RAJASTHAN HIGH COURT

v.

VED PRIYA & ANR.

(Civil Appeal Nos. 8933-8934 of 2017)

MARCH 18, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Judicial Service – Probation period – Order of non-confirmation in – Respondent no.1 – a former Judicial Officer was appointed as a Civil Judge (Junior Division)-cum- Judicial Magistrate and he was placed on probation for a period of two years – There were certain allegations of 7 and corruption in discharge of judicial functions during the probation period against respondent no.1 – On basis of which the Registrar of Vigilance was called and he submitted a report – The Administration Committee of the High Court did not confirm the service of respondent no.1 – The Full Court of the High Court confirmed the recommendations – Consequently, on basis of the recommendation of the High Court the State government dispensed with the services of respondent no.1 – Writ Petition by respondent no.1 – The Division Bench of the High Court quashed the termination order and directed reinstatement of respondent no. 1 – Before the Supreme Court, the respondent no. 1 contended that it was a case of an indictment following allegations of corruption against him – On appeal, held: The entire object of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post – The true test of suitability is actual performance of duties which can only be applied after the candidate joins and starts working – In the instant case, the order of termination of services of respondent no. 1 is based upon overall assessment of performance of respondent no. 1 during the period of probation, which was not found satisfactory – Such an inference which can be valid foundation to dispense with services of a probationer does not warrant holding of an enquiry in terms of Art. 311 of the Constitution – It is thus not true on part of respondent no. 1 to allege that it was a case of an indictment following allegations of corruption against him – There is nothing in the present case to infer that the motivation behind the removal was any allegation – Instead, it was a routine confirmation exercise

A *– The foundation for removal was not the allegations but it was a holistic assessment of respondent's service record – Therefore, the judgment of the High Court set aside.*

Constitution of India – Art. 226 – Judicial review by the High Court over the decision taken by its Full Court on administrative
B *side – Held: Although it would be a futile task to exhaustively delineate the scope of writ jurisdiction in such matters but a High Court u/Art. 226 has limited scope and it ought to interfere cautiously – The amplitude of such jurisdiction cannot be enlarged to sit as an 'appellate authority', and hence care must be taken to not hold another possible interpretation on the same set of material*
C *or substitute the Court's opinion for that of the disciplinary authority – This is especially true given the responsibility and powers bestowed upon the High Court u/Art.235 of the*

Constitution – The collective wisdom of the Full Court deserves due respect, weightage and consideration in the process
D *of judicial review.*

Service Law – Difference between the termination of a probationer and of a confirmed employee – Held: There is a subtle, yet fundamental, difference between termination of a probationer and that of a confirmed employee – Although it is undisputed that
E *the State cannot act arbitrarily in either case, yet there has to be a difference in judicial approach between the two – Whereas in the case of a confirmed employee the scope of judicial interference would be more expansive given the protection u/Art. 311 of the Constitution or the Service Rules but such may not be true in the case of probationers who are denuded of such protection(s) while*
F *working on trial basis – Constitution of India – Art. 311.*

Service Law – Right to continue in the employment of probationers – Held: Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable – It is only in a very
G *limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are 'removed' in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights – In such cases of 'stigmatic' removal only a reasonable opportunity of hearing is* sine-qua-non.

H

Allowing the appeals, the Court

HELD: 1. The order of termination of services of Respondent No.1 recites that "*the Rajasthan High Court, Jodhpur, after examining all the relevant records has been of the opinion that the person in question has not made sufficient use of his opportunities and has otherwise also failed to give satisfaction as a probationer in the Rajasthan Judicial Service.*" It is explicit from these contents that neither any specific misconduct has been attributed to Respondent No.1 nor any allegation made. The order is based upon overall assessment of the performance of Respondent No.1 during the period of probation, which was not found satisfactory. Such an inference which can be a valid foundation to dispense with services of a probationer does not warrant holding of an enquiry in terms of Article 311 of the Constitution. It is thus not true on the part of Respondent No.1 to allege that it was a case of an indictment following allegations of corruption against him. [Para 20] [981-D-E]

2. True it is that the form of an order is not crucial to determine whether it is simplicitor or punitive in nature. An order of termination of service though innocuously worded may, in the facts and circumstances of a peculiar case, also be aimed at punishing the official on probation and in that case it would undoubtedly be an infraction of Article 311 of the Constitution. The Court in the process of judicial review of such order can always lift the veil to find out as to whether or not the order was meant to visit the probationer with penal consequences. If the Court finds that the real motive behind the order was to 'punish' the official, it may always strike down the same for want of reasonable opportunity of being heard. [Para 21] [981-F-H]

3. There is nothing on record in the present case to infer that the motivation behind the removal was any allegation. Instead, it was routine confirmation exercise. The evaluation of services rendered during the probationary period was made at the end of the first respondent's tenure, along with 92 others. Vigilance reports were called not just for Respondent No. 1, but also for at least ten other candidates. It is thus clear that the object was not to verify whether the allegations against the first respondent had been proved or not, but merely to ascertain whether there were sufficient reasons or a possible cloud on his

suitability, given the higher standard of probity expected of a judge. [Para 22] [982-A-B]

4. Even otherwise, it may not be true that just because there existed on record some allegations of extraneous considerations that the High Court was precluded from terminating the services of Respondent No.1 in a simplicitor manner while he was on probation. The unsatisfactory performance of a probationer and resultant dispensation of service at the end of the probation period, may not necessarily be impacted by the fact that meanwhile there were some complaints attributing specific misconduct, malfeasance or misbehavior to the probationer. If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of over all performance during the period of probation, the theory of action being punitive in nature, will not be attracted. Onus would thus lie on the probationer to prove that the action taken against him was of punitive characteristics. [Para 24] [982-F-H; 983-A-B]

5.Since Respondent No.1 has failed to establish that the High Court intended or has actually punished him for any defined misconduct, it stands crystallized that the object of the High Court on the administrative side was to verify the suitability and not enquire into the allegations against the first respondent. Independently also, this Court does not find that the foundation was the allegations but it was based upon a holistic assessment of the respondent's service record. Even taking an effects-based approach, this Court does not feel that the order of non-confirmation or the preceding circumstances would prejudice the respondent, meriting a higher procedural requirement. [Para 26] [983-E-F]

Parshotam Lal Dhingra v. Union of India **AIR 1958 SC 36 : [1958] SCR 828 ;** *Kazia Mohammed Muzzammil v. State of Karnataka* **(2010) 8 SCC 155 : [2010] 7 SCR 1061 ;** *Rajesh Kumar Srivastava v. State of Jharkhand* **(2011) 4 SCC 447 : [2011] 3 SCR 823 – relied on.**

Case Law Reference

[2010] 7 SCR 1061	**relied on**	**Para 14**
[2011] 3 SCR 823	**relied on**	**Para 15**
[1958] SCR 828	**relied on**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8933-8934 of 2017

From the final Orders dated 19.11.2014 and 16.12.2014 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Writ Petition No.1993 of 2006 and in D.B. Writ Review Petition No.199 of 2014 respectively.

Purushaindra Kaurav, Sr. Adv., Sunil Kumar Jain, Abhishek Jain, Anuradha Mishra, Advs. for the Appellant.

Ranbir Singh Yadav, Nitin Meshram, D. Subramanyam, Ms. Anzu K. Varkey, Mrs. Pratima Yadav, Ritesh Patil, Atul Jha, Advs. for the Respondents.

The following Judgment of the Court was delivered:

JUDGMENT

1. These civil appeals have been preferred by the Rajasthan High Court against the order dated 16.12.2014 by which a Division Bench of the said High Court dismissed a petition for review of its earlier order dated 19.11.2014 wherein the High Court had allowed the writ petition filed by Ved Priya (Respondent No. 1 – a former judicial officer) and directed his reinstatement with consequential benefits and seniority.

FACTS

2. Respondent No. 1 was recruited into the Rajasthan Judicial Services on 16.07.2002 and appointed as Civil Judge (Junior Division)-cum-Judicial Magistrate. He was placed on probation for a period of two years w.e.f. 02.08.2002, which was later extended by a further period of two months on 28.07.2004.

A 3. Certain allegations of misdemeanour and corruption in discharge of judicial functions were received during the probation period against a few judicial officers (including Respondents No. 1), on the basis of which the Registrar (Vigilance) of the Rajasthan High Court called for the records and submitted a report dated 05.08.2004. This report was put forth before the Administrative Committee of the High B Court, along with a wealth of other material while it was undertaking the confirmation process of over ninety-three probationary judges. This five-judge Committee sought to determine the suitability of the probationers as per terms and conditions of the appointment by evaluating their integrity, knowledge, conduct and behaviour. In this C process the Committee relied upon numerous materials, including reports submitted by their District Judges, Inspecting Judges, ACRs as well the aforementioned report submitted by the Registrar (Vigilance). After due consideration, it was recommended that the services of ninety officers be confirmed, the probationary period of one officer be extended and services of two judicial officers (including Respondent No. 1) not be D confirmed. This report was placed before the Full Court of the High Court, which on 16.09.2004 confirmed the recommendations. Consequently and on the recommendation of High Court, State Government vide order dated 30.09.2004 dispensed with the services of Respondent No.1.

E 4. Respondent No. 1 being aggrieved approached the Rajasthan High Court on its judicial side and filed a writ petition seeking quashing of the termination order, as well as reinstatement of his services. It was vehemently contended that the termination order was punitive and a result of subjective notions, and was delivered without due enquiry or hearing.

F

5. The Division Bench relied upon a catena of judgments to observe that although evaluation of probationary period was necessary to determine suitability for confirmation and that a probationer could be laid-off without any reason but the decision so taken would always be amenable to a limited judicial review. Though the High Court opined G that such like orders ought not to state reasons as it gave rise to the possibility of casting stigma, it nonetheless proceeded to evaluate the actual reasons behind the termination of services of Respondent No.1 with a view to determine whether the action of the appellant was arbitrary or illegal. Taking note of the 'good' service-record of the H Respondent No.1 and the positive feedback given by his reporting

authority and the endorsements by the Inspecting Judges, the Court viewed that there was no material on the basis of which the Full Court could resolve to dispense with the services of Respondent No. 1. The Full Court's reliance on unsubstantiated allegations and that too without affording an opportunity of hearing, was held to be impermissible which made the action punitive. The Court accordingly quashed the termination order and directed reinstatement of Respondent No.1.

6. A review was later filed by the appellant, who contended that the Division Bench failed to take note of the special report submitted by the Registrar (Vigilance). This report was stated to have shown as to how the judicial officer had, without competence, granted bail in two matters pertaining to offences under the Narcotics, Drugs and Psychotropic Substances Act, 1985 (hereinafter, "NDPS Act"). The High Court, however, declined to entertain the review petition and dismissed it by noting that the above stated report had in fact been kept in mind while allowing the writ petition.

CONTENTIONS OF PARTIES

7. Learned counsel appearing for the appellant-High Court vehemently contended that the termination order could not be labelled as punitive or arbitrary or having been passed without sufficient material. The report submitted by the Registrar (Vigilance) dated 05.08.2004 when read with various other material on record, sufficiently justified for the appellant to form an opinion regarding the unsuitability of Respondent No. 1.

8. It was then argued that the Division Bench of the High Court erred in entering into the merits of the case, and in doing so transgressed the scope of judicial review and assumed the role of an appellate authority. Learned Counsel while placing reliance on a series of decisions, highlighted that it was a settled position of law that adequacy or reliability of evidence could not be canvassed before the judicial side of a High Court under Article 226 of the Constitution, and the judgment in ***High Court of Patna v. Pandey Gajendra Prasad***[1], where this Court had held that an order of termination of a judicial officer could not be altered through writ jurisdiction merely on the ground that his Annual Confidential Reports (ACRs) had good remarks, was squarely applicable to the present facts.

[1] (2012) 6 SCC 357.

A 9. Placing reliance on past precedents and the provisions of Rajasthan Judicial Service Rules, 1955, it was urged that services of temporary employees and probationers could be terminated without attracting the operation of Article 311 of the Constitution. It was highlighted how no mala fide had been alleged or proved, and in such a scenario, the only limited issue which could be gone into was as to B whether or not there was due application of mind before taking the innocuous administrative decision.

10. On the other hand, Respondent No. 1 submitted that an opportunity of hearing was one of the most fundamental protections known to law, and no one could be condemned unheard irrespective of C his status as a temporary or probationer employee. Relying upon ***Shamsher Singh v. State of Punjab***[2], it was buttressed that notwithstanding the provisions contained in statutory rules or employment conditions permitting termination of services of probationers without reason, if one was discharged on grounds of specific allegations or D inefficiency without proper enquiry and reasonable opportunity of hearing, such an action would amount to 'removal' from service within the meaning of Article 311(2) of the Constitution.

11. Tracing the various events leading up to the present appeal, the first respondent asserted that although the termination was ostensibly E simplicitor, but was stigmatic in effect. Even if no explicit reasons were accorded for termination, yet the preceding circumstances had made clear that certain allegations of corruption or erroneous exercise of jurisdiction were the foundation of the action, and the ultimate decision could hence be invalidated on ground of violation of principles of natural justice as per ***State Bank of India v. Palak Modi.***[3]

F 12. Further, it was urged that even on merits no case was made out, for the complainant could not be found in a spot enquiry by the learned District judge. Other allegations too were without substance and adequate explanations were provided for certain alleged violations of law.

G **ANALYSIS**

13. At the outset, we may observe that both the appellant as well as the impugned judgment have elucidated the correct statement of law

[2] (1974) 2 SCC 831.

H [3] (2013) 3 SCC 607.

regarding the width and sweep of judicial review by a High Court over the decisions taken by its Full Court on administrative side. Although it would be a futile task to exhaustively delineate the scope of writ jurisdiction in such matters but a High Court under Article 226 has limited scope and it ought to interfere cautiously. The amplitude of such jurisdiction cannot be enlarged to sit as an 'appellate authority', and hence care must be taken to not hold another possible interpretation on the same set of material or substitute the Court's opinion for that of the disciplinary authority. This is especially true given the responsibility and powers bestowed upon the High Court under Article 235 of the Constitution. The collective wisdom of the Full Court deserves due respect, weightage and consideration in the process of judicial review.

14. The present case is one where the first respondent was a probationer and not a substantive appointee, hence not strictly covered within the umbrella of Article 311. The purpose of such probation has been noted in ***Kazia Mohammed Muzzammil v. State of Karnataka***[4]:

> *"25. The purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation. ..."*

15. Similarly, in ***Rajesh Kumar Srivastava v. State of Jharkhand***[5] it was opined:

> *"... A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should*

[4] (2010) 8 SCC 155.
[5] (2011) 4 SCC 447.

A *be continued and that he should be confirmed, or he should be released from service. ..."*

16. It is thus clear that the entire objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. Such an B exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job. The true test of suitability is actual performance of duties which can only be applied after the candidate joins and starts working.

C 17. Such an exercise undoubtedly is subjective, therefore, Respondent No.1's contention that confirmation of probationers must be based only on objective material is far-fetched. Although quantitative parameters are ostensibly fair, but they by themselves are imperfect indicators of future performance. Qualitative assessment and a holistic analysis of non-quantifiable factors are indeed necessary. Merely D because Respondent No. 1's ACRs were consistently marked 'Good', it cannot be a ground to bestow him with a right to continue in service.

18. Furthermore, there is a subtle, yet fundamental, difference between termination of a probationer and that of a confirmed employee. Although it is undisputed that the State cannot act arbitrarily in either E case, yet there has to be a difference in judicial approach between the two. Whereas in the case of a confirmed employee the scope of judicial interference would be more expansive given the protection under Article 311 of the Constitution or the Service Rules but such may not be true in the case of probationers who are denuded of such protection(s) while working on trial basis.

F 19. Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable. Its only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are 'removed' in a manner which prejudices their G future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of 'stigmatic' removal only that a reasonable opportunity of hearing is *sine-qua-non*. Way back in ***Parshotam Lal Dhingra v. Union of India***[6], a Constitution Bench opined that:

H [6] AIR 1958 SC 36.

"28.... In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with."

20. The order of termination of services of Respondent No.1 recites that "the Rajasthan High Court, Jodhpur, after examining all the relevant records has been of the opinion that Shri Ved Priya has not made sufficient use of his opportunities and has otherwise also failed to give satisfaction as a probationer in the Rajasthan Judicial Service." It is explicit from these contents that neither any specific misconduct has been attributed to Respondent No.1 nor any allegation made. The order is based upon overall assessment of the performance of Respondent No.1 during the period of probation, which was not found satisfactory. Such an inference which can be a valid foundation to dispense with services of a probationer does not warrant holding of an enquiry in terms of Article 311 of the Constitution. It is thus not true on the part of Respondent No.1 to allege that it was a case of an indictment following allegations of corruption against him.

21. True it is that the form of an order is not crucial to determine whether it is simplicitor or punitive in nature. An order of termination of service though innocuously worded may, in the facts and circumstances of a peculiar case, also be aimed at punishing the official on probation and in that case it would undoubtedly be an infraction of Article 311 of the Constitution. The Court in the process of judicial review of such order can always lift the veil to find out as to whether or not the order was meant to visit the probationer with penal consequences. If the Court finds that the real motive behind the order was to 'punish' the official, it may always strike down the same for want of reasonable opportunity of being heard.

22. There is nothing on record in the present case to infer that the motivation behind the removal was any allegation. Instead, it was routine confirmation exercise. The evaluation of services rendered during the probationary period was made at the end of the first respondent's tenure, along with 92 others. Vigilance reports were called not just for the Respondent No. 1 petitioner, but also for at least ten other candidates. It is thus clear that the object was not to verify whether the allegations against the first respondent had been proved or not, but merely to ascertain whether there were sufficient reasons or a possible cloud on his suitability, given the higher standard of probity expected of a judge.

23. The vigilance report suggests that one of the factors which prompted the Administrative Committee or the Full Court to not confirm Respondent No.1, was his action granting bail in the matters under the NDPS Act. It has not been alleged nor it may be true that the first respondent granted bail in NDPS matters owing to illegal gratifications or any other extraneous consideration. The stand taken by him before us is that bail was granted keeping in mind 'equitable and humanitarian considerations'. We find no merit in such an explanation. The question of exercising equity arises only when the Court is conferred jurisdiction expressly or by implication. Respondent No.1 was expected to be in know of Section 36(3) of the NDPS Act, 1985 which expressly ousts competence of a judicial officer below the rank of Sessions Judge or an Additional Sessions Judge in NDPS matters. The High Court on administrative side, therefore, justifiably inferred that Respondent No.1 was prone to act negligently or had the tendency to usurp power which the law does not vest in him. This was a relevant factor to determine suitability of a probationer judicial officer.

24. Even otherwise, it may not be true that just because there existed on record some allegations of extraneous considerations that the High Court was precluded from terminating the services of Respondent No.1 in a simplicitor manner while he was on probation. The unsatisfactory performance of a probationer and resultant dispensation of service at the end of the probation period, may not necessarily be impacted by the fact that meanwhile there were some complaints attributing specific misconduct, malfeasance or misbehavior to the probationer. If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the

simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of over all performance during the period of probation, the theory of action being punitive in nature, will not be attracted. Onus would thus lie on the probationer to prove that the action taken against him was of punitive characteristics.

25. There is something more which the learned Division Bench failed to notice and reconcile. On page 22 of the impugned judgment, it has been stated that "*on consideration of material available before the committee, the committee resolved to recommend that petitioner Ved Priya is not fit for confirmation*", additionally, it was stated that "*certain reference has been made in regard to the complaints……which according to the respondent was considered by the committee while taking the final decision*." This suggests that there was, if not substantial, at least some material under consideration before the committee. However, on page 24 later the Division Bench has observed that there was "*absence of any material which could support in arriving at the conclusion*" and that such a decision would be violative of Article 14 of the Constitution.

26. Since Respondent No.1 has failed to establish that the High Court intended or has actually punished him for any defined misconduct, it stands crystallized that the object of the High Court on the administrative side was to verify the suitability and not enquire into the allegations against the first respondent. Independently also, we do not find that the foundation was the allegations but it was based upon a holistic assessment of the respondent's service record. Even taking an effects-based approach, we do not feel that the order of non-confirmation or the preceding circumstances would prejudice the respondent, meriting a higher procedural requirement.

CONCLUSION

27. In light of the above discussion, the appeals are allowed. The judgment of the High Court is set aside and the order of discharge dated 30.09.2004 whereby services of Respondent No.1 were dispensed with during probation, is hereby approved. No order as to costs.

Ankit Gyan Appeals allowed.