2025 INSC 289

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.142 OF 2024

SARITA CHOUDHARY ...PETITIONER

VERSUS

HIGH COURT OF MADHYA PRADESH & ANOTHER ...RESPONDENTS

WITH

SUO MOTO WRIT PETITION (C) NO.2 OF 2023

IN RE: TERMINATION OF CIVIL JUDGE, CLASS-II (JR. DIVISION), MADHYA PRADESH STATE JUDICIAL SERVICE

AND

WRIT PETITION (C) NO.233 OF 2024

ADITI KUMAR SHARMA ...PETITIONER

VERSUS

STATE OF MADHYA PRADESH & ANOTHER ...RESPONDENTS

J U D G M E N T

NAGARATHNA, J.

I N D E X

Introduction:

The careers of two women Judicial Officers out of six have to be decided in these writ petitions filed by them as well as in Suo Moto Writ Petition (Civil) No.2 of 2023. Out of six women Judicial Officers who were terminated from service during their probation period, four Judicial Officers have been reinstated pursuant to the resolution of the Full Court of the respondent-Madhya Pradesh High Court dated 01.08.2024 on certain terms. However, insofar as two Judicial Officers, namely, Ms. Sarita Choudhary and Ms. Aditi Kumar Sharma, there has been no revocation of the earlier resolution and consequently, their termination under challenge in these writ petitions have to be decided by this Court.

Genesis of the Controversy:

2. On 23.05.2023, six women Judicial Officers serving in the State of Madhya Pradesh (Civil Judges, Junior Division) were terminated on the recommendation of the Administrative Committee of High Court of Madhya Pradesh. Earlier that month, the Administrative Committees of the High Court had met on 08.05.2023 and 10.05.2023 for shortlisting of officers for

confirmation of judicial officers on probation. The shortlist were then recommended to the Full Court of the High Court for confirmation. On 13.05.2023, the High Court issued an order confirming a list of 403 Judicial Officers and recommending termination of services, *inter alia*, of the petitioners herein. On the basis of the aforesaid order issued by the High Court, the termination order(s) in respect of, *inter alia,* the petitioners herein were passed on 23.05.2023, thereby, discharging the petitioners from their duties.

2.1 On 02.09.2023, three women Judicial Officers of the District Judiciary of the State of Madhya Pradesh made a representation to Hon'ble the Chief Justice of India alleging their termination from service as illegal, arbitrary, and contrary to the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (for short, "Recruitment Rules"). Upon considering the said representation, Hon'ble the Chief Justice of India, by an administrative Order dated 11.11.2023, directed that the matter be registered by way of a *suo moto* writ petition in respect of all six women judicial officers who were terminated from service.

2.2 By the time the matter was registered on 07.12.2023, one of the Judicial Officers, Ms. Sonakshi Joshi, had filed Writ Petition (C) No.849/2023 before this Court invoking Article 32 of the Constitution of India. However, by Order dated 22.08.2023, she withdrew the said writ petition with liberty to secure relief from the Madhya Pradesh High Court. Similarly, three other Officers, namely, (1) Ms. Rachna Atulkar Joshi; (2) Ms. Jyoti Varkade; and (3) Ms. Priya Sharma, who had also filed Writ Petition (C) Nos.1325, 1339 and 1357 of 2023 respectively under Article 32 withdrew their writ petitions with liberty to approach the Madhya Pradesh High Court *vide* order dated 08.12.2023.

2.3 However, as these four petitioners, who withdrew their writ petitions from this Court, were not aware of the fact that this Court had registered *Suo Moto* Writ Petition as Hon'ble the Chief Justice of India had already taken cognizance of their grievance, we found it just that notice must be issued to them in the *suo motu* writ petition.

2.4 On 23.07.2024, this Court had requested the Full Court of the High Court of Madhya Pradesh to reconsider the termination of the six women judicial officers. Pursuant to our order dated

23.07.2024, the Full Court of the High Court of Madhya Pradesh re-considered its earlier resolutions and orders impugned in the *suo motu* writ petition as well as the other writ petitions, and consequently, in its 530th Full Court Meeting held on 01.08.2024, four officers, namely, Smt. Jyoti Varkade, Sushri Sonakshi Joshi, Sushri Priya Sharma, and Smt. Rachna Atulkar Joshi were considered for reinstatement. However, there was no quietus to the controversy *qua* two other officers namely, Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma as the Full Court of the High Court did not deem it proper to reinstate them. For ease of reference, the extract of the Minutes of 530th Full Court Meeting dated 01.08.2024 at 5.00 P.M are extracted as follows: -

"xxx

SUB NO.01. Consideration of the matter relating to termination of 06 Civil Judges, Junior Division of Madhya Pradesh Judicial Service.

Hon'ble the Supreme Court in Suo Motu Writ (C) No. 2/2023 in Re: Termination of Civil Judge, Junior Division has been pleased to pass following order on 23.07.2024: -

"Learned senior counsel and Amicus Curiae submitted that although earlier, the concerned Committee had reviewed the matter and had reiterated its earlier resolution, nevertheless,

> the Full Court of the High Court could reconsider the matter and depending upon its resolutions, further consideration of these matters could be taken up. In the circumstances, we request the Full Court of the High Court of Madhya Pradesh to reconsider its resolutions and orders impugned in these suo moto writ petition and other writ petitions filed by the parties. On a reconsideration by Full Court of the High Court, a copy of the resolution could be placed before this Court by learned counsel for the respondent-High Court preferably within a period of four weeks from today".

In view of the order of Hon'ble Supreme Court, Full Court considered the matter and resolves that the termination of following 04 Civil Judges, Junior Division be revoked with a condition that they be posted as Civil Judge, Junior Division with a probation period of one year without backwages and they be placed at the bottom of their respective batch. They will regain their original seniority subject to their confirmation.

xxx

Full Court also considered the matter of Sushri Sarita Choudhary, the then II-Civil Judge Junior Division, Umaria and Sushri Aditi Kumar Sharma, the then V-Civil Judge, Junior Division, Tikamgarh. After considering their ACRs Gradings, Disposal Statistics, Adverse Remarks, complaints made against them and their overall performance, Full Court is of the view that the termination of Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma cannot be revoked. In view thereof Full Court resolves to reiterate its earlier resolution dated 11.05.2023 in respect of Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma. Full Court further resolves to place adverse remarks and other material against them before the Hon'ble Supreme Court in a sealed cover."

2.5 In these circumstances, the *lis* in respect of the four officers stood closed and present adjudication remains only in respect of petitioner-Sarita Choudhary and petitioner-Aditi Kumar Sharma. For immediate reference, our order dated 03.09.2024 extracted as under:

> "SMW(C) No.2/2023
>
> Pursuant to our order dated 23.07.2024, the Full Court of the High Court of Madhya Pradesh has re-considered its earlier resolutions and orders impugned in the suo motu writ petition as well as other writ petitions filed by the respective petitioners which is evident by Minutes dated 01.08.2024 of 530th Full Court Meeting held on the said date. The following four officers, namely, Smt. Jyoti Varkade, Sushri Sonakshi Joshi, Sushri Priya Sharma and Smt. Rachna Atulkar Joshi have been considered for reinstatement subject to certain terms and conditions. Insofar as two other officers are concerned, namely, Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma, there is no revocation of the earlier orders and resolutions and the Full Court has also further resolved to place the adverse remarks and other materials against them before this Court in a sealed cover.
>
> For ease of reference, the extract of the Minutes of 530th Full Court Meeting dated 01.08.2024 at 5.00 P.M is extracted as follows: -
>
> "xxx
>
> SUB NO.01. Consideration of the matter relating to termination of 06 Civil Judges, Junior Division of Madhya Pradesh Judicial Service.

Hon'ble the Supreme Court in Suo Motu Writ (C) No. 2/2023 in Re: Termination of Civil Judge, Junior Division has been pleased to pass following order on 23.07.2024:-

"Learned senior counsel and Amicus Curiae submitted that although earlier, the concerned Committee had reviewed the matter and had reiterated its earlier resolution, nevertheless, the Full Court of the High Court could reconsider the matter and depending upon its resolutions, further consideration of these matters could be taken up.

In the circumstances, we request the Full Court of the High Court of Madhya Pradesh to reconsider its resolutions and orders impugned in these suo moto writ petition and other writ petitions filed by the parties.

On a reconsideration by Full Court of the High Court, a copy of the resolution could be placed before this Court by learned counsel for the respondent-High Court preferably within a period of four weeks from today".

In view of the order of Hon'ble Supreme Court, Full Court considered the matter and resolves that the termination of following 04 Civil Judges, Junior Division be revoked with a condition that they be posted as Civil Judge, Junior Division with a probation period of one year without backwages and they be placed at the bottom of their respective batch. They will regain their original seniority subject to their confirmation.

Sr. No.	Name of the Officers whose termination is to be revoked
1.	Smt. Jyoti Varkade, the then CJ, Jr. Division, Timarni [Harda]

2.	Sushri Sonakshi Joshi, the then V AJ To I CJ, Jr. Division, Morena
3.	Sushri Priya Sharma, the then I CJ, Jr. Division, Dr. Ambedkar Nagar [Indore]
4.	Smt. Rachna Atulkar Joshi, the then II CJ, Jr. Division, Teonthar [Rewa]

Full Court also considered the matter of Sushri Sarita Choudhary, the then II Civil Judge Junior Division, Umaria and Sushri Aditi Kumar Sharma, the then V Civil Judge, Junior Division, Tikamgarh. After considering their ACRs Gradings, Disposal Statistics, Adverse Remarks, complaints made against them and their overall performance, Full Court is of the view that the termination of Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma cannot be revoked. In view thereof Full Court resolves to reiterate its earlier resolution dated 11.05.2023 in respect of Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma. Full Court further resolves to place adverse remarks and other material against them before the Hon'ble Supreme Court in a sealed cover."

Learned senior counsel Shri R Basant, appearing for the aforesaid three officers, namely, Smt. Jyoti Varkade, Sushri Priya Sharma and Smt. Rachna Atulkar Joshi submitted that these officers have no grievance with regard to the resolution passed as such. The submission regarding payment of salary from the date of termination till reinstatement is rejected.

Shri R Basant, learned senior counsel urged that the High Court may issue orders as expeditiously as possible and within a period of four weeks from today so that the aforesaid officers on reinstatement may join their duties.

In the circumstances, the lis in suo motu writ petition in respect of the four officers stand closed.

Ms. Tanvi Dubey, learned counsel, who appeared for Sushri Sonakshi Joshi, also submitted that her client has accepted the aforesaid resolution.

It is needless to observe that these officers on regaining their original seniority as stated above, shall be granted continuity in service and all consequential benefits except back wages.

Insofar as Sushri Sarita Choudhary and Sushri Aditi Kumar Sharma are concerned, the Full Court has stated that Resolutions and Orders passed as against them cannot be revoked.

We appreciate the assistance rendered by learned senior counsel and learned Amicus Curiae and learned counsel who have appeared for the respective parties and particularly Shri Arjun Garg, who has appeared for the High Court.

List the matter on 24.09.2024 to hear regarding the case of other two judicial officers."

3. We find it necessary to briefly enumerate the facts relevant to the career trajectory and service details of the two petitioners and other necessary facts relevant to the present adjudication.

Factual Backdrop:

Re: Sarita Choudhary - W.P. (C) 142/2024:

3.1 By Order Fa.No.3(B)3/2015/21-B(One), issued in December 2016, the Department of Law and Legislative Affairs of the respondent-State appointed the Petitioner in W.P. (C) 142/2024 to the post of Civil Judge Class-II (Entry Level) in the

Madhya Pradesh Judicial Service on probation of two years from the date she assumed charge. On 25.01.2017, the said petitioner was appointed as Civil Judge, Class-2 on probation for two years. Her initial positing as a trainee Judge was at Raisen, Madhya Pradesh. For this period, the petitioner has drawn our attention to the fact that for her first year as a trainee judge i.e. for the period from 25.01.2017 to 31.12.2017, the Annual Confidential Report (ACR) was initially graded by the District Judge as "good" or "very good" and "satisfactory" on all parameters. However, subsequently the Portfolio Judge converted the grading to C (good). A perusal of the ACR reveals that explicitly no shortcomings were found despite the fact that an adverse entry was later communicated to the petitioner on 28.08.2018.

3.2 In the following year, on 05.02.2018, High Court transferred the petitioner to Shajapur as First Civil Judge Class-II on independent charge in the regular vacant court. Her ACR for the period from 01.01.2018 to 31.12.2018 recorded a final grade of 'B-Very Good' and also noted that she had good conduct, was sincere and polite, and her judicial work was good in both quantity as well as quality. Pertinent to note is that in this time

period, she earned a total of 1233.96 units within 220 standard working days; however, her civil units earned stood at 83.05.

3.3 We note that during the aforesaid time period, the petitioner was posted in a vacant court, which understandably does not see a high disposal rate in civil matters as Judicial Officers are required to re-initiate and kickstart the entire machinery of civil suits, sometimes from the issuance of notice(s).

3.4 Notably, her ACR for the period 01.01.2019 to 31.12.2019 carried a demoted graded of 'C-Good'. However, she was still reported to display good conduct of business in court and in office. It was argued by learned counsel for the respondent-High Court that this degrading was due to three complaints that were filed against the petitioner in the year 2019. These complaints alleged that the petitioner had failed to conduct proceedings as per law, and in a criminal case even passed an order despite pendency of counter cases. Learned Amicus and learned senior counsel for the petitioner highlighted that despite the number or nature of these complaints, it was considered just by the Chief Justice of the High Court to close all three complaints simply

with warnings to the petitioner. She was noted to be an average judicial officer as far as sincerity and punctuality were concerned and her quality of judgment was appreciated to be good. Despite a nearly threefold jump in units earned from 83.05 to 234.15, she had failed to earn the prescribed civil units. It is pertinent to consider that the ACR noted as improvable her management, initiative, planning, relations with advocates, staff and colleague judicial officers. In our view, equally relevant is a letter that was issued to the petitioner on 27.11.2020 stating that the remarks in the ACR for the year 2019 were only advisory in nature and meant for future guidance. Learned senior counsel appearing for the Petitioner, Sri Basant contended that this Court must be alive to the fact that despite some complaints – which were closed with only warnings - the ACR of the petitioner observed her as a good judicial officer and all the adverse remarks were admittedly only advisory in nature.

3.5 Petitioner-Ms. Sarita Choudhary was then transferred to Goharganj (Raisen) as 2nd Civil Judge, where she joined on 25.11.2019. A perusal of her ACR for the period from 01.01.2020 to 31.12.2020 reflects that she was graded 'D i.e. Average'.

Furthermore, her ACR noted that her conduct of business was not satisfactory as she lacked effective control over staff and did not take initiative to clear pending cases. The petitioner was recorded to have failed to achieve her unit criteria and also lacked in punctuality, seriousness, transparency, and quality in judicial work, cordiality with staff and advocates, and team work. Two complaints were also filed against the petitioner in 2020 for lack of punctuality and in respect of an error made by the petitioner whilst granting bail in a non-bailable offence. Perusal of material on record shows that both of these complaints were met with warnings from the Chief Justice and finally closed. Adverse remarks made in the ACR were replied to by the petitioner through a representation.

3.6 After completion of three years of probation, the petitioner's case was considered for confirmation by the Administrative Committee of the Madhya Pradesh High Court on 24.07.2020, but the same was deferred in view of the pending complaints.

3.7 It is also necessary to note that in March 2020, in the wake of Covid-19 pandemic, the unit criteria – a quantitative metric used to assess performance of Judicial Officers - applicable to

District Judiciary including Family Courts in Madhya Pradesh, was suspended from 16.03.2020 till 31.03.2020. As the continuing nature of the pandemic revealed itself, the unit criteria was eventually suspended till 31.12.2020. Pertinent to note is that throughout 2020, several circulars had been issued by Madhya Pradesh High Court regulating the limited functioning of the District Judiciary. It was only on 11.12.2020 that the Madhya Pradesh High Court issued directions to start regular but limited physical functioning in District Courts.

3.8 For the following year being 01.01.2021 to 31.12.2021, her ACR grade again witnessed a decline to 'E – Poor'. It was noted that the judicial work of the officer was not up to the mark. Although she was noted to be efficient and had good grasp over the subject of law, the assessing officer recorded that she lacked sincerity and did not fulfil her administrative tasks. It was noted that she failed to meet her unit criteria. While she disposed of 124 cases pending for more than three years, achieved 756.5 units, and also achieved 122 units through ADR, it was noted that she failed to dispose of even a single contested civil case. Upon comparing this ACR to the year prior, it will be seen that

the ACR noted that she had good personal relationships and good team work. This finding in the ACR merits consideration as it finds place despite two complaints filed in 2021 alleging misbehaviour with colleagues, advocates, staff, parties/witness/ prosecution. Pertinently, both complaints were closed with advisories to the petitioner from the Chief Justice of Madhya Pradesh High Court.

3.9 Our attention was drawn to the improvement of her ACR for the period from 01.01.2022 to 31.12.2022. This ACR assigned to petitioner was a significant improvement from 'E – Poor' to grade 'C – Good'. It was noted that her understanding of law and application in her judgments was appropriate and well-reasoned. Her ability to efficiently dispose of the cases was seen as reflective of her good legal knowledge.

3.10 *Per contra*, it was highlighted that several complaints were filed against the petitioner in 2022.

(i) Complaint No. 81/2022 dt. 12.01.2022 alleged procedural lapses and inappropriate behaviour with advocates, parties or witnesses. *Vide* Order dt.22.03.2023, the Chief Justice of the

High Court warned the petitioner to be careful in future and to ensure that lapses should not be repeated.

(ii) Similar was the outcome of Complaint No.877/2022 dt. 29.09.2022 which was filed alleging misbehaviour by petitioner in RCT No.310/2019, titled "*State vs. Kanhaiya Lal*".

(iii) However, in respect of 2022, one Complaint bearing No.992/2022 (21.12.2022) wherein it was alleged that petitioner failed to monitor 321 sensitive/suspicious files/cases and keep track of those files, the file was kept in abeyance by order dated 28.06.2023 of the Chief Justice of Madhya Pradesh High Court.

Learned senior counsel for the petitioner highlighted that 321 suspicious cases were indeed discovered in an almirah (cabinet/storage) in the court room but those cases were related to predecessor judges. A departmental inquiry was conducted targeting the clerical staff involved, and one specific staff member D.R. Ahirwar at position Execution Clerk was identified and found guilty of dereliction of duty.

3.11 During her posting at Raisen, the petitioner failed to achieve unit criteria as she achieved only 3.36 units per day. Similarly, petitioner failed to achieve the target on civil side as

she achieved only 30.80 units. However, out of 25 targeted old cases, the petitioner successfully disposed of 100% cases.

3.12 Dissecting and inferring from these facts, learned senior counsel for the petitioner has drawn our attention to the fact that the latest ACR immediately before her termination in 2023 had in fact noted her to be a 'Good' judicial officer and even observed that she had good decisive nature, managerial skill, and that she maintained good relationships in the team.

3.13 Soon thereafter, on 10.04.2023, Ms. Sarita Choudhary was again transferred to Umaria as 2nd Civil Judge, Junior Division. Only a month thereafter, on 13.05.2023, the Madhya Pradesh High Court recommended termination of services of the petitioner. This was followed by Termination Order dt. 23.05.2023 which was received by petitioner on 26.05.2023. Surprisingly, on 09.10.2023 i.e. several months after her termination, adverse remarks made in petitioner's ACR for the year 2021 were communicated to the Judicial Officer.

3.14 For ease of reference, relevant information pertaining to Petitioner-Sarita Choudhary are tabulated hereunder:

ACR GRADING TABLE

PERIOD	GRADE
25.01.2017 to 31.12.2018	C- Good
01.01.2018 to 31.12.2018	B- Very Good
01.01.2019 to 31.12.2019	C-Good
01.01.2020 to 31.12.2020	D-Average
01.01.2021 to 31.12.2021	E-Poor
01.01.2022 to 31.12.2022	C-Good

UNIT VALUE

YEAR	VALUE
2017	Trainee Judge
2018	7.11
2019	8.53
2020	3.72 Learned Amicus emphasized before this Court that for the pre-Covid period, her unit value was **9.3** as per page 73 of reply.
2021	6.47
2022	3.36 (3.64 as per page 108 of reply)

LIST OF COMPLAINTS

S.NO	COMPLAINT NO. & DATE	COMPLAINT	ACTION
2019			
1	26/2019 dt. 10.01.2019	In Case No.369/2016, titled "Vipin Bedle vs. Rajesh Malviya" the petitioner did not proceed as per law	Complaint disposed of by Hon'ble Chief Justice by order dated 25.01.2020.

S.NO	COMPLAINT NO. & DATE	COMPLAINT	ACTION
2	311/2019 dt. 24.04.2019 & 407/2019 dt. 07.06.2019	Cases not conducted as per law	Warning by Hon'ble Chief Justice vide order dated 19.09.2021.
3	408/2019 dt. 07.06.2019	No.1501281/2016 (State of MP vs. Umaravlal)-Passed orders in Cr. Non-recordable Case despite counter cases are pending adjudication.	Non-recordable Warning dated 19.09.2021 by Hon'ble Chief Justice.
2020			
4	354/2020 dt. 24.07.2020	Remained not punctual despite repeated warnings	Advised not to leave the headquarters without prior permission and to sit on the dais on time and not to leave the dais before court working hours vide order dated 28.01.2023 by Hon'ble Chief Justice.
5	495/2020 dt. 09.10.2020	Granted bail in a non-bailable offence and making alteration in the order sheet	Warned to remain careful and vigilant in future while passing the bail orders and not to repeat the mistake as committed by her while passing bail order for offence u/s 304 IPC in Crime No.

S.NO	COMPLAINT NO. & DATE	COMPLAINT	ACTION
			122/2020 of PS Obedullaganj, vide order 14.02.2023 by Hon'ble Chief Justice.
		2021	
6	127/2021 dt. 24.02.2021	Misbehaviour towards colleagues and seniors	File the complaint with an advice to Ms. Sarita Choudhary that she mend her behavior towards her seniors and should remain careful in future, vide order dated 03.08.2022 by Hon'ble Chief Justice.
7	130/2021 dt. 02.03.2021	Rude behaviour with advocates, staff, parties/ witness/prosec ution including not taking interest in judicial work.	Advised to be careful, vigilant while dealing with the cases and to make sincere efforts to dispose of the same as early as possible, vide order dated 22.03.2023 by Hon'ble Chief Justice.
8	Registrar General note-sheet 12.11.2021		Order 05.08.2020 – case deferred and a special report called for from the concerned District and Sessions Judge. Report sent to Joint Registrar on 04.12.2021

S.NO	COMPLAINT NO. & DATE	COMPLAINT	ACTION
		2022	
9	81/2022 dt. 12.01.2022	Procedural lapses and inappropriate behavior with advocates, parties/witnesses affecting dignity of the court.	Warned to be careful in future and lapses should not be repeated in future, vide order dated 22.03.2023 by Hon'ble Chief Justice.
10	468/2022 dt. 17.05.2022	Complaint by Advocate that Petitioner has done work against the dignity of the Court on 19.04.2022 Petitioner contends that this complaint was never communicated to her and cannot be used to her detriment	As per note-sheet dated 30.09.2022, the Hon'ble Chief Justice directed that the complaint be filed.
11	877/2022 dt. 29.09.2022	Re: Misbehaviour with the Advocate in RCT No.310/2019 (*State vs. Kanhaiya Lal*)	Advisory by Hon'ble Chief Justice to maintain cordiality vide Order dated 27.04.2023
12	992/2022 dt. 21.12.2022	Failed to monitor sensitive/	File be kept in abeyance by order of Hon'ble Chief Justice dated 28.06.2023

S.NO	COMPLAINT NO. & DATE	COMPLAINT	ACTION
		suspicious files/ cases	
2023			
13	174/2023 dt. 15.03.2023	Inappropriate post in social media (Facebook)	File be kept in abeyance by order of Hon'ble Chief Justice dated 28.06.2023
14	271/2023 dt. 29.04.2023	Certain acts of the Judicial Officer affecting the dignity of the post	File be kept in abeyance by order of Chief Justice dated 14.05.2023
15	286/2023 dt. 08.05.2023	Unauthorized absence from office.	Matter/Complaint be kept in abeyance as per note dated 14.05.2023 of PPS.

Re: Aditi Kumar Sharma - W.P.(C) No. 233/2024:

4. It is pertinent to narrate the facts relevant to the career trajectory and termination of Petitioner-Aditi Kumar Sharma in W.P(C) No.233/2024. On 25.10.2018, Petitioner-Aditi Kumar Sharma was appointed and later posted as Trainee Judge at Rajgarh, Madhya Pradesh on probation for two years or till further orders. The petitioner's ACR for the period 01.01.2019 to 31.12.2019 was graded with a final grade of 'B – Very Good'. It was observed that the petitioner possessed good capacity to do

judicial work, good reputation and character, and was overall a very good Judge.

4.1 The Petitioner-Aditi Kumar Sharma was appointed as First Civil Judge, Class-II, at Satna in the regular court on 22.06.2020. In ACR for the period being 01.01.2020 to 31.12.2020, the petitioner was graded 'C-Good'. The petitioner's marshalling of evidence, legal reasoning and consideration of law was appreciated. It was also observed that petitioner-Aditi Kumar Sharma had made sincere efforts to minimize pendency of civil and criminal cases.

4.2 A perusal of the ACR for 01.01.2021 to 31.12.2021 reveals that this petitioner was again awarded the grade 'C – Good' for the year. While the District and Principal Sessions Judge had awarded the grade 'B-Very Good', notably, the Portfolio Judge (High Court Judge) lowered the grading to 'C – Good' considering the pendency and disposal.

4.3 ACR for the year 2021 also notes that the petitioner-Aditi Kumar Sharma exhibited good conduct of business in court and with the office staff. However, a complaint bearing no.75/2021

dated 01.02.2021 was filed alleging the petitioner wrongfully adjourned Civil Suit No.4A/2015 titled, "*Ramashankar Pandey vs. Beva Rachil*". The inquiry Officer found the allegation to be not proved.

4.4 The same ACR also appreciated her to be a sincere and punctual judicial officer who successfully ensured regular entry and uploading of accurate and complete data. Her quality of judgments was also appreciated to be very good. Additionally, her capacity to lead, manage, plan and decision making was noted to be good.

4.5 It must also be noted that the petitioner-Aditi Kumar Sharma earned total 220.50 units within 162 standard working days. However, she earned only 22.9 civil units.

4.6 For a contextual appreciation of the unit value earned by the petitioner-Aditi Kumar Sharma, our attention was drawn to the fact that the she had a tumultuous time in the year 2021. At that point, she was given charge of a vacant court whose effective functioning even worsened due to the global pandemic. In 2020, this petitioner got married on a short notice and was hospitalized

in ICU for treatment of Covid at Chirayu Hospital, Bhopal. The petitioner was hospitalized for a period of eleven days with further prescription of bed rest for more than ten days after getting discharged. Furthermore in 2021, in the month of January, the petitioner's brother was diagnosed with blood cancer and soon thereafter, in the month of March, the petitioner herself suffered a miscarriage. Such practical realities both inside and outside the courtroom would certainly merit consideration of this Court.

4.7 Our attention was drawn by learned counsel for the respondents to the fact that her ACR for the period 01.01.2022 to 31.12.2022 witnessed a demotion to the grade of 'D – Average'. While the ACR for 2022 noted that although petitioner had been at the same posting from 26.05.2020, a total of only 28 contested regular cases were disposed of in 2022 and no remarkable work was noticed in her duties as junior-in-charge of filing section.

4.8 It was also noted that despite 1500 number of cases on average pending for adjudication before her Court, the total number of contested and uncontested cases disposed of by her in the entire year of 2022 was less than 200. To explain the low

disposal rate and less units earned, the petitioner attributed the same to less number of cases ready for disposal, absence of witnesses, non-service of notices, warrants, etc. However, these reasons were found to be not satisfactory in relation to lesser units earned by her.

4.9 In 2022, following complaints were registered against the petitioner-Aditi Kumar Sharma which merit our perusal.

(i) Complaint No. 251/2022 dated 24.02.2022 was filed alleging that the name of the petitioner was mentioned in Crime No.284/2021 registered on behalf of the petitioner's sister to create influence on the police.

(ii) It was alleged in another Complaint No.664/2022 dt. 28.07.2022 that in response to objections raised against petitioner's dogs defecating in front of complainant's house, the petitioner used abusive words and released her dogs behind the complainant. *Vide* Order dt. 17.12.2022, the Chief Justice of the High Court directed that permission regarding taking criminal action against the petitioner may not be given.

(iii) Complainant in Complaint No.775/2022 dt. 22.09.2022 alleged that the petitioner did not record the statement of complainant in UNCR 27/2022.

(iv) Complaint No.776/2022 dated 22.09.2022 again alleged misconduct in the courtroom. It was alleged therein that in UNCR 25/2022 & 26/2022, unnecessary comments were recorded by the petitioner in the order sheet due to sheer animosity. As a consequence, petitioner was advised to mend her behaviour in order to maintain cordial relations with the Bar. Files for both these complaints alleging poor conduct in the courtroom were kept in abeyance by order of the Chief Justice of High Court dated 26.07.2023.

4.10 On 23.12.2022, the sitting Principal District & Sessions Judge prepared an Annual Inspection Report which recorded this petitioner's marshalling and appreciation of evidence as proper and generally observed that judicial work of the petitioner appeared to be 'excellent'. However, on the very next day another complaint dt. 24.12.2022 was filed against the petitioner. We

need not delve into the same as it was not considered by the Full Court in coming to its decision.

4.11 During the year 2022, petitioner-Aditi Kumar Sharma earned only 44.16 units towards civil cases and 269 units for criminal cases. Cumulatively, her unit value, a measure of work done, was 1.68 units per day for 228 working days. Post adjusting a total of thirteen days as medical leave and 01 day for training out of 220 working days, her final work done was 1.86 units per day, which the ACR notes to fall under the 'poor category'.

4.12 Notably, the Portfolio Judge, commenting on her ACR, specifically recorded that the petitioner lacked in her management skills and must drastically improve to achieve targets. Subsequently, on 31.03.2023, the High Court of Madhya Pradesh transferred the petitioner to District Tikamgarh, where she assumed charge and served as V Civil Judge, Junior Division until her termination.

4.13 For ready reference, petitioner-Aditi Kumar Sharma's Unit Value for each ACR is tabulated as under:

UNIT VALUE

YEAR	UNIT VALUE
2019	Trainee Judge
2020	1.95
2021	1.36
2022	1.86
2023	4.80

LIST OF COMPLAINTS

SR. NO.	COMPLAINT NO. & DATE	COMPLAINT	ACTION
		2021	
1	Complaint No. 75/2021 dt. 01.02.2021	Judicial officer was alleged to have wrongfully deferred/adjourned Civil Suit No.4A/2015, titled '*Ramashankar Pandey vs. Beva Rachi*'	Inquiry Officer had not found allegation be proved.
		2022	
2	Complaint No. 251/2022 dt. 24.02.2021	In Crime No.284/2021, '*Anjali Chakravarti vs. Subrat Chakravarti*', name of Aditi Singh Kumhare (Sharma) Civil Judge Class-II, Satna who is the sister of Anjali Chakravarti is mentioned in the FIR to create influence on the police	File to be kept in abeyance as per order of the Chief Justice dated 27.06.2023
3	Complaint No. 664/2022 dt. 28.07.2022 & 26.04.2023	Complainant objected to the act of allowing dogs of Ms. Aditi Kumar Sharma, Judicial Officer directed that permission to defecate in front of complainant's house. On 22.07.2022 around 8:00 pm, she used	Chief Justice *vide* order dated 17.12.2022 directed that permission regarding taking criminal action against the judicial officer may not be

SR. NO.	COMPLAINT NO. & DATE	COMPLAINT	ACTION
		abusive words and released her dogs behind the complainant by untying the rope.	given and the complaint be filed. Since terminated, hence, file be kept in abeyance by Order of Chief Justice dated 05.08.2023.
4	Complaint No.775/2022 dt. 22.09.2022	In UNCR 27/2022 judicial officer is alleged to have not recorded statement of the claimant and also erred in functioning of the court.	File be kept in abeyance by order of Chief Justice dated 27.06.2023
5	Complaint No.776/2022 dt. 22.09.222	In UNCR 25/2022 & 26/2022, judicial officer recorded unnecessary/ uncalled for comments against the advocate in the order sheet due to animosity.	PR(V) proposed to advise Sushri Aditi Sharma, I-CJ. Jr. Division, Satna to mend her behavior in order to maintain cordial relations between the Bar and Bench. File be kept in abeyance by order of Hon'ble Chief Justice dated 27.06.2023
6	Complaint No.10/2023 dt. 24.12.2022	In Civil Suit No.26/2014, titled '*Kali Prajapati vs. Soniya Prajapati*' the judicial officer failed to pass judgment since February, 2022 despite written arguments filed by both parties.	The 6th complaint dated 24.12.2022 does not appear to be part of the consideration by the administrative side.

Submissions of learned Amicus Curiae – Sri Gaurav Aggarwal, Senior Advocate:

5. In Suo Moto Writ Petition (C) No.2 of 2023, Sri Gaurav Aggarwal was appointed as the Amicus to assist this Court by the order of the Hon'ble the Chief Justice of India. He has made his submissions in respect of both petitioners.

Re: Sarita Choudhary:

5.1 Learned Amicus submitted that Ms. Sarita Choudhary was appointed as a Civil Judge, Class-II (Entry level) *vide* order dated 28.12.2016 in Madhya Pradesh Judicial Service for two years or on temporary basis till further orders. Initially, she was a trainee Judge and was posted to a regular court with effect from 05.02.2018. In July, 2020, her confirmation was deferred owing to pending complaints and on 26.05.2023, she was terminated from service. Thus, she served for a period of six years and four months on probation. That the State Government order dated 13.05.2023 recorded that the concerned judicial officer had not utilised her probation period successfully and satisfactorily and having regard to the record of her ACRs, assessment chart and other materials, the services of the judicial officer were dispensed

with. Pursuant to the direction of this Court, the Full Court of the Madhya Pradesh High Court reconsidered the matter and noted that there were complaints made against Ms. Sarita Choudhary and therefore, the earlier view of termination could not be revoked and hence, it resolved to reiterate the resolution dated 13.05.2023.

5.2 Referring to the ACRs for the years 2017 to 2022, learned Amicus contended that the adverse remarks for the year 2020 ought not to have been taken into consideration as the representation given by the concerned judicial officer was pending at the time when the decision was taken by the Full Court on 13.05.2023. The representation was rejected on 13.12.2023 i.e. after termination. The adverse remarks for the year 2021 ought not to have been taken into consideration as the said adverse remarks were communicated to the judicial officer on 09.10.2023 i.e. after her termination. It is contended that the non-communication of the adverse remarks in the ACRs was arbitrary and violative of Article 14 of the Constitution of India.

5.3 It was further submitted by learned Amicus that the ACR of Ms. Sarita Choudhary had substantially improved which fact ought to have weighed with the Full Court on 01.08.2024 when there was a reconsideration of her case pursuant to the order of this Court.

5.4 It was next submitted that the unit value of the judicial officer in the year 2022 was lesser than the previous years for which there was an explanation offered by her citing the following reasons:

(i) that number of civil cases in court was very less and all of them were transferred to another court.

(ii) the number of criminal cases in her court also reduced.

(iii) that on 18.01.2022, there was an order for transfer of criminal cases from her court to another court from November, 2019, when the officer had already conducted the proceedings.

(iv) that the above factors affected the workload making it difficult to reach the target unit value. Most of the cases pending in her court were at preliminary stage.

(v) Also, due to non-allotment of the police station, fresh cases could not be allotted to her thereby the unit points earned was reduced.

(vi) Securing the presence of the parties especially retired persons and migrant labourers became difficult as the parties were residing in other States.

(vii) Therefore, it was the submission that the low unit value of the year 2022 could not have been the basis for holding that the judicial officer had not completed her probation satisfactorily.

5.5 With regard to the complaints made against Ms. Sarita Choudhary, it was contended that the Full Court Resolution dated 01.08.2024 has referred to the said complaints. Two complaints are pending and nine complaints have been closed in the form of advisories, non-recordable warnings or warnings. That none of the complaints could have been the basis for the termination of the judicial officer. That the pending complaints are not serious inasmuch as the first complaint concerned the non-monitoring of the work of the two clerks in the court and the second related to an innocuous facebook post.

5.6 In the above context, reliance was placed on ***Anoop Jaiswal vs. Government of India, (1984) 2 SCC 369 ("Anoop Jaiswal")*** to contend that it is open for the court to go behind the form and ascertain the true character of the termination order to see whether in reality, it is a cloak for an order of punishment. This is because in the case of misconduct, Article 311(2) of the Constitution would be attracted and an inquiry has to be conducted in the first instance. The aforesaid decision has been followed by this Court in ***Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basis Sciences, Calcutta, (1999) 3 SCC 60 ("Dipti Prakash Banerjee"),*** and recently in ***Swati Priyadarshini vs. State of Madhya Pradesh, 2024 SCC OnLine SC 2139 ("Swati Priyadarshini").***

5.7 It was submitted by the learned Amicus that possibly the warnings and advisories given to the concerned judicial officer may have been the basis for the termination which is founded on alleged misconduct. That this judicial officer had worked for over six years and her unit value was also good. There was no doubt on her integrity and her work also improved in the year 2022.

Therefore, this officer ought to be given an opportunity just as other four judicial officer have been given by the Madhya Pradesh High Court.

5.8 It was submitted that the non-confirmation of a judicial officer who is on probation and consequent termination is subject to judicial review.

Re: Aditi Kumar Sharma:

6. Learned Amicus Curiae submitted that Ms. Aditi Kumar Sharma joined duty on 30.11.2018 as a trainee judicial officer appointed as Civil Judge Class-II. She was posted in regular court from 22.06.2020 and was terminated on 26.05.2023. That on 08.05.2023 and 10.05.2023, the Administrative Committee of the Madhya Pradesh High Court met to discuss the performance of 393 Civil Judges which resulted in the termination of this judicial officer, amongst others.

6.1 Learned Amicus submitted that for the year 2019, this petitioner received "B-Very Good" grading and for the years 2020 and 2021, "C-Good" grading, while for the year 2022, the grading was "D-Average". The said grading could not have been taken

into consideration as the same was approved by the Chief Justice of the High Court on 11.07.2023 i.e. after the termination dated 26.05.2023. The adverse remark for the year 2022 was communicated to this officer by letter dated 23.01.2024, six months after her termination.

6.2 Insofar as the low unit value of this officer is concerned, the following submissions were advanced:

(i) That for the years 2020 and 2021, despite the disposal rate being 1.95 and 1.36, this judicial officer had "C-Good" in the said years.

(ii) That owing to Covid-19 pandemic, the High Court had waived the target of the requisite unit value *vide* Circular of the High Court dated 03.12.2020.

(iii) For the year 2021, the High Court reduced the unit value requirement to 50 per cent. Moreover, this judicial officer had submitted her detailed explanation for the low disposal in the year 2021. Similarly, an explanation was offered for the year 2022.

(iv) From January to April, 2023, the unit value of this judicial officer was 4.80 (for four months only). Thus, the performance of this officer had improved considerably.

6.3 It was submitted that if the conduct and the quality of performance of the officer has been good and her reputation is also good, mere low disposal should not be the reason for termination. The High Court ought to have made a concession for newly appointed judicial officer. Hence, this Court may consider the correctness of the termination of this officer and give another opportunity to her to prove herself.

6.4 As far as the complaints against this officer are concerned, the first complaint was by one Ramashankar Pandey and on a discrete enquiry conducted by District Judge (I) Inspection, Jabalpur, this officer was advised to maintain cordial relations between the Bench and the Bar. This advice had been approved by the Portfolio Judge and the file has not yet been placed before the Chief Justice of the High Court. This advice has neither been communicated to this officer nor has she had an opportunity to represent against the proposed advice.

6.5 The second complaint was made by one Devrath Chakraworthy who is a litigant and an inquiry into the same was found to be baseless. Therefore, this complaint could not have been the basis for consideration of the case of the judicial officer. The third complaint made by one Advocate Sukhendra Kumar Pandey was that the statement of the complainant was not recorded. No steps has been taken on the said complaint.

6.6 It was next submitted that the order of the termination of this officer is not termination *simpliciter* but appears to be stigmatic. Therefore, this case would call for closer scrutiny. It was further submitted that the termination of this officer must be vitiated as despite having very good and good ACRs for the initial years and for the year 2022, the grade 'D-Average' was not communicated to her. Consequently, this officer has been denied the opportunity to represent against adverse remarks. Since, this officer had shown remarkable improvement in the year 2023, the low rate of disposal of cases could not have been the sole factor for termination of this officer.

6.7 Further, the complaints could not have been the basis for termination inasmuch as if the allegation against misconduct of the judicial officer is not followed by an inquiry but is the basis of termination then, the purported termination *simpliciter* could be interfered with. The court could go behind the form and ascertain the true character of the order by lifting the veil. In this case, it was also contended that the protection of Article 311(2) ought to have been provided to this officer as has been held in ***Registrar General, High Court of Gujarat vs. Jayshree Chamanlal Buddhbhatti, (2013) 16 SCC 59 ("Jayshree Chamanlal Buddhbhatti").***

6.8 Learned Amicus Curiae submitted that the cases of both the aforesaid officers may be considered favourably by setting aside the termination order and granting them an opportunity to fare themselves better by allowing these writ petitions with appropriate conditions.

Submissions on behalf of the Petitioner-Sarita Choudhary:

7. Learned senior counsel, Sri Basant appearing for the petitioner, at the outset, contended that the High Court was not right in not declaring the successful completion of probation of

the petitioner-Ms. Sarita Choudhary and consequently, she has been subjected to discrimination and arbitrary action on the part of the High Court.

7.1 We might note at the outset that learned senior counsel for the petitioner drew our attention to Rule 11 of the Recruitment Rules which provides that the probation period 'shall' not be extended beyond three years from the date of appointment/joining.

7.2 Sri Basant contended on behalf of the petitioner-Sarita Choudhary that the low unit value for year 2022 being 3.35 can be explained *inter alia*, by several reasons; *firstly*, the number of civil cases in the court were very less and absolutely NIL after transfer of cases; *secondly*, the criminal matters which she had brought to the stage of disposal since November 2019 were transferred to another Court on January 18, 2022 and the remaining matters could not be disposed of by the petitioner; *thirdly*, no police station was allotted to the petitioner which curtailed new and miscellaneous judicial work, and resultantly new charge sheets and summary cases were not filed. Consequently, there was reduction in units earned.

Furthermore, petitioner submitted that most of the cases (3 years or less than 3 years old) pending in her court were at the preliminary stage. It was also contended that for the year 2022, the petitioner was not in charge of any section till December 7th, 2022. The efficiency of the petitioner was even hampered due to court employees regularly taking casual leave without prior notice. Similarly, there was only one typist at the dais in the court which severely hurdled court proceedings. Petitioner's learned senior counsel further submitted that despite being directed, the execution clerk would not facilitate referral of mediation cases. Furthermore, it is also submitted that it was laborious and time-consuming to seek the presence of parties, as several were migrant labourers and drivers working in areas other than Raisen district, and employees residing in other States, etc.

7.3 As far as the ACR for the year 2020 is concerned, it was submitted that petitioner had given a representation against said ACR but it was pending consideration as on the date of her termination. It was also contended that the actions of Respondent-High Court are in violation of principles of natural

justice as the ACR for 2021 was communicated to the officer only after her termination.

7.4 Inferring from the reply of the respondent-High Court filed before this Court, learned senior counsel for the petitioner contended that it was mentioned before the Administrative Committee that two complaints were pending against the petitioner. In respect of the first complaint, the petitioner has voraciously highlighted that although the subject matter of the complaint is grave as it involves 321 suspicious cases the allegation *qua* the petitioner is only of not monitoring the work of execution clerks. The petitioner was given an opportunity to explain and the same was submitted on 06.04.2023. As for the pending complaint concerning the post put up by the petitioner on WhatsApp, it was contended that no explanation was called from her.

Submissions on behalf of Petitioner-Aditi Kumar Sharma:

8. Ms. Indira Jaising, learned senior counsel appearing for the petitioner-Ms. Aditi Kumar Sharma, in the first instance, contended that her party has been subjected to discrimination

inasmuch as four of the Judicial Officers have been reinstated but not her by the High Court.

8.1 Learned senior counsel sought to contend that a holistic perusal of the petitioner's ACRs would establish that the petitioner indeed was suitable for confirmation and that the failure to confirm her by relying on irrelevant and insufficient material is bad in law. Learned senior counsel also contended that any conclusion drawn must not be punitive and be based upon a holistic appreciation of petitioner's service record. It is therefore prayed that this Court may quash and set aside the impugned order of termination for being perverse and illegal; direct the petitioner's reinstatement as a permanent judicial officer with full back wages, continuity in service and seniority.

8.2 Emphasizing on the integral and compendious nature of ACRs as the primary documents determining a public servant's suitability in services, the petitioner emphasized that, notably, there are no minimum criteria for earning units that must be fulfilled for an officer to be confirmed.

8.3 The manner of preparation and approval of an ACR was adverted to. Upon filling up of the ACR by a judicial officer based on his/her self-assessment, it is graded by the reporting authority i.e. the Principal District Judge. Thereafter, the same is reviewed by the Portfolio Judge who is a High Court Judge. Finally, the ACR is placed before the Chief Justice for acceptance.

8.4 It was submitted in respect of the ACR for 2019 that after approval from the Portfolio Judge and the Chief Justice the petitioner was finally graded 'B-Very Good' in the year 2019. For the year 2020, the petitioner was graded 'C-Good' in the ACR and she is aggrieved by alleged 'incorrect and misleading data' presentation of disposal units in the Assessment Chart placed before the Administrative Committee. The Assessment Chart showed the disposal rate for the entire year of 2020 as 1.95 units. The petitioner contended that an accurate picture is gleaned from the distribution between pre-Covid (from 1st January to 11th June 2020) and post-Covid (from 13th June to 31st December 2020). Our attention was drawn to the adverse remarks column in the Assessment Chart which records the pre-

Covid disposal as 0.24 and post-Covid disposal to be 0.67. It was however contended that disposal for the post-Covid period should accurately reflect 6.99 units earned by the petitioner which would, as per the relevant circular, fall under the category of "Very Good". Reliance in this regard is placed on the '*Statement Showing the Net Disposal*' forming part of the ACR for year 2020.

8.5 It was also emphasized that in light of Covid-19, the High Court had waived the unit value requirement for the year 2020. As a corollary, the petitioner would submit that no weight should be given to any adverse remarks stemming from low unit value in the year 2020.

8.6 Both Petitioners highlight that the Covid years - 2020 and 2021 - were particularly cumbersome for the judicial system inasmuch as disposing of cases and other work done was concerned. According to the Petitioner, for the year 2021 the High Court had given 50% relaxation in unit value. Therefore, it was contended that if benefit of extra 1.50 is given to the petitioner-Aditi Kumar Sharma, the unit value for 2021 will increase to 2.86.

8.7 We need not repeat the practical difficulties endured by petitioner-Aditi Kumar Sharma in 2021. Learned senior counsel for the petitioner argued that the low unit value and any other deficiency for the year must be seen in light of the trials and tribulations faced by this petitioner.

8.8 On the aspect of grade B-Very Good – awarded by the Principal District Judge – relegated to C-Good by the Portfolio Judge citing "*pendency and her disposal*" in petitioner's ACR for 2021, the petitioner contended that such relegation was approved by the Chief Justice on 13.04.2023 i.e. post an excessively inordinate delay of more than one year. The inordinate delay, according to the petitioner, deprived her of improving in a timely manner and therefore negatively impacted her future assessments.

8.9 Furthermore, it is submitted that despite Covid-19 limitations on functioning of courts, the Principal District Judge remarked her performance to be 'good' in the "quantity of work" section of the Report even though she earned only 22.9 civil units as, summarily, she earned sufficient units over 162 working days.

8.10 Furthermore, the petitioner also contended that there was a violation of principles of natural justice. It was argued that the petitioner was never given an opportunity to furnish an explanation against the "adverse remark" noted in the ACR, which was eventually considered by the Administrative Committee for recommending the termination of her services. The fact that the Registrar General of the High Court, on 07.10.2023, by way of a communication gave an opportunity to the petitioner to file a representation explaining the "adverse remarks" from the ACR for 2021 is relied upon by the Petitioner to contend that prior to October 2023, the petitioner was never given an opportunity to file a representation; that such an adverse remark did not warrant termination; and that there was complete non-application of mind at the stage of termination. The adverse remark noted stated that "... she has earned only 22.9 civil units."

8.11 In respect of the ACR for 2022, the petitioner-Aditi Kumar Sharma submitted various grounds before the High Court, *inter alia*, excessively large number of interim applications prolonging disposal of civil matters, prioritizing matters older

than 3 years, etc. It was preliminarily submitted that the Administrative Committee in its meetings in May 2023 should have never considered the ACR of 2022 as the same would not finalised by the accepting authority i.e. the Chief Justice till July 2023.

8.12 Furthermore, it was contended that the ACR for 2022 was not prepared by petitioner's Principal District Judge or his successor or the second senior-most judge who had supervised the petitioner for three months but was prepared by the Principal District Judge of Ratlam by virtue of her being the District Judge (Inspection) of the Jabalpur Zone during the relevant period *vide* D.O letter issued by the Registrar General of the High Court of Madhya Pradesh. According to the letter, Smt. Anuradha Shukla was authorized to act as the Inspection Judge of District Satna for the year 2023. Petitioner challenges the evaluation by the District Judge by contending that the District Judge was not competent to evaluate the petitioner; that the District Judge did not have any opportunity to personally evaluate the performance of the Petitioner; that, consequently, petitioner was graded solely on the basis of units earned dehors any holistic evaluation of

other factors such as conduct of business, quality of judgment writing, etc.; that the Principal District Judge of the Petitioner who personally evaluated the petitioner had assessed her judicial work to be 'excellent' in December 2022 in the Annual Inspection Report of the Petitioner.

8.13 Therefore, according to the petitioner, it is apparent that on the date the Committee met, this ACR was neither final nor communicated to the Petitioner, and yet the "adverse remarks" and grading of 'D – Average' appearing therein were taken into consideration by the Committee while terminating her services.

8.14 Although it was contended by the learned counsel appearing for the High Court of Madhya Pradesh that the Administrative Committee of the High Court had arrived at the decision to terminate the services of petitioner-Aditi Kumar Sharma on a holistic appreciation of her ACRs and service, the petitioner has vociferously contended that the termination is not *simpliciter* in nature but is founded upon the complaints which were made against the petitioner. It is not out of place to note here that according to petitioner, even as far as her worst ACR of the year 2022 is concerned, the Principal District and Sessions

Judge, Satna *vide* Annual Inspection Report dated 23.12.2022 assessed that the judicial work of the petitioner appears to be excellent.

8.15 In order to display her efficiency and commitment to the service, petitioner-Aditi Kumar Sharma also highlighted that the petitioner earned 4.80 units from January to April 2023 i.e. until her transfer to District Tikamgarh, which was 'Very Good'. The petitioner earned a total of 321.35 units and, specifically, 126.4 civil units – both categorized as 'Very Good'. The Petitioner contends that this shows significant improvement in units earned. This was during post-Covid period.

8.16 Furthermore, emphasis was laid on the fact that the petitioner had been found not guilty in three complaints out of the five placed before the Administrative Committee. Although she was found guilty in the discreet inquiries conducted in the remainder two complaints, it was contended that these inquiries violated the principles of natural justice as the petitioner was not given an opportunity to defend herself or to make a representation.

8.17 Learned senior counsel would contend that such deprivation of opportunity to defend herself signifies that the termination is stigmatic and violative of Article 311(2) of the Constitution, *vide* ***Khem Chand vs. Union of India, 1958 SCR 1080.***

8.18 According to her, the termination of the petitioner is punitive and not termination *simpliciter* as it was founded on complaints of misconduct and the finding of guilt in reports of full-scale inquiries. - *vide* ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520***

8.19 Therefore, it was contended that prior to her termination, the Petitioner should have been given an opportunity to be heard, *vide* ***Chandra Prakash Shahi vs. State of U.P, (2000) 5 SCC 152.***

8.20 Arguing from the factual record, it was contended that, in any event, the findings of these discreet enquiries are perverse as the petitioner was found guilty of misconduct in complaint no. 775/2022 despite the complaint being withdrawn by the complainant. Therefore, where there could have been no finding

of guilt, according to the Petitioner, only an advisory should have been given which, in fact, never was. As for Complaint no. 776/2022, it was advanced that the same was perverse as the statements of the witnesses recorded were not supported by affidavits, instead a piece of paper with the signatures of some advocates was annexed with the report. As per the petitioner, such a practice is unsustainable in law, *vide* ***Amar Singh vs. Union of India, (2011) 7 SCC 69***.

8.21 To support the submission that the termination is punitive, it was submitted that this Court can discern the reasons for the termination from the material on record and need not restrict itself to the reasons appearing on the order of termination. Our attention was drawn to the letter addressed by the High Court to the Law and Legislative Works Department dated 13.05.2023 recommending the termination of the petitioner which mentions that the Assessment Chart which contains the complaints and the finding of guilt formed part of the material taken into consideration by the Administrative Committee. Specifically, it was emphasized that the Assessment Chart was the only material annexed to the letter.

8.22 Learned senior counsel submitted that it is trite law that for an order of termination to be stigmatic the words casting stigma may also be contained in an order or proceeding referred to in such an order or in an annexure thereto. That being the case here, it was contended that the order must be construed as *ex facie* a stigmatic order of termination, as any such reference would inevitably impact the future prospects of the judicial officer, *vide* ***Dr. Vijayakumaran CPV vs. Central University of Kerala & Ors, (2020) 12 SCC 426***.

8.23 Furthermore, it was argued that an order may be stigmatic if perusal of the record discloses that other material was taken into consideration while proposing the action of termination, *vide* ***State of Bihar vs. Shiva Bhikshuk Mishra, (1970) 2 SCC 871*** and ***Shamsher Singh vs. State of Punjab, (1974) 2 SCC 831***.

8.24 Our attention was also invited to the Full Court's observation made while reconsidering the termination inasmuch as it stated that "considering the ACR Gradings, Disposal Statistics, Adverse Remarks, 'complaints made against them' and their overall performance", Full Court was of the view that the termination of the petitioner cannot be revoked. According to

the petitioner, this categorically establishes that the Committee acted on irrelevant material i.e. complaints were taken into consideration whilst ignoring relevant material, i.e., her good performance. It was contended that such decision making is bad in law as inquiries of these complaints were held behind the back of the Petitioner without giving her the reasonable opportunity to show cause *vide* ***Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, (1999) 3 SCC 60***.

8.25 It was also argued by learned senior counsel for the petitioner that even a probationer is entitled to the protection provided under Article 311(2) of the Constitution as the Article does not condition protection on permanency and is available to probationers alike, *vide* – ***Jagdish Mitter vs. Union of India, 1963 SCC OnLine SC 75 : AIR 1964 SC 449.*** It was contended that probationers require the protection of the Article as much as permanent employees do and to limit the protective provisions of Article 311(2) to only that class of persons who hold permanent positions would be adding qualifying words to the Article which do not *ex facie* exist, *vide* ***Parshotam Lal Dhingra***

vs. Union of India, AIR 1958 SC 36 ("Parshotam Lal Dhingra").

8.26 Learned senior counsel argued that at least soon after approval by the Chief Justice the "adverse remarks" should have been communicated to the petitioner along with an opportunity to respond to the same. It was contended that deprivation of such opportunity, as a corollary, also deprived the petitioner to make her case for the grading to be upgraded. It was also highlighted that a downgrade from a grading of "very good" in the previous year to "good" in the subsequent year is considered an "adverse remark" and must have been required to be communicated to the petitioner. - *vide* ***Abhijit Ghosh Dastidar vs. Union of India, (2009) 16 SCC 146***.

8.27 It was contended that though the Respondent-High Court has power to terminate the services of probationers under Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Services) Rules, 1994, this discretion cannot be exercised in an arbitrary manner, upon the subjective satisfaction of the High Court and in violation of principles of natural justice. Therefore, the termination order being against right and reason must be set

aside. - *vide* ***Central Inland Water Transport Corporation Limited vs. Tarun Kanti Sengupta, (1986) 3 SCC 156***.

8.28 It was also contended that the petitioner must be made a permanent judicial officer as the impugned action suffers from material illegalities and is liable to be set aside. The plea of the petitioner was that to direct the petitioner to serve on probation again would put her in a vulnerable position.

8.29 It was highlighted that as a constitutional spearhead over the District judiciary, High Courts have a duty to guide and protect judicial officers from concocted complaints. Furthermore, the High Court must aid and advance the improvement of judicial officers instead of using the mistake of a probationer as an excuse to terminate his/her services in the first instance. Relying on ***Ishwar Chand Jain vs. High Court of Punjab & Haryana, (1988) 3 SCC 370***, the petitioner argued that if even after warning and guidance a probationer fails to improve, then the High Court can terminate their services; however, this power must not be exercised arbitrarily.

8.30 Learned senior counsel finally contended that the District Judiciary will be stifled if judicial officers are forced to live under a constant threat of complaint and inquiry. Furthermore, as the termination herein was, in substance, by way of punishment and therefore bad in law, it needs to be quashed and the petitioner should be reinstated with seniority and back wages.

Submissions on behalf of the Respondent-High Court:

9. *Per contra*, Sri Arjun Garg, learned counsel appearing for the Madhya Pradesh High Court, at the outset contended that as per Rule 11(d) of the Recruitment Rules, even if the maximum period of probation has lapsed (two years), a probationer cannot be automatically confirmed without a specific order being passed by the High Court. Although the probationary period lapsed, the probation would continue till the High Court confirms the officer. In this regard, reliance was placed on ***High Court of Madhya Pradesh vs. Satya Narayan Jhavar, (2001) 7 SCC 161*** and ***Durgabai Deshmukh Memorial Senior Secondary School vs. JAJ Vasu Sena, (2019) 17 SCC 157***.

9.1 It was next submitted that a probationer can be discharged without any notice or opportunity of hearing or without

conducting any inquiry under Article 311 of the Constitution of India. Reliance was placed on ***Rajasthan High Court vs. Ved Priya, (2021) 13 SCC 151 ("Ved Priya"); High Court of Judicature at Patna vs. Pandey Madan Mohan Prasad Sinha, (1997) 10 SCC 409 ("Pandey Madan Mohan Prasad Sinha")*** and ***Satya Narayan Athya vs. High Court of Madhya Pradesh, (1996) 1 SCC 560***. Further, it was contended that a discharge *simpliciter* or cessation of service of an employee during probation would not cast any stigma on the employee. The service rules do not contemplate any prior notice or opportunity of hearing before discharge or termination of a probationer. The following judgments were relied upon ***Pavanendra Naryana Verma vs. Sanjay Gandhi PGI of Medical Science, (2002) 1 SCC 520;*** and ***Rajesh Kohli vs. High Court of Jammu and Kashmir, (2010) 12 SCC 783***.

9.2 It was contended that in the case of a probationer, the overall record must be considered. This would include the entries in the confidential reports/character rolls/vigilance reports, both favourable and adverse. The confirmation of probationer is purely a matter subject to the satisfaction of the High Court.

Further, unless there is a direct nexus between the charges levelled and action taken, a mere preliminary inquiry or examination of the complaints against the probationer for assessment for his overall performance would not vitiate an order of termination so as to make it punitive. The employer need not conduct an inquiry but at the same time, he can terminate the employee if he does not want him to continue in view of the complaints against him. In such a case, the termination is not punitive. Reliance was placed on the following judgments:

a. ***Registrar, High Court of Gujarat vs. CG Sharma, (2005) 1 SCC 132.***
b. ***Rajesh Kumar Srivastava vs. State of Jharkhand, (2011) 4 SCC 447.***
c. ***Governing Council of Kidwai Memorial Institute of Oncology, Bangalore vs. Dr. Pandurang Godwalkar, (1992) 4 SCC 719.***
d. ***Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, (1999) 3 SCC* 60.**

9.3 It was lastly contended that the judicial service in a district falls under the control of the High Court under Articles 233-235 of the Constitution and therefore, if the High Court found an officer not to be suitable, the said opinion has to be regarded and acted upon by terminating the officer concerned

from service even if the probation has not been successfully completed. In this context, reliance was placed on ***Ved Priya,*** and ***Dipti Prakash Banerjee.***

9.4 On facts, learned counsel for the respondent contended that the petitioner-Aditi Kumar Sharma was not entitled to the benefit of additional 1.5 units for the year 2021 as the same is provided for a period of two years from the date of her joining. As the petitioner-Aditi Kumar Sharma joined service on 15.11.2018, two years would have completed on 15.11.2020 and therefore, the benefit of 1.5 units cannot be extended to her for the year 2021.

9.5 Furthermore, it was contended that petitioner-Aditi Kumar Sharma was indeed allocated adequate number of criminal cases and it was not open for her to suggest that her unit value for criminal cases was hindered due to insufficient number of criminal cases pending in her court.

9.6 Learned counsel also apprised us of the fact that four out of the five complaints made against the Petitioner are kept in abeyance and a singular complaint was disposed of with only a

direction to the complainant to take criminal action against the petitioner as the complainant deems fit. It was therefore contended that it is not open to the petitioner to contend that petitioner was dismissed based on false, frivolous and malicious pending complaints.

9.7 Learned counsel appearing for the High Court placed significant reliance on the position that the decision to terminate the services of the petitioners-probationary judicial officers herein had been taken based on a comprehensive view formed on a holistic and overall performance of the judicial officers rather than any specific misconduct.

9.8 To elaborate that there was no exclusive link between the complaints and termination, it was contended by learned counsel that there was no request made for termination in any of the complaints. In the context of the complaint that from September 2022, petitioner had a poor conduct and acrimony with members of the Bar within the courtroom, it was submitted that a discreet enquiry was conducted by the then District Judge (Inspection) Jabalpur. While the petitioner was found guilty as per the report of the District Judge, the final suggestions were

submitted to the Principal Registrar (Vigilance) of the High Court. Thereafter, on 28.03.2023, the Principal Registrar (Vigilance) thought it sufficient to merely advice the petitioner-Aditi Kumar Sharma to behave “properly with fellow advocates and maintain cordial relations between the Bench and Bar". At this juncture, it was again argued that the question of terminating the petitioner was neither raised nor suggested. Furthermore, as the services of the Petitioner had already been terminated on 23.05.2023 i.e. before the conclusion of enquiry, the file was kept in abeyance.

9.9 Without prejudice to the aforesaid factual position, it was also contended that it is trite law that a probationer can assert no indefeasible right to continue in employment until he/she is confirmed by the competent authority. It was also summarily argued that the subjective exercise of evaluating the performance of two judicial officers during probation could not possibly be, in the facts herein, held to be either violative of any fundamental right of the petitioners or as arbitrary exercise of power by the High Court.

9.10 Insofar as the controversy over the presiding officer for ACR of year 2022 is concerned, learned counsel for the respondent-High Court submitted that while ordinarily the ACR for the petitioner-Aditi Kumar Sharma - posted as Civil Judge, Junior Division, Satna during the period from 22.06.2020 to 09.04.2023 - would be recorded by the then Principal District & Sessions Judge, Satna, however, since Shri Ramesh Srivastava, the then Principal District & Sessions Judge, Satna, was to be superannuated on 31.12.2022, Smt. Anuradha Shukla, the then District Judge (Inspection), Zone Jabalpur was authorized by the High Court of Madhya Pradesh to record ACR of Judicial Officers of district Satna in compliance with the order of the Chief Justice of Madhya Pradesh High Court dated 21.12.2022.

9.11 It was further contended on behalf of the respondent-High Court that it is a consistent position of this Court that the conduct of judicial officers while discharging their responsibilities must be impeccable and judges must act as role models for the entire judicial system. - *vide* ***Arundhati Ashok Walavalkar vs. State of Maharashtra, (2011) 11 SCC***

324; *and* ***Ram Murti Yadav vs. State of U.P., (2020) 1 SCC 801.***

9.12 It was further submitted that the objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and suitability. For the said evaluation, the employer can assess the overall performance. - *vide* ***Kazia Mohammed Muzzammil vs. State of Karnataka, (2010) 8 SCC 155.*** According to the respondent-High Court, this discretion is subject to subjective satisfaction and cannot be based only on objective material. In that regard, reliance was placed on the dicta of this Court in ***Ved Priya.***

9.13 Relying on the aforesaid judgment, it was also contended that unless the removal of a probationer is stigmatic and causes prejudice to their future prospect or casts aspersions on their character or violates their constitutional rights, they cannot seek protection under the umbrella of principles of natural justice. Notably, the case of the petitioners herein is that the termination order is stigmatic.

9.14 To distinguish the present case from ***Anoop Jaiswal*** it was submitted that, herein, there is no occasion for lifting of the veil, that is to say, go behind the termination order as the material on record amply shows that the order of termination is not punitive. It was submitted that the reference to complaints in the assessment chart is only as part of the overall record of the petitioner and neither the sole nor principal force behind termination. Therefore, the present cases are of termination *simpliciter* and not punitive termination. Reliance in this regard is again placed on the para 24 of ***Ved Priya.***

9.15 A related submission was that the present order of termination was borne out of routine confirmation exercise and not out of any specific action against the petitioners and merely because some complaints were pending cannot lead to the conclusion that those complaints only were the foundation of termination. On the relevance of closed complaints, it was submitted that complaints even though closed can be taken into consideration except when no truth is found in such complaints. Furthermore, a complaint being closed merely with advisory

issued would be crucial for an eventual determination of confirmation as they speak to overall performance.

9.16 Insofar as petitioner-Sarita Choudhary is concerned, it was submitted that she was given warnings repeatedly, year after year, on complaints ranging from misbehaviour, indiscipline, administrative and work related issues.

9.17 It was vehemently contended that a probationer neither has a right to continue in the post nor is a probationer a substantive appointee, therefore, would not strictly be protected by Article 311(2). In that regard, it was submitted that the termination orders being neither punitive nor based on any specific act of misconduct there was no need to serve any notice or grant any opportunity of hearing.

9.18 Learned counsel also contended that this Court in its writ jurisdiction does not sit in appeal over the decision of the Full Court. Relying on ***Ved Priya***, it was submitted that "*the collective wisdom of the Full Court deserves due respect, weightage and consideration in the process of judicial review*".

9.19 It was next submitted that non-communication of ACRs and no notice being served before discharge/termination is not fatal to the validity of the orders of termination. The delay in communication of ACRs was due to evaluation of representations called from the judicial officers for upgradation of ACRs for the period between 2016 and 2020. As the said exercise was completed only in 2023, adverse/advisory remarks were scrutinized and thereafter were communicated to the judicial officers resulting in delay. Furthermore, it was contended that there exists no obligation in law to communicate adverse material to a petitioner before the decision is taken since the petitioners herein did not hold any right to a post; therefore, principles of natural justice do not apply to such situations. Reliance in this regard was placed on ***Pandey Madan Mohan Prasad Sinha*** wherein this Court had to answer whether non-communication of remarks for some of the years served by a probationer would amount to a violation of principles of natural justice. Therein, adverse remarks in respect of some years were communicated only after the decision to terminate had been taken. Observing that a probationer does not have a right to hold

the post during the period of probation, this Court held that a *sine qua non* for questioning an order terminating the services of a probationer is arbitrariness or showing that it has been passed by way of punishment without complying with the requirements of Article 311(2) of the Constitution. It was held that lacking the right to hold the post on which a person has been appointed on probation, a probationer cannot claim a right to be heard before an order terminating his services was passed.

Points for Consideration:

10. Having heard learned Amicus and learned senior counsel for the petitioners and learned counsel for the respondents at length, the following points would arise for our consideration:

i) Whether the respondent-High Court was right in terminating the services of the petitioners? In other words, whether the cessation of services of the petitioners in the instant cases is punitive, arbitrary and therefore contrary to law?

ii) If the answer to the aforesaid question is in the affirmative, then what order?

11. Before proceeding to consider the individual cases, it would be useful to discuss the applicable Rule.

Rule 11 of the Recruitment Rules reads as under:

"11. Probation-

(a) A person appointed to category (i) of rule 3(1) shall, from the date on which he joins duty, be on probation for a period of two years.

(b) The High Court may, at any time, extend the probation, but the total period of probation shall not exceed three years.

(c) It shall be competent for High Court at any time during or at the end of the period of probation in the case of Civil Judge (Entry Level) to recommend termination of his service and in the case of Senior Civil Judge, to revert him on account of unsuitability for the post.

(d) On successful completion of probation, the probationer shall, of there is permanent post available be confirmed on the service or post to which he has been appointed and if no permanent post is available, a certificate shall be issued by the High court to the effect that he would have been confirmed, but for the non-availability of the permanent post and as soon as permanent post become available, he will be confirmed, if the High court decides that he has successfully completed the period of probation and he is suitable to hold the post."

11.1 The extract of the Minutes of the Meeting of the Administrative Committee (Madhya Pradesh Judicial Services) held on 08.05.2023 and 10.05.2023 by which services of six women judicial officers were terminated as per Rule 11(c) of the Recruitment Rules reads as under:

> "EXTRACT OF THE MINUTES OF THE MEETING OF ADMINISTRATIVE COMMITTEE (M.P. JUDICIAL SERVICE) HELD ON 08.05.2023 and 10.05.2023.
>
> xxx xxx xxx
>
> PART-3 & 4
>
> ITEM No.02. Consideration regarding confirmation of 393 temporary Civil Judges (Junior Division), completed probation period upto 31.12.2021 (01.01.2020 to 31.12.2021) under Rule 11 of the M.P. Judicial Service (Recruitment and Conditions of Service) (amended) Rules, 1994 along with 25 officers of previous consideration.
>
> D. Further resolved that following officers did not utilise their probation period successfully and satisfactorily, therefore having considered the ACRs, assessment chart, consistently poor performance/work done and other material, the Committee resolved to recommend that services of the following officers are no more required to be continued. Accordingly, it is resolved to recommend termination of services of the following officers as per Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Service) Rules, 1994:-

Sr. No.	Name of the Officers Sarvashri
1	Sushri Sarita Choudhary, II Civil Judge Jr. Division, Umaria
2	Smt. Jyoti Varkade, CJ, Jr. Division, Timarni [Harda]
3	Sushri Aditi Kumar Sharma, V CJ, Jr. Division, Tikamgarh
4	Sushri Sonakshi Joshi, VAJ To I CJ, Jr. Division, Morena
5	Sushri Priya Sharma, I CJ, Jr. Division, Dr Ambedkar Nagar [Indore]
6	Smt. Rachna Atulkar Joshi, II CJ, Jr. Division, Teonthar [Rewa]

Further resolved that the representation dated 07.10.2021 of Sushri Sarita Choudhary, II Civil Judge, Junior Division, Goharganj (Raisen) regarding confirmation in M.P. Judicial Service is disposed off in terms of above resolution of the Committee.

Let the matter be placed before Full Court for approval by circulation.

xxx xxx xxx

Sd/-
(RAMKUMAR CHOUBEY)
REGISTRAR GENERAL

Later on Full Court approved the above recommendation by circulation on 13.05.2023."

11.2 The order of the Government of Madhya Pradesh, Law and Legislative Works Department dated 23.05.2023 is in respect of Ms. Sarita Choudhary, II-Civil Judge (Jr. Division), Umariya is

extracted below. A similar order in respect of Ms. Aditi Kumar Sharma, V-Civil Judge (Junior Division), Tikamgarh was also passed bearing the same date.

"GOVERNMENT OF MADHYA PRADESH, LAW & LEGISLATIVE WORKS DEPARTMENT

ORDER

Bhopal, dated 23rd May, 2023

F. No. 2404/2023/21-B(One). As a result of not completing the probation period satisfactorily and successfully by the member of Judicial Service namely Ms. Sarita Chaudhary, Second Civil Judge (Junior Division), Umariya, in pursuance of the decision taken in the meetings dated 08.05.2023 and 10.05.2023 of the Administrative Committee of High Court, Madhya Pradesh and meeting dated 13.05.2023 (by circulation) of Full Court, it has been recommended to Termination of Service of aforesaid Judicial Officer.

Being agreed with the enclosures enclosed with the Recommendation of High Court, Madhya Pradesh regarding aforesaid Judicial Officer, the State Government has decided that Ms. Sarita Chaudhary, Second Civil Judge (Junior Division), Umariya, be terminated from service with effect from the date of order.

Therefore, under Rule 11(c) of the M.P. Judicial Service (Recruitment & Conditions of Service) Rules, 1994, the State Government do hereby Terminates Ms. Sarita Chaudhary, Second Civil Judge (Junior Division), Umariya from Service.

In the name of Governor of Madhya Pradesh
& by the Orders
Sd/-
(B.K. Dwivedi)
Principal Secretary
Law & Legislative Works Department

Page No. F. No. 2404/2023/21-B(One) Bhopal, Dt. 23rd May, 2023

Copy to:-

1. Registrar General, M.P. High Court, Jabalpur, in reference to his Demi-Official letter No. 479/Gopniya/2023 Two-3-70/60 dated 13.05.2023.
2. Accountant General, Madhya Pradesh, Gwalior (M.P.) for information and necessary action.
3. Deputy Controller, Government Central Printing Press, Arera Hills, Bhopal for publication in the next issue of Gazette.

Sd/-23.05.2023
(Rajghvendra Bhardwaj)
Additional Secretary
Government of Madhya Pradesh
Law & Legislative Works Department"

Discussion:

12. The services of a probationer could result either in a confirmation in the post or ended by way of termination *simpliciter*. However, if a probationer is terminated from service owing to a misconduct as a punishment, the termination would cause a stigma on him. If a probationer is unsuitable for a job

and has been terminated then such a case is non-stigmatic as it is a termination *simpliciter*. Thus, the performance of a probationer has to be considered in order to ascertain whether it has been satisfactory or unsatisfactory. If the performance of a probationer has been unsatisfactory, he is liable to be terminated by the employer without conducting any inquiry. No right of hearing is also reserved with the probationer and hence, there would be no violation of principles of natural justice in such a case.

12.1 In ***Parshotam Lal Dhingra***, this Court held that the protection of Article 311 also covers a probationer if the termination was by way of a punishment and "it puts delible stigma on the officer affecting his future career". To a similar effect is the ruling of this Court in the case of ***State of Bihar vs. Gopi Kishore Prasad, AIR 1960 SC 689***. In the said case, it was observed that if the employer simply terminates the services of a probationer without holding an inquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant has no cause of action even though the real motive behind the removal from

service may have been that the employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or efficiency or some such cause. Thus, the test is, whether, in a given case the termination is *simpliciter* or by way of punishment. When termination is by way of punishment, the concept of stigma would arise. If a punishment casts a stigma on the competence of an employee, it can affect his future career. However, the dilemma is, even when the probationer, who has no right to hold the post in the first instance, could argue that a cessation of service owing to non-suitability, inefficiency or any other similar reason was stigmatic.

12.2 As noted, if a termination from service is not visited with any stigma and neither are there any civil consequences and nor is founded on misconduct, then, it would be a case of termination *simpliciter*. On the other hand, an assessment of remarks pertaining to the discharge of duties during the probationary period even without a finding of misconduct and termination on the basis of such remarks or assessment will be by way of punishment because such remarks or assessment would be stigmatic. According to the dictionary meaning, stigma is

indicative of a blemish, disgrace indicating a deviation from a norm. Stigma might be inferred from the references quoted in the termination order although the order itself might not contain anything offensive. Where there is a discharge from service after prescribed probation period was completed and the discharge order contain allegations against a probationer and surrounding circumstances also showed that discharge was not based solely on the assessment of the employee's work and conduct during probation, the termination was held to be stigmatic and punitive *vide* ***Jaswantsingh Pratapsingh Jadeja vs. Rajkot Municipal Corporation, (2007) 10 SCC 71.***

12.3 Even though a probationer has no right to hold a post, it would not imply that the mandate of Articles 14 and 16 of the Constitution could be violated inasmuch as there cannot be any arbitrary or discriminatory discharge or an absence of application of mind in the matter of assessment of performance and consideration of relevant materials. Thus, in deciding whether, in a given case, a termination was by way of punishment or not, the courts have to look into the substance of the matter and not the form.

12.4 In ***Samsher Singh vs. State of Punjab, AIR 1974 SC 2192***, a seven-Judge Bench of this Court held that if a probationer was discharged on the ground of misconduct or inefficiency or for similar reasons without a proper inquiry it might, in a given case, amount to inflicting the punishment of removal from services within the meaning of Article 311(2) of the Constitution. In the very same case, it was also observed as a test for determining whether, the termination was by way of punishment, namely, whether, the termination was sought to be ***founded*** on misconduct, negligence, inefficiency or other disqualification. Thus, if a termination is founded on misconduct, it would be a punishment but *de hors* this, if the right to terminate existed, the motive operating in the mind of the employer would be wholly irrelevant. However, all that is stated above would ultimately boil down to the question, whether, the termination would prejudicially affect the future employment of the employee. It is this delicate line which has to be discerned in every case where a challenge to a termination is made by a probationer. In other words, if the termination is simply owing to unsuitability having regard to the nature of the

job and such other factors, it is not stigmatic. Before any probationer is considered for confirmation, the satisfactory nature of the work and suitability of the probationer have to be considered for which some inquiry would have to be made and if it is found that he is unsuitable for the job then, he could be discharged and the same would be non-stigmatic and this would also not call for opportunity for hearing being given to a probationer.

13. The relevant case law could be discussed at this stage:

(i) In ***Anoop Jaiswal,*** the facts were that the impugned order of discharge was passed in the middle of the probation period after seeking an explanation regarding the alleged act of indiscipline. Similar explanations were called from persons other than the appellant therein, but in the end only the case of the appellant was dealt with severely. This Court observed that even though the order of discharge was non-committal, it could not stand alone. It was observed that though the noting in the file of the Government may have been irrelevant, the cause of the order of discharge could not have been ignored. That the recommendation, which was the basis or the foundation for the

order of discharge should have been read with the order for the purpose of determining its true character. If on reading the two together the court reached the conclusion that the alleged act of misconduct was the cause of the order and but for that allegation it could not have been passed, then it was inevitable that the order of discharge should fall to the ground. This was because the appellant therein had not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution. While holding so, this Court held in paragraph 12 as under:

> "12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

Consequently, in the aforesaid case, after discussing the facts of the case in detail, this Court set aside the order of discharge/termination of service on the ground that an inquiry ought to have been held against the appellant therein prior to

termination of service. As a result, the appellant therein was reinstated in service at the same rank and seniority in which he was entitled to before the order the discharge was passed, as if it had not been passed at all, with all consequential benefits.

(ii) In ***Dipti Prakash Banerjee,*** this Court *inter alia,* considered the following points:

> "(1) In what circumstances, termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that allegations were only a motive?
>
> (2) When can an order of termination of a probationer be said to contain an express stigma?
>
> (3) Can stigma be gathered by referring back to proceedings referred to in termination order?

Each of the aforesaid points were answered which can summarised as under:

> Point 1: If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "*founded*" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would

be a motive and not the foundation and the simple order of termination would be valid.

xxx

Point 2: There is considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a 'stigma'. It depends on facts and circumstances of each case and language or words used to ascertain whether termination order contains stigma.

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Point 3: Material which amounts to stigma need not be contained in termination order of a probationer but might be contained in documents referred to in the termination order or in its annexures. Such documents can be asked for, or called for, by any future employer of the probationer. In such a case, employee's interests would be harmed and therefore termination order would stand vitiated on the ground that no regular enquiry was conducted.

xxx

It is true that the Supreme Court in some of the cases has held that termination order is not punitive where employee has been given suitable warnings or has been advised to improve himself or where he has been given a long rope by way of extension of probation. However, in all such cases, there were simple orders of termination which did not contain any words amounting to stigma. On the other hand, there is a stigma in the impugned order which cannot be ignored because it will have effect on the appellant's future. Stigma need not be contained in termination order but may also be contained in an order or proceeding referred to in termination order or in an annexure thereto and would vitiate the termination order."

Referring to ***Indra Pal Gupta vs. Managing Committee, Model Inter College, Thora, (1984) 3 SCC 384,*** it was observed

in paragraph 35 that the said decision is a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted.

In that case, the employer had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice. It was observed that in such circumstances where he was given a long rope by way of extension of probation, this Court had said that the termination order could not be held to be punitive as held in ***Hindustan Paper Corpn. vs. Purnendu Chakrobarty & Ors., (1996) 11 SCC 404, Oil & Natural Gas Commission vs. Dr Md. S. Iskender Ali, (1980) 3 SCC 428, Principal, Institute of Post Graduate Medical Education & Research, Pondicherry vs. S. Andel & Ors., 1995 Supp (4) SCC 609*** and

a labour case being ***Oswal Pressure Die Casting Industry, Faridabad vs. Presiding Officer, (1998) 3 SCC 225.*** This Court further observed that in the above noted cases, the order were simple orders of termination which did not contain any word amounting to stigma. That in case it was concluded that there was stigma in the impugned order of termination or discharge it would have an effect on the future irrespective of whatever had been the earlier opportunities granted by the employer to the employee to improve.

Thus, the approach of the Court must be firstly, to ascertain whether the impugned order is founded on any conclusions arrived at by the employer as to his misconduct or whether the termination was passed because the employer did not want to continue an employee against whom there were some complaints. The second aspect is whether there is any stigma in the order of termination or in the documents referred to in the termination order. In the aforesaid case, the impugned order of termination was quashed and the appeal was allowed. The appellant therein was directed to be reinstated with back wages till the date of reinstatement and continuity of service reserving

liberty to the respondents therein to take such action as they deem fit in accordance with law against the appellant therein.

(iii) Recently in ***Swati Priyadarshini,*** this Court, placing reliance on the earlier judgment in ***Parshotam Lal Dhingra*** granted relief to the appellant therein. The relevant portion of ***Parshotam Lal Dhingra*** could be recapitulated as under:

> "28. …. Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal. … 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. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances.

It puts an indelible stigma on the officer affecting his future career. …"

(iv) ***Jayshree Chamanlal Buddhbhatti*** is a case pertaining to a Civil Judge, Junior Division who was placed on probation for the period of two years. The respondent in the aforesaid case initially received certain adverse remarks to which she sent her replies and the same were followed by her termination from service on the premise that her performance was not good and satisfactory and that she was not suitable for the post she held. Therefore, it was recommended for termination of her probation immediately and that she should not be allowed to continue to officiate in service for a long term. Being unsuccessful in her representation, she assailed the same before the High Court which held that it was not a case of termination *simpliciter* of a probationary officer and therefore set aside the termination of her service and directed reinstatement with back wages. The High Court of Gujarat had preferred an appeal before this Court. Going through the original records, this Court summarised as under:

> "The question is whether this is a case of termination simpliciter of the services of a probationer on account of her unsuitability for the post that she was holding, or whether it is a termination of her services after holding an inquiry behind her back, and without giving her an opportunity to defend herself. Having gone through the salient judgments on the issue in hand, one thing which emerges very clearly is that, if it is a case of deciding the suitability of a probationer, and for that limited purpose any inquiry is conducted, the same cannot be faulted as such. However, if during the course of such an inquiry any allegations are made against the person concerned, which result into a stigma, he must be afforded the minimum protection which is contemplated under Article 311(2) of the Constitution even though he may be a probationer. The protection is very limited viz. to inform the person concerned about the charges against him, and to give him a reasonable opportunity of being heard."

Consequently, this Court affirmed relief granted to the respondent therein by granting reinstatement of her service with continuity and all consequential benefits. However, the back wages payable to her were restricted to the period subsequent to the decision of the High Court as the respondent therein confined her prayer to that extent as she was interested in mitigating her position.

Analysis:

Re: Sarita Choudhary:

14. As already noted, Ms. Sarita Choudhary was appointed as a Civil Judge, Class-II (Entry level) *vide* order dated 28.12.2016 in Madhya Pradesh Judicial Service. For the year 2017 she served as a trainee Judge for which the District Judge graded her as 'B-Very Good'; however, the Portfolio Judge reduced her general assessment grade to 'C-Good'. It was noted by the District Judge that her judicial work was satisfactory and she had good reputation and good character. However, the Portfolio Judge noted that on an overall review he disagreed with the remark made by the District & Sessions Judge and thereby changed her grade.

14.1 The ACR of the successive year i.e. 2018 is appreciative for the petitioner. The District Judge granted the petitioner a general assessment grade of 'B-Very Good' and it was also noted that she has good conduct of business in court and office, is a sincere and punctual judicial officer and that the quality of her judgments is good. Notably, her management and inter-personal skills were also appreciated. It is equally important to note that

her judicial work, quantity and quality-wise, was termed to be 'good'. Despite not meeting the civil units due to being posted in a vacant court, this assessment was approved as it is by the Portfolio Judge.

14.2 In the following year, while her unit value increased, her general assessment grade was yet downgraded in the ACR for 2019 to 'C-Good'. Consistent with previous years, it was noted that she has good conduct in in court and office. She was an average judicial officer insofar as sincerity, punctuality and overall performance were concerned. Again, despite not earning requisite civil units it was observed that her quantity of work was good. Our attention was drawn to two letters: the first dated 26.11.2020 which communicated the adverse remarks to the petitioner and provided her with an opportunity to submit representation. This is particularly useful to know in light of the fact that Complaint No.26/2019 dated 04.01.2019 was filed by an advocate against the petitioner complaining that the petitioner had failed to take action in accordance with law in a grave criminal case. However, the respondent-High Court

submitted before us that in a discreet enquiry the said complaint was found to be baseless and therefore no action was taken.

14.3 Furthermore, in another complaint filed by an advocate it was alleged that the petitioner had failed to conduct her court in accordance with law. As her explanation was not found satisfactory, she was issued a warning to conduct proceedings as per law. Finally in another complaint bearing no. 408/2019, the High Court upon discreet enquiry issued a non-recordable warning (oral) to her stating that the petitioner must not repeat procedural mistakes in the future.

14.4 This context is particularly useful in the context of reliance placed on a second letter dated 27.11.2020 which clarified to the petitioner that certain adverse remarks in the ACR for 2019 were only advisory in nature and meant for future guidance and improvement. Therefore, despite these observations the ACR was categorical that she deserves 'C-Good' grade and that her quality of judgments is good. We must also note that although all these complaints related to conduct in court, the ACR categorically recorded that petitioner had good

conduct of business in court and office, a fact, as already noted, consistent with previous years.

14.5 The Administrative Committee of the High Court was convened on July 24, 2020, to consider the confirmation of 92 temporary Civil Judges (Entry Level) under Rule 11. While considering these cases, the Committee deferred its decision regarding the petitioner due to a complaint filed against her, for which they requested a special report from the District & Sessions Judge. The Administrative Committee's decision was subsequently approved on August 18, 2020. As we have noted above, the first complaint filed in 2019 was found to be baseless and in the other two, the petitioner was only asked to be careful and conduct proceedings as per law. Albeit, these two complaints were only closed in September 2021, much after petitioner's case had been deferred.

14.6 Thereafter, petitioner's ACR for 2020 witnessed a downward shift in her grade to 'D-Average'.

14.7 In 2020, two complaints were filed against the petitioner by the District and Session Judge, Raisen wherein he complained regarding petitioner's lack of punctuality and improper conduct of office, and an instance of erroneous grant of bail in a criminal case triable by Sessions Court. Notably, in both complaints she was only given advice to adhere with the rules of court and propriety. In the complaint related to erroneous grant of bail, she was warned to remain vigilant and not commit the same mistake again.

14.8 We note that it is not the case advanced before us that petitioner was not adept at handling criminal cases. In fact her ACRs reflect that the petitioner regularly handled criminal cases. The High Court's decision to only issue a warning seems to be an acknowledgement of the fact that this instance was an error made by a junior judicial officer who is, indeed, expected to be vigilant but also expected to learn with experience.

14.9 Part II of her ACR for 2020, prepared by the District Judge, noted that her conduct of business in court and office was satisfactory. This observation is despite the first complaint

suggesting that she poorly managed her court. While the ACR was overtly critical of her conduct, her lack of sincerity to dispose of old cases and highlighted the lack of transparency in her judicial work which had room for improvement, we must also note that the ACR observed that her unit value earned was in 'Very Good' category. Furthermore, it was also noted in the ACR that she earned a total 253.5 units by disposal of cases pending for more than three years. The ACR form, as placed before us, noted 15% of total units earned as the benchmark for disposal of old cases and the same had clearly been achieved by the petitioner. Thus, we are not clear as to how the aforesaid adverse remark regarding lack of sincerity to dispose of old cases was warranted. Although the District Judge had noted that she earned only 3 units in civil cases, we are of the view that this must be seen in light of the fact that the petitioner was already in charge of a vacant court and Covid-19 prolonged civil cases during the year 2020.

14.10 Although it was noted that her judicial and administrative work was not up to the mark and she was habitual to make unnecessary and false statement in official

letters, it was also noted that she had satisfactory capability to manage the cases, lead, initiate, plan and make decisions.

14.11 The adverse remarks in the ACR were communicated to the petitioner only on 09.12.2021 and her representation was rejected by the High Court *vide* letter dated 13.12.2023. We find ourselves in agreement with the general submission of the petitioners that such delay in communicating adverse remarks deprives judicial officers of the ability to rectify their approach and conduct towards their work. In that regard, we would hope that hereafter the High Court will take all reasonable and necessary steps to ensure that such delay is minimized and curtailed.

14.12 It is pertinent to note that as the format of the Assessment Chart placed before the Administrative Committee only includes comments that were exclusively adverse comments, it was never highlighted that her unit value for old cases fell in the 'Very Good' classification or that her conduct of business in court and office was considered to be 'satisfactory'.

14.13 Petitioner's ACR for 2021 was further downgraded to 'E-Poor', despite earning units in excess than required units. It is noted that though the required units per day to be classified as very good were only 3.5, the petitioner had achieved 6.47 units per day. Notably, she was recorded to dispose of 124 cases pending for more than three years. However, she achieved only 149.8 units on the civil side.

14.14 For a comprehensive evaluation of the material on record, we must be cognizant of the fact that the ACR notes her to be not interested in judicial work and adversely remarks her aversion to work. However, simultaneously, it has also been noted that her unit value and disposal of old cases is very good. The ACR also notes that out of 25 targeted old cases she disposed of all cases. Therefore, although the petitioner may have not been able to dispose of any contested civil case in the year 2021, it seems unclear to suggest that a judicial officer may lack initiative to work when the quantitative record suggests that she has been highly productive.

14.15 In stark contrast to the previous year, it was noted that the petitioner has good personal relationship and good team work. In our view, this signifies a crucial improvement in her outlook and interpersonal behaviour and a marked departure which should be appreciated.

14.16 A complaint bearing No.127/2021 was filed against the petitioner for improper behaviour towards her seniors, but upon noting her explanation and apology, the Chief Justice advised her to improve her behaviour and exercise care. Similarly, in another complaint No.130/2021 filed by an advocate, the Chief Justice advised her to be careful. Pertinently, upon perusal of the submissions of the respondent-High Court, it is revealed that as the complaint had been withdrawn, no further enquiry was called for. In light of the fact that this complaint was not mentioned in the Assessment Chart and the complaints had been withdrawn, we are of the view that no adverse inference must be drawn against this petitioner.

14.17 Learned Amicus Curiae and learned senior counsel for the petitioner have drawn our attention to the fact that there was a significant improvement, as noted in her ACR for the following

year i.e. 2022, which was also the year before termination. It was noted that the petitioner's work is 'good and up to mark'. Comprehensively, her understanding of law, marshalling and appreciation of evidence was appreciated. Her interpersonal relationship with office staff was also appreciated. In consonance with last few years, it was noted that her unit value was in the 'very good' category. Although she was unable to achieve the benchmark for disposal of civil cases and disposal through ADR, the District Judge noted that petitioner successfully disposed of all 25 old cases, as targeted in pursuance of High Court Memo No.A/3397 Jabalpur dated 01.09.2022

14.18 We must note that despite complaints filed by members of the Bar in 2022 and one even alleging mismanagement of files in her courtroom, the District Judge in the ACR for 2022 noted that her managerial skill and leadership quality was good and so was her decisive nature.

14.19 In the assessment chart placed before the Administrative Committee and the Full Court, two complaints against the petitioner were shown as pending. Of these, the first related to 321 suspicious cases/order sheets found in the

court of the petitioner. There is merit in the submission of the petitioner that the Inquiry Report dated 13.12.2022 found that while the petitioner should have continuously monitored those suspicious cases/order sheets but the actual negligence and lack of sense of duty was on part of the then posted execution clerks, who were then subjected to departmental inquiry. In our view, this fact also lends credence to her submission that her court staff generally failed to execute and follow directions or instructions.

14.20 Another complaint bearing No.174/2023 is reflected as pending in the Assessment Chart. However, as neither any explanation was actually called for nor any action was taken in respect of this complaint regarding a post on Face Book messenger, the same would not merit further consideration by us. Although two more complaints were filed against the petitioner in 2023, we must be circumspect in considering the same as they were not placed before the Administrative Committee and the Full Court when the decision to terminate was taken. It is alleged in Complaint No.271/2023 dated 29.04.2023 that during her posting in Umaria District, the

petitioner resided in Room No.4 of Judicial Officer's Circuit House without submitting any application for allotment in the Circuit House. It was complained that petitioner's act of leaving with the keys of the VIP Room had caused grave inconvenience to visiting guests.

14.21 In Complaint No.286/2023, it was complained that petitioner took unauthorized absence from office.

14.22 In our view, these complaints should not stand as a hurdle in any holistic consideration in favour of this petitioner as neither do they speak about her capabilities as a judicial officer nor do they militate the fact that the latest ACR for 2022 was generally positive and noted her to have undoubtful integrity, good personal relationships and high disposal.

Re: Aditi Kumar Sharma:

15. On a perusal of the material on record, it is inferred that petitioner-Aditi Kumar Sharma's performance for the years 2019 and 2020 was sufficiently good and does not call for minute scrutiny except for the low unit value. Although the respondent-High Court has contended that in 2020, her final disposal rate

was poor, it is pertinent to give weight to the submission that in 2020 only urgent cases were heard due to the pandemic and that in the same year she got married. On a broader level, we note that after considering her overall performance the petitioner was finally awarded the grades 'B-Very Good' in her ACR for 2019 and 'C-Good' in the ACR for 2020.

15.1 Note must also be made of 'Column 8 – General Assessment' wherein the Principal District Judge has noted as follows:

> "She is hard working judge, having good reputation and character and takes her responsibilities seriously. Her conduct, behaviour and working is very good. She is submissive, serious officer."

15.2 If there indeed was a significant deficiency towards her work, there clearly would have been no occasion for the Principal District Judge to observe as above. The aforesaid ACR was also approved by the Chief Justice as it is.

15.3 Therefore what falls for consideration, on facts, are the ACRs for the following two years and the complaints filed against her. As noted, the petitioner's initial grade of 'B-Very Good' in the ACR of 2021 was lowered by the Portfolio Judge to 'C – Good'

considering the pendency and disposal. Foundationally, it is pertinent to examine the remarks of the Principal District and Sessions Judge made in her ACR for the year 2021. Part II of the ACR for 2021 noted that the Principal District Judge was of the view that the petitioner has '*very good conduct of business in court and office staff*'. Additionally, she was also noted to be '*sincere and punctual*' and someone who ensures the regular entry of data on NJDG portal. Although she earned only 22.9 civil units in 2021, the general assessment was that her '*judicial work, quantity and quality wise is very good. Her administrative work is very good'*.

15.4 Upon perusal of the record, it is apparent that the Portfolio Judge deemed it fit to downgrade her from 'B-Very Good' to 'C-Good' only due to 'pendency and disposal'. We are of the view that an appropriate analysis of 'pendency and disposal' must not be distanced from the practical realities of the courtroom and the petitioner's life. In fact, the petitioner in the section titled '*If required the following note stating reasons/endeavours may be added*' has supplemented the quantitative record of the ACR with reasons explaining the

deficit. In Column 1(e) it was added that she was unable to reach the benchmark set for disposing of sufficient number of cases pending in her court as she presided over a vacant court with very old and complicated files transferred to her. Furthermore, in Column 1(f) wherein a judicial officer is provided opportunity to give any other sufficient reason beyond control, she submitted as follows:

> "After my regular posting to a vacant court, most of the time the proper and regular functioning of the court ha(d) been adversely affected by the global pandemic COVID-19. In the same course of time, i got married on a very short notice shortly after which i had contracted COVID-19 infection. i was hospitalised in ICU for the treatment of the same at dedicated covid 19 centre Chirayu Hospital, Bhopal for 11 days with further prescription of bed rest for more than 10 days after getting discharged ever since then my health not been in good state. In the month of January my elder brother was diagnosed with blood cancer and in the month of march I had a miscarriage due to w(h)ich i had to avail special leave of 45 days on the advice of my doctor. (I) would attribute only the above stated unfortunate yet unavoidable reason for having not achieve the bench mark set by hon. High Court."

15.5 Some of the prevailing factors cited in her ACR for 2021 by the petitioner-Aditi Kumar Sharma had occurred in 2020 but we would be remiss to ignore their cascading effects, especially as the petitioner submitted that her health had not been in a

good state ever since Covid-19. Clearly her elder brother's diagnosis is of January 2021 and later in March of the same year she suffered a miscarriage herself. It is apparent from the aforesaid that the additional reasons provided by the petitioner in conjunction with her posting in a vacant court would sufficiently explain the low units earned in 2021. It is also worth noting that so far neither the quality of her work nor the reasons of her health were ever noted to act as hindrances to her service. This is particular evident from absence of negative comments on her 'State of health' in any ACR In fact, the respondent-High Court submitted before us that the sole reason for grade 'C-Good' was her low disposal rate. At this point, it would be beneficial to appreciate the argument of the learned amicus to the effect that low disposal in the above factual backdrop should not be the sole reason for termination of this petitioner.

15.6 Further, a total of five complaints filed against the petitioner were also taken into consideration by the Administrative Committee. Insofar as 2021 is concerned, the complaint bearing no.75/2021 in which the allegation was of wrongfully adjourning a case was found to be not proved in the

report of the enquiry officer. The petitioner has contended that despite a positive preliminary report, the status of the complaint was erroneously marked as pending and placed before the Administrative Committee. We are of the view that it would not be appropriate to draw any negative inference against the petitioner from this complaint as the allegation was found to be not proved. Even the respondent-High Court in its submissions before this Court has noted that it is due to termination of the petitioner that the complaint is kept in abeyance by order of the Chief Justice dt. 27.06.2023. More importantly, as the ACR of 2021 does note that her management, planning, and decision making were good, we glean that the true general assessment of the petitioner on court management would be positive.

15.7 At this juncture, it is pertinent to examine the argument of learned senior counsel for the petitioner who contended that the Administrative Committee gravely erred in considering petitioner-Aditi Kumar Sharma's ACR for 2022 as the same was yet to be approved and finalised. The relevant extract of the minutes of the meeting Administrative Committee on 08.05.2023 and 10.05.2023 reads as follows:

> "Further resolved that following officers did not utilise their probation period successfully and satisfactorily, therefore having considered the ACRs, assessment chart, consistently poor performance/work done and **other material**, the Committee resolved to recommend that services of the following officers are no more required to be continued. Accordingly, it is resolved to recommend termination of services of the following officers as per Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Service) Rules,1994.
>
> *(emphasis supplied)*"

15.8 It is the submission of the petitioner's learned senior counsel that in reply to an RTI application, it was revealed that the '*other material'* relied upon were excerpts of 'unapproved and under process' ACR of 2022 and the statement showing her actual disposal from January 2023. As noted, after an assessment the ACR is graded by the reporting authority i.e. the Principal District Judge. Thereafter, the same is reviewed by the Portfolio Judge and is finally placed before the Chief Justice for acceptance. It was therefore argued that an unapproved and unprocessed ACR is akin to irrelevant material and could not have been placed for consideration before the Administrative Committee and the Full Court. It is trite law that what cannot be done directly cannot be done indirectly. The *imprimatur* of the

Chief Justice to an ACR is an approval of the highest judicial office in the State which is a mandatory requirement. In the absence of the said procedure being completed, the Administrative Committee could not have considered by classifying an unapproved ACR as 'other material'.

15.9 Given that the Administrative Committee did indeed take into consideration the ACR for 2022 we consider it useful to examine the same to draw a complete overview of petitioner's service.

15.10 It is true that the general assessment of the petitioner was further downgraded in her ACR for 2022 to 'D-Average'. In her self-assessment in the ACR for 2022, the petitioner duly acknowledged that the quantity of work done by her was not satisfactory but that she was leaving no stone unturned to improve. The reasons appended by the petitioner explaining the shortfall, *inter alia*, were being posted to a vacant court, excessive interim applications, priority given to matters pending for over three years, non-appearance of witnesses and insufficient number of criminal cases, were rejected as unsatisfactory by the Principal District Judge, Ratlam. That

being the case, it also merits consideration that the petitioner highlighted in her self-assessment that out of 25 cases specially listed by the High Court in September 2022, the petitioner disposed of 10 cases by the end of the year including the oldest pending case of Satna District. Pertinently, even this ACR found no qualms with the quality of her judicial work.

15.11 Part II of the ACR for 2022 assessed by the Principal District Judge, Ratlam (M.P.) is equal parts appreciative of the quality of petitioner's judgments, her marshalling and appreciation of evidence, her interpretation and application of law and the style of language in writing judgments, but was critical of the low quantity of work done by her. Column 1 of Part II is a field marked for assessment of judicial officer's 'Quality of work'. Further filtered down, Column 1(a) is for evaluation of 'Conduct of business in Court and Office'. However, instead of assessing the quality of work done in Column 1(a), the Principal District Judge, Ratlam has noted that this petitioner, despite being in the same posting since 26.05.2020, only resolved 28 regular cases in 2022. It is further noted by the Principal District Judge, Ratlam that although the petitioner served as junior-in-

charge of the filing section, no notable work carried out by her had been highlighted. In our view any such adverse remark must not be read *dehors* petitioner's general approach towards court management. In her self-assessment for the year 2022, the petitioner indeed noted that she inspected the filing section with her senior-in-charge various times and that she found no major shortcoming in 2022. However, it is also pertinent to note that in the preceding years (2021 and 2020) the petitioner was junior-in-charge of civil record room wherein, according to her ACR for the relevant years, she did observe shortcomings in arrangement of old records and took active steps to ensure that old files were bundled and maintained appropriately in accordance with relevant rules and orders. Therefore, it is apparent that the petitioner has been neither aloof nor uninvested in the improvement of court operations and it would therefore be incongruous with her record to infer the same solely from the observation in ACR of 2022.

15.12 In Part III, the Portfolio Judge agreed with the assessment of the Principal District Judge, Ratlam and concluded that the petitioner deserved the grade of 'D-Average'

as drastic improvement in working was necessitated to achieve desired targets. In contrast to these observations, we must not lose sight of the fact that the then Principal District & Sessions Judge, who had personally supervised the petitioner, on 23.12.2022 prepared an Annual Inspection Report and observed that petitioner's judicial work appeared to be 'excellent'.

15.13 Out of the four remaining complaints, two each were presented before the Administrative Committee as pending and closed. Complaint No.251/2022 dated 24.02.2022, which was shown as pending, alleged an indirect misuse of her position to exert pressure on police officials by way of mentioning the said judicial officer's name in FIR filed by her sister. While the petitioner contends violation of principles of natural justice and incomplete disclosure by the High Court officials before the Administrative Committee and the Full Court, it is observed that the respondent-High Court has itself in its written submissions filed before this Court notes that by a discreet enquiry report dt. 13.06.2022 the allegations were not found to be correct; however, the file has been kept in abeyance because of the termination of the petitioner. This complaint is inconsequential.

15.14 Another pending complaint in the assessment chart was Complaint No.775/2022 alleging that petitioner did not record the statement of the complainant. While the petitioner contends that the enquiry was conducted in violation of fundamental principles of natural justice, we find it more appropriate to appreciate the submission of the petitioner that the complaint was voluntarily withdrawn. In view of the same, at this stage, it is inconsequential whether the complaint was supported by affidavit(s) or was the fact of voluntary withdrawal placed before the Administrative Committee or not. In any event, the respondent-High Court has submitted before this Court that Registrar (Vigilance) by his report dated 31.03.2023 only recommended issuance of advice to the petitioner-Aditi Kumar Sharma. Therefore, in view of the aforesaid facts, especially that the complaint is said to have been voluntarily withdrawn, it would be irrelevant to consider the same.

15.15 Two further complaints were reflected as concluded in the assessment chart. Complaint No.664/2022 dated 28.07.2022 alleged that petitioner released her dogs and used

abusive words at the complainant. The Assessment Chart noted that, "*Status: Hon'ble the Chief Justice order dated 17.12.2022, the permission/direction regarding to take criminal action against the judicial officer namely Sushri Aditi Kumar Sharma may not be given and the complaint be filed.*" The petitioner has contended that it was concealed from the Administrative Committee that the Chief Justice had ordered the filing of the complaint after a preliminary enquiry conducted by Registrar (Vigilance) found that the allegations, *prima facie*, appeared to be an afterthought and counterblast to the police complaint filed by the petitioner against the complainant. Presently, since terminated, the file is kept in abeyance by order of the Chief Justice.

15.16 Complaint No.776/2022 concerning notation of unnecessary comments against an advocate in the order sheet was also shown as concluded in the Assessment Chart. The petitioner has contended that despite being found guilty in a discreet enquiry, no explanation was ever sought from her. Moreover, we note that the only semblance of any action taken therein has been the proposal by PR(Vigilance) to advise the petitioner to maintain cordial relations between the Bar and the

Bench. Furthermore, we also note that from 2019 till 2021, her respective ACRs have noted that her inter-personal relationship with advocates, staff, colleagues, and litigants, was good. Even the ACR for 2021 notes her inter-personal relationship to be satisfactory. Considering the general assessment in the ACR to be the compendious annual review of a judicial officer, rather than relying exclusively on complaints, we find that it would be appropriate to take a holistic view of the material on record. That being the case, especially when action taken was an advisory to maintain cordial relations between the Bar and Bench, no inference negativing her generally cordial approach – as evidenced by successive ACRs - could be drawn from this complaint.

15.17 Therefore, it appears that it is only Complaint No. 664/2022 dated 28.07.2022 concerned with use of abusive words by the petitioner-Aditi Kumar Sharma which would hold weight and suggest that she displayed conduct unbecoming of a judicial officer. However, it is also noteworthy that the Chief Justice had directed that permission for a criminal complaint against the petitioner may not be given.

16. On a perusal of the Minutes of the Meetings of the Administrative Committee of the High Court dated 08.05.2023 and 10.05.2023, it is apparent that the Committee considered the ACRs, Assessment Charts which included the complaints pending/concluded against these two judicial officers. Their consistent "poor performance"/work done and "other material" were also considered by the Committee. As a result of the said consideration, it was resolved that, *inter alia,* these two officers were no longer required to be continued in their posts. The Minutes extracted above when juxtaposed with our aforesaid analysis would bring to fore the following aspects:

(i) That the ACRs which were adverse in nature were either not communicated in time and even after an explanation was received, there were no effort to expunge the adverse remarks made in the said ACRs on the basis of a consideration of the explanation. Possibly they were simply rejected.

(ii) The reference to the consistent "poor performance" is also not in accordance with the record which has been submitted by the learned counsel for the respondent-High

Court insofar as these two officers are concerned. The record does not reflect any consistent poor performance; the record speaks otherwise. We have also pointed out the inherent contradictions in the ACRs in our analysis.

(iii) As far as "other material" considered is concerned, it could have been the complaints which were either concluded or pending against them. If the complaints formed the foundation for these officers to be terminated, we find that the voluminous cases which we have referred to above in our discussion would clearly point out that an opportunity had to be given before termination. This is particularly having regard to Article 311 of the Constitution read with relevant Conduct Rules.

(iv) Therefore, in our view, the termination of these two judicial officers is punitive, arbitrary and therefore illegal. They are not in accordance with the judgments of this Court discussed above, as we have applied the tests laid down in those judgments to the facts of the present cases while detailing the ACRs, the Assessment Charts and other material in light of the submissions made by the learned

amicus as well as learned Senior Counsel appearing for the respective petitioners.

(v) Even on perusal of the records of the petitioners submitted by the learned counsel for the High Court in a sealed cover, they do not persuade us to take a different view in the matter.

(vi) Therefore, we are of the view that the impugned terminations herein were by way of punishment as the surrounding circumstances also show that the terminations were, *inter alia,* founded on the allegations of the complaints of misconduct and "inefficiency" and were stigmatic in nature. Even though many of the complaints against these officers may have been closed or resulted in advisories/warnings, they could not have been the basis for the impugned terminations.

16.1 In the circumstances, we find that the Resolutions of the Administrative Committee dated 08.05.2023 and 10.05.2023 followed by the Resolution of the Full Court dated 13.05.2023 by circulation; orders of the High Court dated 13.05.2023 and the Government Orders dated 23.05.2023 insofar as these two

officers are concerned, are illegal and contrary to the established principles of law and, therefore, are liable to be set-aside and are set-aside.

Women Workforce: Women in the Indian Judiciary:

17. To holistically understand women's effective participation in the Judiciary, it is important to look at three main phenomena: (I) the entry of women into the legal profession; (II) the retention of women and growth of their numbers in the profession; and (III) the advancement of women, in numbers, to senior echelons of the profession.

17.1 Many have stressed that increased diversity within a judiciary, and ensuring judges are representative of society, enables the judiciary as a whole to better respond to diverse social and individual contexts and experiences. It is a recognition of this fact that a greater representation of women in the judiciary, would greatly improve the overall quality of judicial decision making and this impacts generally and also specifically in cases affecting women.

17.2 Advancing women's greater participation in the judiciary also plays a role in promoting gender equality in broader ways:

a. Female judicial appointments, particularly at senior levels, can shift gender stereotypes, thereby changing attitudes and perceptions as to appropriate roles of men and women.

b. Women's visibility as judicial officers can pave the way for women's greater representation in other decision-making positions, such as in legislative and executive branches of government.

c. Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.

17.3 Article 10 of the International Covenant on Economic Social and Cultural Rights states that special protection should be accorded to mothers during a reasonable period before and after child birth. Article 11 of CEDAW states that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures, which can be extracted as under:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

17.4 The freedom from discrimination or equal protection of the laws during pregnancy and maternity of a woman are precious rights for women workforce. If pregnancy results in the birth of a child, it brings not only joy to the parents of the child but also a sense of fulfilment to the young mother. On the other hand, a pregnancy miscarriage has deep physical, mental and psychological aftereffects on a woman. Miscarriage is generally defined as a loss of pregnancy before viability. Psychological consequences include increase in the risk of anxiety, depression, post-traumatic stress disorder, sometimes leading to suicides. Recurrent miscarriage leads to obstetrics complications and long-term health problems. Although there is varying amount of

physical aftereffects including backache and abdominal pain involved in miscarriages, the psychological and social effects may be more severe and long lasting. A miscarriage affects a person's identity, leading to disappointments and challenges to motherhood identity and role, stigma and isolation, amongst other aspects. A number of risk factors predisposing women to experience significant psychological distress following miscarriage have also been identified. There could be psychiatric illness and a previous pregnancy loss could lead to increase in chances of severe psychological distress.[1]

17.5 In ***Ministry of Defence v. Babita Puniya, (2020) 7 SCC 469,*** this Court castigated the State's perpetuation of anachronistic gender roles based on sex stereotypes which have long discriminated against women. Reliance was placed by the State on the "inherent physiological differences between men and women" to effectively suggest that the "weaker" sex may not

[1] *See:* V Klier, P Geller and J Ritsher, 'Affective Disorders in the Aftermath of Miscarriage: A Comprehensive Review' (2002) 5 Archives of Women's Mental Health 129-149; Siobhan Quenby and others, 'Miscarriage Matters: The Epidemiological, Physical, Psychological, and Economic Costs of Early Pregnancy Loss' (2021) The Lancet, May; P Gerber-Epstein, RD Leichtentritt and Y Benyamini, 'The Experience of Miscarriage in First Pregnancy: The Women's Voices' (2008) 33(1) Death Studies 1-29; OB Van den Akker, 'The Psychological and Social Consequences of Miscarriage' (2011) 6(3) Expert Review of Obstetrics & Gynecology 295

undertake tasks that are "too arduous" for them. This Court rejected the State's arguments finding them to not constitute a constitutionally valid basis for denying equal opportunity to women officers.

17.6 In ***Nitisha v. Indian Army, (2021)*** **15 SCC 125**, this Court significantly advanced Indian jurisprudence on indirect discrimination. In this case, this Court explained how the facade of certain structures as harmless and as a "norm" may in reality reflect the 'insidious patriarchal system'. Cognizant of the transformative intent of our constitutional project, this Court noted the need to rebuild societal and legal structures to realise equal opportunity in public employment and gender equality.

17.7 Much like '*it is not enough to proudly state that women officers are allowed to serve the nation in the Armed Forces*', it is not enough to find comfort solely in the growing number of female judicial officers if we are unable to secure for them a sensitive work environment and guidance. The High Court has erred in acting agnostic to, *inter alia,* claims of insubordination of petitioner-Sarita Chaudhary and acute medical and emotional conditions battled by petitioner-Aditi Kumar Sharma. Despite

still reeling from the effects of a severe case of Covid-19 and a miscarriage, the ACR for 2021 of petitioner-Aditi Kumar Sharma was downgraded by the Portfolio Judge from 'B-Very Good' to 'C-Good' only considering 'pendency and disposal'. While gender is not a rescue for poor performance, it is a critical consideration which must weigh for holistic decision-making at certain times and stages of a woman judicial officer.

Conclusion:

18. In the result, we set aside the termination orders *vis-à-vis* the petitioners herein including Resolution dated 13.05.2023 and the order/letter dated 13.05.2023 of the High Court, order of the State Government dated 23.05.2023 and all consequential adverse orders, if any. The petitioners herein are reinstated in their service with all consequential benefits, subject to the following conditions:

(i) the respondents are directed to declare their probation as on the date their juniors were confirmed;

(ii) However, the petitioners herein shall not be entitled to any salary from the date of termination till their reinstatement but the monetary benefits for the said period shall be calculated notionally for the purpose of pensionary benefits etc.;

(iii) It is directed that these petitioners shall be reinstated into service within a period of fifteen days from today in accordance with their seniority that they possessed as on the date of termination; and

(iv) the complaints if any, which were kept in abeyance by orders of the Chief Justice owing to the termination of these officers may be dealt with in accordance with law.

Before parting with these matters, we wish to record our appreciation for the valuable assistance rendered by Sri Gaurav Agrawal, learned senior advocate and Amicus Curiae appointed by the Chief Justice of India in effectively assisting the Court in the adjudication of these cases.

The writ petitions as well as Suo Moto Writ Petition are allowed and disposed of in the aforesaid terms.

.....J.
(B. V. NAGARATHNA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
FEBRUARY 28, 2025.