

unsatisfactory. Furthermore, the decision of the Apex Court with regard to Class III employees who was working since 1957 before the 1961 Rules came into existence, cannot be equated with the conditions of service of a judicial officer.

40. On the facts of *Wasim Beg's* case, it was held by the Hon'ble Supreme Court that after completing the initial period of probation on January 09, 1979 the petitioner was considered to be a regular employee as his work was satisfactory for the first three years and only thereafter serious problems arose regarding his work and the Corporation suffered losses on that account. Since the Corporation admitted that the appellant's work was satisfactory and three months' salary was given in lieu of notice, as was required to be given to the confirmed employees, the order of termination could not be sustained looking at the relevant service Rules and was therefore set-aside. The facts of that case cannot be equated in any manner with the case of petitioner who intentionally and deliberately suppressed the material facts before the Hon'ble High Court and the employer was not satisfied with the acts and conduct of the petitioner.

41. Furthermore, in *Wasim Beg (supra)*, neither the respondents denied in their affidavit that the petitioner performed satisfactorily in the first few years nor did they give him one month salary in lieu of notice as per the appointment letter. Since the Corporation itself treated the petitioner-employee as a confirmed one by giving him three months salary in lieu of notice the Apex Court had no hesitation to hold that there was *deemed* confirmation in favour of the employee.

42. On the facts of *Parshotam Lal Dhingra (supra)*, the appeal was dismissed with costs since the petitioner was found to have no right to continue on the officiating post and his appointment was terminable at

any point in time on reasonable notice by the government. Moreover, the reduction did not operate as a forfeiture of right and could not be described as reduction of rank by way of punishment. There is no dispute with the proposition laid down by the Hon'ble Apex Court regarding opportunity of hearing to be given in case of *stigmatic termination*, but this Court fails to see how the same aids the case of petitioner.

43. The Hon'ble Apex Court in *Satya Narayan Jhavar (supra)* was of the view that mere continuation of a probationer after considering his case for confirmation during the period of probation by no stretch of imagination could be construed as confirmation by implication relying on the case of *Dharam Singh (supra)* as the petitioners sought to contend. Such *deemed confirmation* could never have the intention of Rule making authority. Paragraph 40 of the judgment is reproduced herein below :

“xxx

40. *The importance of the suitability of the officer for confirmation need not be emphasized and such suitability under the Rules is required to be adjudged by the Full Court of the High Court. The Constitution itself while indicating that the claims of Scheduled Castes and Scheduled Tribes to services and posts shall be taken into consideration in Article 335, have further added that such claim should be consistent with maintenance of efficiency of administration. The subordinate judiciary is the foundation on which the super-structure is built. It would be the solemn duty of every authority on whom the administration of justice vests, to see that the said foundation is not shaken by any process including the process of allowing adjudged unsuitable person to man the post. While interpreting Rule 24 and considering the question whether a deemed confirmation can at all be conferred, the aforesaid principle must be borne in mind and unless the Rules explicitly say, so, by implication a status of deemed confirmation ought not to be granted, particularly when the Full Court of the High Court has adjudged the Judicial Officers unsuitable. In this view of the matter, we have no hesitation to come to a conclusion that the decision of this Court in the case of Dayaram Dayal (supra) does not lay down the correct position with regard to the interpretation of Rule 24 of the Rules. As has been stated earlier in this batch of cases, the question of confirmation of each of the probationers was considered by the Full Court*

within the maximum period of probation provided in Sub-rule (1) of Rule 24, but the Full Court found them not fit for confirmation and instead of adjudging them unsuitable and recommending for termination, the Court deferred their case for further consideration and thereby granted further opportunity for proving their worth for confirmation. Such continuance of the probationers, in our considered opinion, would not confer the status of deemed confirmation, merely because a maximum period of probation has been provided there in Sub-rule (1) of Rule 24.”

44. Cases of the writ petitioners were considered after completion of four years by the Full Court and the same were deferred on the first occasion as the services were not found to be satisfactory. Service of only one of the writ petitioners was terminated after the initial period of four years and the others were given opportunities to improve themselves for a couple of years, but ultimately recommended for **termination**.

45. The judgment of Apex Court reported in *AIR 2012 (SC) 1571 Head Master, Lawrence School Lovedale v. Jayanthi Raghu and another*, also does not aid the case of the petitioner since it did not deal with a judicial officer and the primary issue under consideration was whether the language of termination was stigmatic or not. The Apex Court after analyzing the Rules came to the finding that the irresistible conclusion in that case was that principle of *deemed confirmation* was not attracted. However, on facts, it held that the first respondent acquired the status of a confirmed employee and thereafter, an enquiry was required to be conducted.

46. The appellant was appointed in Punjab Civil Service (Judicial Branch) and was on probation in *Ishwar Chand Agarwal v. State of Punjab, AIR 1974 (SC) 2192* which was considered along with *Shamsher Singh (supra)* and disposed of by a common judgment by the

Apex court. Both the termination orders were set-aside by the Hon'ble Supreme Court.

47. In the case of ***Shamsher Singh*** (*supra*), the High Court for reasons not stated, requested the Government to depute Director of Vigilance to hold an enquiry. The Apex Court found it strange since the High Court itself had control over the subordinate judiciary and instead of holding an enquiry itself, asked the Government to hold the same. It opined that the Members of Subordinate Judiciary were not only under the control of the Hon'ble High Court but also under its care and custody and the High Court failed to discharge its duty by relinquishing its control and in total disregard of Article 235 of the Constitution of India. The Government could only act on the recommendation of the High Court and not conversely.

48. In case of ***Shamsher Singh*** (*supra*), the Apex Court was of the view that the unsuitability was not properly assessed and Rule 9 made it incumbent upon the authority that service of a probationer could be terminated on specific fault or on account of unsatisfactory record implying unsuitability, which was not the case with the appellant therein.

49. The Enquiry Officer nominated by the Director of Vigilance recorded the statements of witnesses behind the back of the appellant in ***Ishwar Chand*** (*supra*) and gave his findings on the allegations of misconduct. The High Court accepted the said report and then recommended that Ishwar Chand Agarwal was not a suitable person to be retained in service. The Apex Court held that termination in the facts and circumstances was clearly by way of punishment since the allegations were serious and grave in nature, involving stigma of misconduct and the

petitioner could not have been terminated without an opportunity of hearing.

50. In the present case, clearly under Rule 7, the authorities found that the petitioner's services could be terminated prior to confirmation on the specific fault of not complying with the High Court orders, concealing necessary facts before the High Court and seeking to tinker with the evidence. Furthermore the aforesaid judgments can be distinguished on the ground that High Court itself conducted the enquiry and did not relegate its duty to the Government to conduct the same. It was on the recommendation of the High Court that Government dispensed with the services of petitioner.

51. In *Gujarat Steel Tubes Ltd. And others v. Gujarat Steel Tubes Mazdoor Sabha and others* reported in (1980) 2 SCC 593, relied upon to support the petitioner's case, the Apex Court dealing with the issue of management and workman under the Industrial Disputes Act, 1947 held as :

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Now one thing must be borne in mind that these are two distinct and independent powers and as far as possible neither should be construed so as to emasculate the other or to render it ineffective. One is the power to punish an employee for misconduct while the other is the power to terminate simpliciter the service of an employee without any other adverse consequence.

Xxx”

How the said case dealing with the question whether the termination was *simpliciter* ‘discharge’ or founded on ‘*misconduct*’ under the provisions of Industrial Disputes Act, 1947, is applicable to the present case, is beyond the comprehension of this Court.

52. In *Anoop Jaiswal v. Government of India and another* reported in AIR 1984 (SC) 636, the Indian Police Service (Probation)

Rules, 1984 were in question. In the said case relying on *Shamsher Singh (supra)* and *Ishwar Chand (supra)*, the Apex Court on the facts held that the appellant's case was allowed in the name of the constitution and the same should help him regain his spirit and encourage him to turn out to be a public servant since amongst the other probationers, only the appellant's case was dealt with severely and the ones who were considered to be the ring leaders, their cases were not considered seriously. The Apex Court was of the view that the Director wished to set the case of the appellant as an example for others including the other probationers similarly situated, by discharging him from service.

53. The case of *Anoop Jaiswal (supra)* neither pertained to a judicial officer nor was any issue of discrimination raised in the present case. The question of the other probationers who were ring leaders not being terminated for the same misconduct, was taken into consideration while allowing the prayer of Anoop Jaiswal in the '*name of constitution*'.

54. Again in the case of *Radhey Shyam Gupta v. U.P State Agro Industries Corporation Ltd. And another* reported in AIR 1999 (SC) 609, the question of termination *simpliciter* qua *stigmatic* termination was discussed. On the facts of the case, it was found that certain incriminatory material was found in the letters leading to the termination which was stigmatic. Since it was a stigmatic termination, a departmental enquiry was recommended to be conducted.

55. In *Registrar, High Court of Gujarat and another v. C.G. Sharma* reported in AIR 2005 (SC) 344, considering the case of a judicial officer under the Gujarat Judicial Service Recruitment Rules, 1961, the Apex Court was of the view that :

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40. Mr. Colin Gonsalves, learned senior counsel appearing for the respondent, submitted that the termination order is void inasmuch as the order of termination would be punitive and also amount to a stigmatic order. He would further submit that questioning the integrity of a Judge is perhaps the most serious charge against judicial officer and no person can be terminated on such a serious charge without affording the employee a reasonable opportunity to rebut such serious and stigmatic allegations. It was submitted that the respondent was neither given any show cause notice leveling any charge questioning the integrity nor any opportunity, whatsoever has been given to such an officer against such a serious allegation. Therefore, he would submit that the termination order is liable to be struck down on the ground that the action of termination is punitive without following the principles of natural justice and, therefore, void and also in contravention of Article 311(2) of the Constitution of India.

Xxx

47. We have decided the case on hand on the facts and circumstances of the case with reference to the relevant Rules, original records such as Confidential Reports, Vigilance Reports and other annexures filed along with the writ petitions. A number of judgments were cited by the counsel on either side. We are not inclined to refer to all those judgment and make this judgment a voluminous one as according to us the judgments cited by both the parties are distinguishable on facts and on law. In the result, Civil Appeal No. 4019 of 2002 filed by the Registrar of the High Court of Gujarat and the State of Gujarat is allowed and Civil appeal No. 575 of 2003 filed by Mr. C.G. Sharma stands dismissed. However, there will be no order as to costs.
Appeal allowed.”

56. In all the cases cited by Mr. Bains, a cardinal principle that can be culled out is that in the absence of any Rule there can be no *deemed confirmation* and even if the period of probation is stipulated, a letter of confirmation was required before confirming the service of a probationer. In case of a *simpliciter discharge* during the period of probation, there is no requirement of conducting full scale enquiry but only in case the termination is stigmatic, a full scale departmental enquiry was required to be conducted.

57. The position with regard to *deemed confirmation* is succinctly elucidated by the Apex court in **Satya Narayan Jhavar** (*supra*). Relevant extract reads as under :

“11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number of various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before the expiry the order of termination has not been passed. The last time of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.”

58. It was clearly held in **Rajesh Kohli** (*supra*) that mere grant of yearly increments would not in any manner indicate that after the completion of initial period of probation, the Full Court was not competent to scrutinize the records of a judicial officer for assessing whether his services should be *confirmed* or *dispensed with* or the probationary period be *extended*. The Apex Court opined in unambiguous terms that the High Court had solemn duty to consider and appreciate the services of a judicial officer before confirming him, as the

district judiciary is the bedrock of the judicial system and is positioned at the primary level of entry to the doors of justice. The judicial officers who are entrusted with the task of adjudication must officiate in a manner becoming of their position and responsibility towards the society. 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 bench mark of honesty, accountability and good conduct.

59. Mr. Kalra also referred to various judgments of Apex Court including *Rohtash Kumar and others v. Om Prakash Sharma and others* reported in *AIR 2013 (SC) 30*, *Delhi Metro Rail Corporation Ltd. v. Tarun Pal Singh and ors.*, reported in *2018 (5) RCR (Civil) 836*, *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat and Anr.*, reported in *AIR 2004 (SC) 3946* and *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and others* reported in *AIR 1991 (SC) 1538*.

60. He sought to demonstrate as a general Rule, a proviso is added to an enactment to qualify and create an exception to what is in the enactment. Normally a proviso does not travel beyond the provision of the general Rule and only carves out an exception to the main provision. The Court cannot read anything in a statutory provision which is clear and unambiguous. Under the garb of interpreting the provision, the Courts do not have the power to add or subtract even a single word as that would not amount to interpretation to legislation. There is no dispute with regard to above proposition of law.

61. The petitioner was appointed on March 08, 2016. He joined on April 07, 2016 and was under training from April 08, 2016 to April 08, 2017. Such period of training was not required to be considered for

computation of maximum period of probation as duly noted by the Hon'ble Administrative Judge. Moreover, the conduct/action of the petitioner clearly rendered him unsuitable as a judicial officer and only assessment of Annual Confidential Reports or grant of annual increments are not indicative of suitability of a judicial officer. Till such time an order of confirmation is not made after scrutinizing the records of a judicial officer, he continued to be a probationer.

62. The fact that the petitioner did not think it necessary to wait for his approval of Ex-India leave before travelling abroad is indicative of his insubordination. Despite being informed telephonically that his leave has been rejected, he still proceeded to travel abroad and did not think it necessary to apologize immediately upon his return in October, 2019. Upon being asked to explain the reason for fixing less number of cases on 23rd and 24th October, 2019, the petitioner only referred to earned leaves that he intended to take on the aforesaid dates without disclosing that he planned to travel abroad on those dates and in fact travelled by clubbing the same with Diwali vacation, without obtaining necessary permission. This is clearly indicative of the fact that the petitioner being a judicial officer, sought to suppress material facts before the Hon'ble High Court.

63. When the petitioner had applied for Ex-India leave in August, 2019 for travelling in December, 2019 to USA, the same was granted. The passport of the petitioner was asked to be produced by the authorities for the purpose of keeping of records, but the petitioner purposely withheld pages 24, 25 and 35. This Court has no hesitation to hold that the said suppression was done deliberately. Further this Court notices that for travelling abroad from December 22, 2019 to January 01,

2020, the petitioner made application on August 26, 2019 as he was aware that the processing of such Ex-India leave usually takes time and the said Ex-India leave was allowed on October 24, 2019 by the Hon'ble High Court.

64. The petitioner deliberately made an application on October 19, 2019 vide soft copy for Ex-India leave between October 23, 2019 to October 28, 2019, knowing fully well that grant of such leave will take time to be processed and the previous application made in August was still pending. The hard copy reached the office of the District Judge on October 24, 2019 after the petitioner proceeded with his travel. Therefore, it is apparent that petitioner intended to travel abroad without necessary permission for Ex-India leave being obtained prior to his departure. This Court is constrained to take the view that the petitioner must have apprehended that the second application for Ex-India leave during the pendency of the first one may not be granted and therefore, made a belated application. There is no suitable explanation provided at all why after an order of rejection by the High Court was communicated telephonically to the petitioner, he proceeded to travel.

65. The petitioner was well aware that his Charge Relinquishing Report dated October 22, 2019 was returned back by the learned District and Sessions Judge, Patiala but even then he proceeded to avail of Ex-India leave in December, 2019 without approval of the Hon'ble High Court. The Hon'ble Administrative Judge correctly held that such repeated acts of insubordination is unbecoming of a judicial officer. An officer who repeatedly committed acts of insubordination/suppression during the period of probation would continue with such acts and inappropriate behavior unabated after confirmation, setting a bad

example for the other judicial officers. The said course of action would not at all be desirable.

66. Furthermore, this Court finds that the scope of interference in judicial review is extremely limited and the Court has to review only the ‘decision making process’ and not the ‘decision’ itself. The High Court in its administrative side evaluated the acts and conduct of the judicial officer based on the recommendation of the Vigilance Committee as directed by the Hon’ble Chief Justice on the recommendations of the Hon’ble Administrative Judge. The procedure has been correctly followed leading to the recommendation of the Full Court to the government for dispensation of service of the judicial officer. There is no infirmity in such ‘decision making process’ which merits interference.

67. Accordingly, the writ petition is dismissed along with all connected applications.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

FEBRUARY 29, 2024
shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes