
(2007) 11 JH CK 0055

In the Jharkhand High Court

Case No : Writ Petition (Service) No. 4582 of 2003

Ajit Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 — Rule 2, 27
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4
Constitution of India, 1950 — Article 226, 233, 234, 235, 236
Jharkhand Service Code, 2001 — Rule 95

Citation : (2009) 1 JCR 635

Hon'ble Judges : M. Karpaga Vinayagam, C.J.; Amareshwar Sahay, J

Bench : Division Bench

Advocate : V. Shivnath and Kanti Roy, for the Appellant; Anubha Rawat Choudhary for Respondents No. 4 and 5 and Nazia Afroz, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—Ajit Kumar, the petitioner herein, who was working as a Subordinate Judge in Garhwa, was removed from service by an order issued by the Governor, State of Jharkhand dated 31.07.2003 on the basis of the resolution of the Full Court (High Court) recommending for removal of the petitioner from service.

2. Challenging the same, the petitioner has filed this writ petition with the following two prayers:

(i) Praying for quashing the order of removal passed by the Governor on 31.07.2003 from service with effect from 31.07.2003, which was issued finding that his service is no longer required in public interest;

(ii) Praying for quashing of the resolution and recommendation of the Full Court through memo dated 24.07.2003 for removal of the petitioner by the Governor without inquiry as the High Court Full Court felt that it would not be reasonably

practicable to hold inquiry in the interests of the institution and also in public interest, thereby dispensing with enquiry under proviso to Article 311(2) of the Constitution of India.

3. The short facts, which are relevant for disposal of the writ petition are as follows:

(i) The petitioner was appointed as temporary Munsif by Government of their Bihar by the order dated 10.06.1988;

(ii) Thereupon his services was confirmed by a notification dated 09.12.1994;

(iii) After bifurcation of the State, he was taken to Jharkhand Cadre and from 21.04.2001, he has been working as a Munsif Magistrate, Godda and thereafter was transferred to Garhwa.

(iv) By the notification dated 14.08.2002, he was promoted as Subordinate Judge, Garhwa.

(v) On 05.05.2003, Justice Hari Shankar Prasad, Zonal Judge inspected the Garhwa Civil Court and inspected the records relating to the petitioner also and submitted his confidential report to the Chief justice against the petitioner that the petitioner did not use to prepare judgments on his own and on the other hand he will get it prepared through some body else and deliver the judgments.

(vi) The Hon''ble Chief Justice, after going through the report, referred the matter to the Full Court for considering for appropriate action.

(vii) On 18.06.2003, the Full Court, after considering the confidential report and the report of the Zonal Judge, resolved that the petitioner can be recommended for removal from service, without enquiry as it felt that it is not practicable in the interest of institution to hold an inquiry since it may lead to the question of validity of several judgments rendered by him; Consequently, the Full Court invoked the proviso to Article 311(2)(b) of the Constitution of India to dispense with the inquiry as against the petitioner;

(viii) Accordingly, the resolution recommending for removal of the petitioner was sent by memo dated 24.07.2003 to the Governor;

(ix) The Governor, after perusal of records, accepted the High Court's resolution and recommendation and passed an order on 31.07.2003, thereby removing the petitioner from service as his service is no more required in public interest;

(x) Thereupon the petitioner received the order of removal by the Governor dated 31.07.2003;

(xi) Challenging the same the petitioner filed this writ petition. Originally, he sought for the single prayer for quashing the order of removal dated 31.07.2003;

(xii) During the pendency of the writ petition, the Registrar General of the High Court, one of the respondents, filed a counter enclosing therewith Full Court

resolution and recommendation, stating that the order of removal by the Governor was passed on the basis of the said recommendation and resolution through the memo dated 24.07.2003 made by the Full Court by invoking Article 311(2)(b) of the Constitution of India to dispense with the inquiry;

(xiii) The petitioner, thereupon, was advised to file an amendment petition for seeking for the second prayer for quashing the memo dated 24.07.2003 as well. Accordingly, he filed the petition adding the one more prayer challenging the High Court's resolution dated 24.07.2003.

4. The short submissions made by Shri V. Shivnath, learned Senior Counsel for the petitioner are as follows:

(i) The Governor is the appointing authority of the petitioner and other officers of the Subordinate Judiciary. Therefore, he is the competent authority to dismiss or remove the petitioner. As per Article 311(2)(b) proviso, the only authority empowered to dismiss or remove a person is competent to record in writing that it is not reasonably practicable to hold the enquiry against petitioner. So the Governor alone is the appointing authority as well as dismissing authority who is competent to decide about the practicability to conduct enquiry.

(ii) The High Court can hold enquiry, impose punishment other than dismissal, removal or reduction in rank. So, the High Court is not competent to remove the petitioner and as such it cannot decide about the practicability to hold enquiry against the petitioner.

(iii) Exercising the powers under Articles 233, 234 and 235 of the Constitution, the power of removal and dismissal is exclusively required to be exercised only by the Governor. The Governor alone is competent to pass an order in terms of proviso (b) to Article 311(2) of the Constitution of India to record that it is not practicable to hold regular enquiry. Therefore, the resolution passed by the Full Court (High Court) to dispense with the regular enquiry is without jurisdiction as the Governor, who is competent to pass the order of removal or dismissal or reduction of rank, alone has to be satisfied with the material placed to dispense with the regular enquiry.

(iv) Chapter VI of the Constitution consists of five Articles, No. 233 to 237. Article 236 means the expression District Judge includes other judges also. The expression judicial services means a service exclusively of a person intending to fill the post of District Judge and other civil judicial post inferior to the District Judge. Article 235 relates to recruitment of persons other than District Judge to judicial services and the same shall be made by the Governor of the State in accordance with the Rules made by him after consultation with the State Public Service Commission and with the High Court.

(v) The power of the Governor under Article 235 cannot be curtailed by the rules framed by the State under Article 234. Even for the sake of argument it is admitted that the High Court has the right to decide to dispense with the regular

enquiry, the said decision of the High Court can stand the scrutiny of the High Court under judicial review.

(vi) Even when such a decision is taken by the High Court to dispense with the enquiry, the petitioner shall be given opportunity by issuance of notice of charges and to submit explanation and deny the charges. Without such an enquiry, the decision taken by the High Court to dispense with the enquiry is arbitrary.

5. In reply to the above contention, Mrs. Anubha Rawat Choudhary, the counsel appearing for the High Court would make the following submission:

(i) The Governor of the State is the appointing authority as far as District Judges are concerned under Article 233. As far as Subordinate Judges like the petitioner are concerned, they are governed under Article 235 of the Constitution of India. So far as they are concerned, the Governor is not the appointing authority. It is the High Court, which has authority to appoint the Judges other than the District Judges including the Subordinate Judges under the Rules framed in exercise of Article 234 of the Constitution of India. Under Rules 2(b) and 27 of the Bihar Civil Services Recruitment Rules 1955, the recruitment to the post of Subordinate Judges shall be made by the High Court. Therefore, the High Court is the appointing authority as well as disciplinary authority in respect of Subordinate Judges.

(ii) The High Court, under Article 311(2)(b) of the Constitution of India, which is empowered to dismiss or remove or reduce in rank, has got the authority to decide to dispense with the enquiry and recommend for removal.

(iii) The Full Court (High Court) proceedings and the memo conveying the recommendation and resolution would clearly indicate that sufficient reasons have been given by the Full Court (High Court) to dispense with the enquiry and recommend for removal to the Governor. The Governor also has perused the entire records and concluded, in view of the conduct of the petitioner, that the petitioner is no more required in service in public interest.

(iv) The recommendation and resolution made by the High Court is well within the powers of the High Court conferred on it under the valid rules, which have been framed in exercise of powers conferred under Article 234 of the Constitution. This resolution by the High Court is binding on the Governor. Therefore, the orders impugned are perfectly valid.

6. We have heard the counsel for the parties and have given our thoughtful consideration to the rival contentions.

7. The main contention challenging the order of the Governor and the memo of recommendation and resolution for removal by the Full Court (High Court) is that Governor, being the appointing authority, is competent to remove the petitioner and as such the Governor alone, under Article 311(2)(b) of the Constitution, would be competent to hold that it is not reasonably practicable to conduct enquiry against the officer concerned on the basis of the reasons to be recorded

in the order and since in this case the appointing authority, the Governor, did not record his reason in the order of removal to hold that it is not practicable to conduct such an enquiry and the Full Court (High Court), which is not competent to dismiss or remove, has no powers to decide about the practicability to conduct such an enquiry against the officer concerned, the orders impugned are liable to be set aside as they are not valid.

8. In reply to this contention, it is submitted by the counsel for the respondents that the High Court, which is the appointing authority and which has got the powers to dismiss or remove or reduce in rank, alone is competent to decide about the practicability of dispensing with the enquiry and accordingly High Court has taken the decision which is binding on the Governor and hence the impugned orders are justified.

9. In the light of the above contentions, the following questions have emerged for consideration:

(i) Whether appointing authority alone is the competent authority to pass an order of removal or dismissal?

(ii) Who is the competent authority within the meaning of Article 311(2)(b) of the Constitution, who can take a decision to dispense with the regular enquiry?

(iii) Who is the appointing authority in respect of the Subordinate Judges?

(iv) Whether the orders impugned could be subjected to the judicial review and the same is in accordance with law?

10. For discussing the first question as to whether appointing authority alone is the competent authority to dismiss or remove, it is worthwhile to refer Article 311(1) of the Constitution of India.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

11. As per this Article the appointing authority can remove a person in service. According to the counsel for the petitioner, the appointing authority alone can dismiss the person in service and no other authority. But the counsel for respondents submits that it is not correct since the person in service can be dismissed either by the appointing authority or the other authority who is not subordinate. On perusal of the above provision, we feel the contention of the counsel for respondent is correct since the provision would indicate that a person in service can be dismissed or removed not only by the appointing authority, but also by the other authority, which is not subordinate to the appointing authority. So, the only bar is that the person in service cannot be removed by any other authority other than appointing authority, only when it is subordinate to the

appointing authority. In other words, the safeguard provided under Article 311(1) is that any member of civil service cannot be dismissed except by the appointing authority or by any other authority which is not subordinate to the appointing authority. It is the contention of the counsel for the petitioner that the Governor is the appointing authority for the petitioner and as such he alone is competent to dismiss or remove the petitioner and not the High Court. On the other hand, it is contended by the counsel for the respondents that Governor is not the appointing authority and even assuming that the Governor is the appointing authority, any other authority who is not subordinate to the appointing authority also can remove and as such the High Court, which is not subordinate to the Governor, can also remove and therefore, the contention of the counsel for the petitioner that High court has no power for removal is not correct. In view of the wordings contained in Article 311(1) of the Constitution, it is clear that the person in civil service can be removed either by the appointing authority or the authority which is not subordinate to the appointing authority. There cannot be any dispute that the High Court is not subordinate to the Governor who is said to be the appointing authority and as such the High Court also is competent to remove the person in service.

12. The next question is as to who is the competent authority to take the decision to dispense with the regular enquiry, whether appointing authority or other authority? According to the counsel for the petitioner, Governor, the appointing authority, alone can take such decision and not the High Court. According to the counsel for the respondents, the High Court alone is competent authority within the meaning of Article 311(2)(b) being the disciplinary authority to take a decision to dispense with the regular enquiry.

13. To deal with the above question, it is relevant to quote the entire Article 311 of the Constitution of India:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

14. Article 311(1) provides for the details of the authorities who can dismiss or remove the person employed in civil services. We have already discussed the said provision. Article 311(2) would deal with the nature of the enquiry to be conducted against that person and the reasonable opportunity of being heard to that person before such removal and dismissal. This clause does not apply to this case as there is no enquiry before removal. Article 311(2) proviso contains three clauses, where the opportunity need not be given for imposing the penalty proposed. For our purpose Article 311(2)(b) is quite relevant. Let us quote Article 311(2) proviso (b).

where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry,

15. Under Article 311(2)(b) it shall not be necessary to give the person concerned opportunity by holding enquiry when there are some reasons to conclude that it is not reasonably practicable to hold enquiry before removal. Further, the authority concerned, who is empowered to dismiss or remove or to reduce him in rank must be satisfied with some reasons and those reasons to be recorded in the order of removal.

16. Article 311(2)(b) would provide for the details of the authorities who are competent to record those reasons. Those details, as contemplated under proviso (b) to Article 311(2) of the Constitution are given below:

(i) The authority who is empowered to dismiss the person in service;

(ii) The authority who is empowered to remove the person in service;

(iii) The authority who is empowered to reduce the person in service in rank.

17. The perusal of the above Article would make it evident that the decision with reference to the practicability to hold enquiry can either be taken by the authority who is empowered to dismiss or remove or by the authority who is empowered to reduce him in rank. This means Article 311(2)(b) does not provide

that the dismissing authority or removing authority alone can dispense with the enquiry, but it provides that the authority who can reduce the person in rank also is competent to come to the conclusion with regard to the question whether it is practicable to hold enquiry?

18. Under Article 311(3) when a question arises whether it is practicable to hold such enquiry as referred to in Clause (2), the decision of the authorities or one of the authorities mentioned above shall be final. Therefore, there is no bar for the High Court, being not subordinate to the appointing authority, namely, the Governor, or being the disciplinary authority to take decision to dismiss or remove the subordinate judge.

19. Similarly, it cannot be disputed that the High Court is vested with the power to reduce any person in subordinate judiciary in rank. In this way, High Court, which is vested with the power of dismissal, power of removal and the power to reduce him in rank is competent to decide about the practicability of holding enquiry as provided in Article 311(2)(b) of the Constitution.

20. In those circumstances, the contention of the counsel for the petitioner that the Governor, who is said to be the appointing authority, alone is to be satisfied with the practicability of holding enquiry and to record his reasons to dispense with the enquiry is not sustainable.

21. Now let us come to the third question as to who is the appointing authority in respect of Subordinate Judges? According to the learned Counsel for the petitioner, Governor alone is the appointing authority for the Subordinate Judges. On the other hand, it is contended by the counsel for the respondents that the High Court alone is the appointing authority in respect of Subordinate Judges.

22. Now, let us see who is appointing authority? Whether Governor or High Court?

(i) Chapter VI of the Constitution of India deals with the Subordinate Courts and it contains Articles from 233 to 237;

(ii) Article 233 relates to the appointment of District Judges;

233. Appointment of district judges.- (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

(iii) As per this article, the appointment, posting and promotion of district judges will be made by the Governor in consultation with the High Court. The exercise of the power of appointment by the Governor is conducted with his consultation

with the High Court, which means that he should only appoint a person to the post of district judge in consultation with the High Court. Thus, it deals with District Judges only and not Subordinate Judges.

(iv) Article 234 relates to the appointment of persons other than District Judges;

234 Recruitment of persons other than district judges to the judicial service. - Appointments of persons other than district judges to the judicial service if a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

(v) This article deals with the appointment of persons to the judicial service other than district judges; i.e., it does deal with Subordinate Judges. As per this Article, the appointments shall be made by the Governor by the State in accordance with the rules framed by him in consultation with the High Court and the Public Service Commission; The Bihar Civil Services (Judicial Branch) (Recruitment) Rules 1955 was framed by the State of Bihar in exercise of the powers conferred under Article 234 of the Constitution of India.

(vi) As per these rules, the Governor of State, after consultation with the High Court and Public Service Commission made rules for regulating the recruitment to Bihar Civil Services (Judicial Branch); The relevant rules are Rule 2(b) and Rule 27;

2(b) Recruitment to the posts of Subordinate Judges shall be made, by the High Court; by promotion of Munsifs confirmed under Rule 27.

27. A candidate appointed to the post of Munsif, otherwise than in a temporary capacity, shall be appointed on probation in the first instance, but will be eligible for confirmation as a Munsif on the date on which the following conditions are fulfilled: .

(i) that he has completed two years service from the date of first appointment;

(ii) that he has passed such tests as may from time to time be prescribed in the Departmental Examination Rules; and.

(iii) that he is recommended by the High Court for confirmation.

(vii) So, reading of the above rules framed under Article 234 of the Constitution would indicate that the High Court is the appointing authority as far as Subordinate Judges are concerned.

(viii) Let us now see Article 235 of the Constitution of India; Article 235 deals with the administrative control over the Subordinate Courts.

235. Control over subordinate courts. - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing

in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

(ix) The above Article provides for the control over the district courts as well as the subordinate courts; the said control over the subordinate judiciary includes the power of posting, promotion, grant of leave, transfer, maintain discipline etc.; these powers are vested with the High Court; this control is exclusive in nature, comprehensive in extent and effective in operation; the posting, promotion and leave are merely illustrative and do not exhaust all matters concerning control. It includes disciplinary jurisdiction, premature or compulsory retirement etc.;

(x) So, in the light of the above Articles and rules, it is clear that the petitioner, being the subordinate judge, is governed by the provisions of Article 234 and 235 of the Constitution of India and also Rules 2(b) and 27 of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 framed by the Governor of Bihar in exercise of powers conferred under Article 234 of the Constitution of India; (xi) In view of the above Rules, the High Court is the appointing authority as far as subordinate judge like the petitioner is concerned.

23. The discussion made in the earlier paragraphs would reveal the High Court is not only the appointing authority for the Subordinate Judges as per the rules framed under Article 234 of the Constitution of India, but also the disciplinary authority in view of Article 235 of the Constitution and is empowered to exercise powers under Article 311(2)(b) of the Constitution to dismiss, or remove or to reduce him in rank and to decide and dispense with the enquiry after recording the reasons in writing.

24. The above view of ours on the basis of interpretation of various rules and articles is supported by the decisions being quote below:

(i) Jai Jai Ram and others Vs. U.P. State Road Transport Corporation, Lucknow, and others,

It was next contended that the officers who had taken action against the appellants had no power to make appointments in government service or on civil posts while they were on deputation with the Corporation and, therefore, they could not have taken any action against the appellants in view of the protection afforded by Article 311. It was submitted that the authority contemplated by Article 311 is the authority which should have power to appoint a person on a civil post under the Union or a State, as the case may be. We do not find any substance in this contention also. Article 311 gives protection to a member of a civil service of the Union or an all-India service or a civil service of a State or to a person holding a civil post under the Union or a State against dismissal or removal by an authority subordinate to that by which he was appointed. Article 311 does not provide that a member of a civil service or a person holding a civil post either under the Union or a State cannot be dismissed or removed by an

authority except the appointing authority. There is no requirement that the authority which takes disciplinary action must continue to have the power of making appointment to the civil service or on a civil post under the Union or a State. It can be any other authority so long as it is not subordinate in rank or grade to the authority by which the delinquent government servant was appointed. That is the only requirement of Article 311 and we cannot read anything more into it.

(ii) High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another,

13. ...As its integral constitutional structure, independency of the judiciary is an essential attribute of rule of law. Judiciary must, therefore, be free from pressure or influence from any quarter. The Constitution has secured to them, the independence. The concept of "judicial independence" is a wider concept taking within its sweep independence from any other pressure or prejudice. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judge belongs. Independent judiciary, therefore, is most essential to protect the liberty of citizens. In times of grave danger, it is the constitutional duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived), undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. (vide C. Ravichandran Iyer v. Justice A.M. Bhattacharjee). The Constitution of India has delineated distribution of sovereign power between the legislature, executive and judiciary. The judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the Council of Ministers and the members of the legislature. It is an office of public trust and in a democracy, such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State. What is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service....

(iii) Madan Mohan Choudhary Vs. The State of Bihar,

18. The Indian Constitution provides for an independent judiciary in every State by making a provision for a High Court being constituted for each State. The Constitution has conferred very wide powers and extensive jurisdiction on each High Court, including the power of superintendence over all the courts and tribunals in the territory over which it has jurisdiction. Undoubtedly, one of the most important wings of the judiciary comprises of the subordinate courts as it is in these courts that the judiciary comes in close contact with the people. In order

to secure the independence of the subordinate judiciary from the executive, Articles 233 to 237 have been placed in the Constitution....

22. In order to ensure their independence, the control over the subordinate courts has been vested in the High Court under Article 235 which provides as under:

235. Control over subordinate courts. - The control over District Courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the Judicial Service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

23. Under this article the High Court's control over the subordinate judiciary is comprehensive and extends over a variety of matters, including posting, promotion and grant of leave. The three words, namely, "posting", "promotion" and "grant of leave" used in this article are only illustrative in character and do not limit the extent of control exercised by the High Court over the officers of the subordinate judiciary.

24. It is now well settled by a catena of decisions (see, for example, *Mohd. Ghouse v. State of Andhra* and *Chief Justice of A.P. v. L.V.A. Dixitulu*) that the expression "control", in Article 235 of the Constitution, includes "disciplinary control".

26. From the scheme of the Constitution, as set out above, it will be seen that though the officers of the subordinate judiciary are basically and essentially government servants, their whole service is placed under the control of the High Court and the Governor cannot make any appointment or take any disciplinary action including action for removal or compulsory retirement unless the High Court is "CONSULTED" as required by the constitutional impact of both the Articles 233 and 234 and the "control" of the High Court indicated in Article 235.

(iv) *G. S. Nagmoti V. State of Mysore*

3. ...It was pointed out that under Article 235 the High Court alone had the power to hold disciplinary proceedings against Officers belonging to the judicial service of a State holding posts inferior to that of a District Judge and no other Authority was competent to initiate disciplinary proceedings or to impose punishment against Subordinate Judges....

(v) *Union of India and Another Vs. Tulsiram Patel and Others*,

62. Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of Clause (a) a government servant

must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of Clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of Clause (c) the President or the Governor of a State, as the case may be, must be, satisfied that in the interest of security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with, some opportunity at least should not be afforded to the government servant so that he is not left wholly without protection. As most of the arguments on this part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso.

(vi) The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another,

15. ...That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the members of the judicial service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the members of the judicial service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor....

(vii) Gauhati High Court and Another Vs. Kuladhar Phukan and Another,

14. The doctrine of separation of powers and the need for having an independent judiciary as a bulwark of constitutional democracy persuaded the founding fathers of the Constitution assigning a place of distinction to the judiciary. Chapter VI of the Constitution dealing with subordinate courts seeks to achieve the avowed object of insulating even the subordinate judiciary from the influence of the executive and the legislature. Article 234 provides for appointments of persons other than District Judges to the judicial services of a State being made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Article 235 vests in the High Court the control over District Courts and courts subordinate thereto. All the matters touching the service career of incumbents in subordinate judiciary including their posting and promotion are subject to the control of the High Court. Once a person has entered in the judicial service, he cannot depart there from save by the leave of the High Court. It is settled by a catena of decisions that the word "control" referred to in Article 235 of the Constitution has been used in a comprehensive sense and includes the control and superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and the administrative side. Even in such matter in which the Governor may make a decision, the decision cannot be taken save by consultation with the High Court. The consultation is mandatory and the opinion of the High Court is binding on the State Government; else the control, as contemplated by Article 235, would be rendered negated. Such control and consultation are not a matter of mere formality; they are the constitutional power and privilege of the High Court, also its obligation, and cannot, be diluted by sheer inaction or failing to act when the High Court must act. The Governor cannot proceed to act in any matter relating to subordinate judiciary and bypass the process of consultation merely because the High Court though, "informed", did not act or respond. The consultation here means meaningful, effective and conscious consultation....

25. The guidelines, which have been given in the above decisions are as follows:

(i) Article 311 does not provide a member of the Civil Service cannot be dismissed or removed by an authority except the appointing authority. The same can be done by any other authority so long it is not subordinate in rank or grade to the authority by which the person concerned was appointed. That is the only requirement of Article 311.

(ii) As its integral structure, the independence of judiciary is an essential attribute of rule of law. Judiciary must be free from pressure or influence from any quarter. The concept of judicial independence is a wider concept taking within its sweep independence from any other pressure or prejudice. Independent judiciary is most essential to protect the liberty of citizens. In times of grave danger, it is the constitutional duty of the judiciary to poise the scales of justice unmoved by the powers undistributed by the clamour of the multitude.

The heart of judicial independence is judicial individualism.

(iii) In order to secure the independence of the subordinate judiciary from the executive, Articles 233 to 237 have been placed in the Constitution. In order to ensure their independence, the control over the Subordinate Court has been vested in the High Court under Article 235 of the Constitution. Under this Article High Court's control over the subordinate judiciary is comprehensive and extends over a variety of matters, including posting, promotion and grant of leave. The three words, namely, posting, promotion and grant of leave used in this Article are only illustrative in character and do not limit the extent of control exercised by the High Court over the officers of the subordinate judiciary. Though the officers of the subordinate judiciary are basically government servants, their whole service is placed under the control of the High Court and the Governor cannot make any appointment or take any disciplinary action including action for compulsory retirement unless the High Court is consulted as required by the constitutional impact of both the Articles 233 and 234 and the control of the High Court indicated in Article 235.

(iv) Under Article 235 the High Court alone has the power to hold that disciplinary proceeding against the officers belonging to the judicial service of a State holding posts inferior to that of a District Judge and no other Authority was competent to initiate disciplinary proceedings or to impose punishment against Subordinate Judges.

(v) In the case of Article 311(2)(b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. The paramount thing to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied that proviso becomes applicable and the government servant is not entitled to an inquiry.

(vi) The High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed by the State Government on the recommendation of the High Court. The recommendation of the High Court is binding on the State Government/Governor.

(vii) The control vested in the High Court is that if the High Court is of opinion that a particular judicial officer is not fit to be retained in service, the High Court will communicate that to the Governor because the Governor is the formal

authority to dismiss, remove or terminate the appointment. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the subordinate judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. The Government will act on the recommendation of the High Court. That is the broad basis of Article 235.

(viii) The word "control" referred to in Article 235 of the Constitution has been used in a comprehensive sense and includes the control and superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and administrative side. Even in such matter in which the Governor may make a decision, the decision cannot be taken save by consultation with the High Court. The consultation is mandatory and the opinion of the High Court is binding on the State Government or else the control, as contemplated by Article 235 would be rendered negated. The consultation with the High Court means meaningful, effective and conscious consultation.

26. Bearing the above principles laid down by the Supreme Court in mind, if we look at the above facts of this case, there is no difficulty in concluding that the High Court, as far as Subordinate Judges are concerned, is the appointing authority as well as the authority who has got the power to dismiss or remove or to reduce the person in service in rank and therefore, the Full Court (High Court) is well within its powers to decide about the dispensing with the regular enquiry in the light of the impracticability to hold such enquiry.

27. Let us now deal with next question as to whether judicial review is permissible in law and the orders have been passed by the competent authority in accordance with law? Learned senior counsel for the petitioner would cite I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, in order to show that judicial review is permissible when the jurisdiction of the authority is questioned. As correctly submitted by the learned Senior Counsel for the petitioner, we are of the view that the word "final" as contemplated under Article 311(3) of the Constitution would not prevent this Court to make a judicial review of the orders impugned under Article 226 since this Court is called upon to find out whether the authority who passed the orders is having jurisdiction to pass those orders and the said authority has exercised powers in accordance with the procedure contemplated under the relevant rules and the relevant Articles of the Constitution.

28. In the light of the above and in order to find out the answer for the above question, it would be appropriate to refer to the resolution and recommendation passed by the High Court and as well as the orders passed by the Governor.

29. According to the counter riled by the Registrar General, High Court:

(i) When the petitioner was working as a Judge of Garhwa, Justice Hari Shankar

Prasad, the Zonal Judge made an inspection of Garhwa Judgeship on 05.05.2003.

(ii) After inspection he submitted his confidential report to the Chief Justice against the petitioner including the fact that he did not himself use to write the judgment and some one else wrote the judgments rendered by him.

(iii) It is also mentioned in the confidential report that in the course of inspection, a number of allegations were leveled against the petitioner including the fact that the petitioner himself did not write the judgment and some one else drafted the judgment and gave a typed copy of the judgment to the petitioner, who in turn dictated the judgment to the stenographer and the same was retyped by the stenographer.

(iv) Inspecting Judge further reported that the petitioner was asked to write some orders on particular subject, but ultimately, the Inspecting Judge found that the petitioner was not capable to write even a short order.

(v) On receipt of this confidential report of Inspecting Judge, the Chief Justice referred the matter to Full Court for consideration and action on 11.07.2003.

(vi) On 18.07.2003, the matter was considered by the Full Court, which, in turn, looking into the report as well as the confidential report resolved to recommend for the removal and recorded reasons in the minutes for dispensing with the enquiry before removal.

The minutes of Full Court dated 18.07.2003 is as follows:

Considered the report of the Zonal Judge and the Annexure thereto. It is resolved that Shri Ajit Kumar, Subordinate Judge, Garhwa, be removed from service. On considering the report made by the Zonal Judge and the Annexures thereto it is resolved that it is not in the interest of the Institution to hold an enquiry since it may lead to questions of validity of several judgments rendered by the Subordinate Judge. That will tend to impair the image of the Judiciary. We are satisfied in the circumstance, that it is not reasonably practicable to hold an enquiry, since it will be against the public interest. We are, therefore satisfied that the proviso to Article 311(2)(b) of the Constitution of India should be invoked in this case. Hence, it is resolved to dispense with an enquiry, as contemplated by Article 311(2) of the Constitution of India.

(vii) The Full Court also before passing the resolution, as referred to in the minutes, perused the ACR as well as the detailed report given by the Zonal Judge. In the entry relating to 2002 and 2003 made by Justice V. Narayan, the Zonal Judge would show the opinion about the officer concerned formed by him. The relevant entry as mentioned in the signature is as follows:

2002-03 Hon"ble Mr. Justice V. Narayan i) Knowledge - In civil matter below average and requires improvement.

ii) Quality of judgment - In Criminal Cases - B and in Civil Cases - C.

iii) Reputation - He is said to have developed close and intimate relation with a particular advocate.

iv) Net Result - There is a strong rumour that his judgment in Title Suits are not written by him and that they are written by some other persons. I examined his judgment in PS. 12/89, T.S. 16/91, PS 39/94 and T.S. 4/92. They are written in chaste English, I have personal knowledge that he cannot write in such a pure and decent language.

30. In order to peruse the report sent by Justice Hari Shankar Prasad, Zonal Judge on the basis of inspection made on 05.05.2003 in the Garhwa Judgeship, we summoned the original records from the Registry. Since the above report was taken into consideration by the Full Court, we feel that it is appropriate to quote the relevant observations made by the Zonal Judge in his report dated 05.05.2003.

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Hon"ble the Chief Justice

In course of inspection of Garhwa Judgeship from 1.5.2003 to 3.5.2003 I inspected the court and office of Sri Ajit Kumar, Sub-Judge, Garhwa. In course of inspection a number of allegations were leveled against tills officer including the fact that he does not himself write the judgment and someone else writes the judgment and gives a typed copy of the judgment to him and he in turn dictates that judgment to his stenographer and stenographer again re-types the judgment and then Sri Ajit Kumar delivers the said judgment. Whether this fact that he does not himself write the judgment and somebody else gives a typed copy of the judgment to be delivered by him is true, I made enquiry in this regard and I was told that while he was SDJM he used to write judgment in Hindi and he never delivered judgment in English but after he became Sub-Judge he started delivering judgments in English. In order to verify the correctness of allegations whether he has capacity to deliver judgment in English or not I confidentially came to know that his English is very weak and I asked him to write an order under Order IX, Rule 4 CPC allowing the same and he dictated an order in my presence to his stenographer, who brought typed order and he read out the same and put his signature. When I read the order I found some grammatical mistakes and then I brought this fact to him that there are several grammatical mistakes in the order and asked him to correct the same and given me and he again read out the same but he could not make correction and handed over the same to me. I am attaching herewith the original copy of the order along with judgment delivered by him in English in the capacity of Sub-Judge for perusal. The fact that he does not write the judgment in English is clear and there is a general feeling among the litigants as well as the members of the Bar that a particular Advocate writes the judgment on his behalf and he gives typed copy of the judgment to the Sub-Judge and he again reads out the typed copy of the judgment to his stenographer and Stenographer re-types the same.

This he does so in order to show that it is he who dictates the judgment and this fact is corroborated from his knowledge in English, which will appear from the order, which he dictated in my presence.

31. Only after taking into account the above report and the ACR, the Full Court, the disciplinary authority, which is competent to recommend for removal, was satisfied that this is a case where the enquiry has to be dispensed with under the proviso to Article 311(2)(b). In pie minutes of the Full Court Meeting, the reasons for dispensing with the enquiry have specifically been given. Exact wordings of the reasons are as follows:

On considering the report made by the Zonal Judge and the Annexures thereto it is resolved that it is not in the interest of Institution to hold an enquiry since it may lead to questions of validity of several judgments rendered by the Subordinate Judge. That will tend to impair the image of the Judiciary. We are satisfied in the circumstance, that it is not reasonably practicable to hold an enquiry, since it will be against the public interest.

32. The above details which have been given by the Full Court in the minutes would make it evident that the disciplinary authority, which is the Full Court was satisfied that the enquiry is to be dispensed with and accordingly recorded the reason for the same in compliance with Article 311(2)(b) of the Constitution of India.

33. On the basis of this resolution and recommendation, as directed by the Full Court, the Registrar General vide a letter dated 24.07.2003 informed the Government with the resolution and recommendation which is given below:

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JHC Sch. (1-7) Phone: 2482672(O) 2243534(R) Collection No. XXI-06-03/Vig.Sec. Sarju Prasad Memo No. 952/Apptt. Registrar General I/c Jharkhand High Court Dated: 24.07.2003 Ranchi To The Secretary to the Government Department of Personnel, Administrative Reforms & Rajbhasha, Ranchi.

Sir, I am directed to inform you that the Court, after considering the report of the concerned Zonal Judge and other materials, have been pleased to resolve and recommend that Sri Ajit Kumar, Sub Judge, Garhwa be removed from service with immediate effect.

The Court has further resolved that it would not be reasonably practicable to hold enquiry in the interest of the institution and also in public interest. Hence invoking the proviso to Article 311(2) of the Constitution of India the requirement of enquiry has been dispensed with.

However, the arrears of salary and allowances admissible to him will be paid in accordance with and subject to the conditions laid down in Rule 95 of the Jharkhand Service Code, 2001.

I am, therefore, to request you for issuing the appropriate Government Orders

and for doing the needful.

Yours faithfully, Sd/- Registrar General I/c

34. On receipt of the same, the Government placed the letter and other materials. The Governor passed an order accepting the recommendation, considering the conduct of the petitioner and felt that he must be removed from service by the order dated 31.07.2003. The order passed by the Governor is as follows:

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vkns''k la[;k&6@LFkk0&022@2001dk0&4346@Jh vthr dkekj voj U;k;k/kh''k xok ds dk;Zdykiks ij fopkjsijkUr ;g ik;k x;k fd yksdfgr esa mudh Isok dh vko;"drk vc ugh gS A vr% jkT; ljdkj us fnukad&31-07-2003 ds vijkg~u ls jh dkekj dks IsokeqDr djus dk fu.kZ; fy;k gS A

Jh dkekj dks >kj[k.M+ Isok lafgrk ds fu;e 95 ds varxZr cdk;k osru vkfn dk Hkqxrku vuqekU; gksxk A

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English translation of the Order passed by the Governor

Government of Jharkhand Department of Rajbhasa, Administrative and Personnel Reforms

::ORDER::

Ranchi dated 31st July 2003 In pursuance of order No. 6/Estt-022/2001 Ka-4346 the conduct of Shri Ajit Kumar, Subordinate Judge, Gathwa was considered and it was found that in public interest his services are no more required. Hence the State Government has decided to remove him from service with effect from 31.7.2003 afternoon.

Arrears of salary etc. shall be payable to Shri Kumar as per Rule 95 of the Jharkhand Service Code.

By the order of the Governor, State of Jharkhand

Sd/- (Nity Shankar Mukhopadhyay) Deputy Secretary to the Government

35. The perusal of the report of Zonal Judge, the Full Court minutes and orders of the Governor would clearly show the Full Court as well as the Governor have gone through the entire papers and took into consideration the conduct of the petitioner and decided to remove him in public interest.

36. As held by this Supreme Court, when the conduct of the judicial officer is such that the act of the judicial officer would deserve the punishment of

dismissal or removal, or reduction in rank then the disciplinary authority can take decision to dispense with the enquiry as it is not practicable to hold such enquiry.

37. In this case the Full Court (High Court), which is the appointing authority of the Subordinate Judge and which is competent to dismiss or remove or reduce him in rank, has rightly decided to dispense with the enquiry and record its reasons in the recommendation and resolution on the basis of which Governor has passed an order of removal, especially taking into consideration the conduct of the petitioner as referred to in the Full Court proceedings.

38. Therefore, in our view, the authorities concerned, i.e., both the Full Court (High Court) as well as the Governor have exercised their power in accordance with law without violating any of the mandatory provisions.

39. Learned senior counsel for the petitioner would cite *The State of West Bengal Vs. Nripendra Nath Bagchi*, , *The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*, and A AIR 1961 SC 1547 to substantiate his plea that the Governor alone is the authority competent to decide about dispensing with the inquiry and dismiss. The relevant observations are as follows:

(i) *The State of West Bengal Vs. Nripendra Nath Bagchi*,

...It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause of that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Courts. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor....

(ii) *The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*,

47. The Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High Court which are made in exercise of the power of control vested in the High Court. The High Court of course under this control cannot terminate the services or impose any punishment on District Judges by removal or reduction. The control over District Judges is that disciplinary proceedings are commenced by the High Court. If as a result of any disciplinary proceedings any District Judge is to be removed from service or any punishment is to be imposed that will be in accordance with the conditions of service.

(iii) *B.K. Sardari Lal Vs. Union of India (UOI) and Others*,

6. As in the cases mentioned in the proviso, the procedure laid down in Clause (2) has not to be followed and the only protection which is conferred on a civil servant cannot be availed of by him, we must look at them carefully. A dichotomy has been introduced in Clauses (b) and (c) with regard to the authority or the functionary who has to be satisfied about the matters stated therein. In Clause (b), it is only the authority empowered to dismiss or remove a person or to reduce him in rank who has to be satisfied that it is not reasonably practicable to hold the inquiry provided by Clause (2) and his decision in terms of Clause (3) of the Article shall be final. But in Clause (c) it is the President or the Governor alone, as the case may be, who has to be satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

40. These authorities do not help the petitioner in any way as the first two authorities, i.e. *The State of West Bengal Vs. Nripendra Nath Bagchi*, and *The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*, would deal with the District Judges in the light of Article 233 of the Constitution and the third authority, i.e. *B.K. Sardari Lal Vs. Union of India (UOI) and Others*, deals with the power of the President of India and the Governor in respect of Officer of Army under Article 311(2)(c) of the Constitution of India. In this case we are concerned with the Subordinate Judge appointed by the High Court under the relevant rules framed by the Governor in exercise of powers conferred under Article 234 of the Constitution and as such it cannot be disputed that the High Court has got disciplinary control over the Subordinate Judiciary including the Subordinate Judges under Article 235 of the Constitution and being the appointing authority and being the disciplinary authority, it felt fully satisfied that the officer concerned cannot be allowed to be retained in service in public interest and decided to pass a resolution and recommendation to the Governor, who is expected to pass a formal order as Supreme Court would say that the recommendation and resolution as far as Subordinate Judges are concerned is binding on the Governor.

41. Furthermore, as indicated above, the Governor also, after perusal of the proceedings has passed an order accepting the recommendation. Thus, it is clear the petitioner has not established that the orders impugned would suffer from any infirmity.

42. Though the counsel for the petitioner in the written submission submitted that the action is mollified and the rules are not valid in law, those things have not been established either by producing any material or by making any valid submission to substantiate the same. So, our conclusion is as follows:

(i) Under Article 235, the High Court alone has the power to initiate the disciplinary proceedings against the officers belonging to the judicial service of the State holding posts inferior to the District Judges and no other authority is competent to initiate proceedings or to impose punishment against subordinate judges. The high Court alone is the disciplinary authority as far as subordinate judges are concerned.

(ii) The High Court alone is entitled to take decision in respect of dismissal, removal, reduction in rank as far as Subordinate Judges are concerned, but the formal order to give effect to such a decision taken by the High Court has to be passed by the State Government on recommendations of the High Court. The recommendations of the High Court is binding on the State Government/Governor.

(iii) In the case of Article 311(2)(b), the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. Before denying a person in service his constitutional right to an inquiry the first consideration would whether the conduct of the person in service is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied that proviso becomes applicable and the person in service is not entitled to an inquiry.

(iv) If the High Court is of the opinion that a particular judicial officer is not fit to be retained in service, the High Court will communicate that to the Government because the Governor is the formal authority to dismiss, remove or terminate the appointment.

(v) The vesting of complete control over the subordinate judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. In other words, the Governor/Government will act on the recommendations of the High Court.

(vi) The High Court is the appointing authority as far as Subordinate Judges are concerned as per rules framed under Article 234 of the Constitution. The High Court is the disciplinary authority in view of Article 235 of the Constitution of India.

(vii) The High Court being the disciplinary authority is empowered to exercise the powers under Article 311(2)(b) of the Constitution of India to decide and to dispense with the inquiry after recording the reasons in writing as has been done in this case.

(viii) Since High Court is not subordinate to the Governor and the High Court is entitled to exercise powers to dismiss or remove or reduce him in rank, the High Court alone is the competent authority to take decision in the light of the conduct of the person in service and to dispense with the inquiry after recording reasons as has been done in this case.

In the light of the reasons recorded, we do not find any merit in the contentions urged by the learned Senior Counsel for the petitioner as in our view the power exercised by the authorities concerned in this case can neither be called as arbitrary nor perverse nor without jurisdiction nor in violation of the provisions of Article 311 of the Constitution of India.

Hence, this writ petition is dismissed. There is no order as to costs.

Amareshwar Sahay, J.

43. I agree.