

(2014) 11 RAJ CK 0155

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 267/2005 and 1993/2006

Kalyan Singh

APPELLANT

Vs

State of Rajasthan
 Ved Priya Vs Rajasthan High Court

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311(2)

Citation : (2015) 2 CDR 595 : (2015) 1 SCT 390 : (2015) 1 WLN 53

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Raj Kamal Gaur and Rajendra Soni, Advocate for the Appellant; N.K. Maloo, A.K. Sharma, Sr. Advocates assisted by Ajit Maloo and V.K. Shah, Advocate for the Respondent

Judgement

Ajay Rastogi, J.—The present writ petitions have been filed by the petitioners u/ Art. 226 of the Constitution of India against order dt. 30.09.2004 issued by the State Government on the basis of the recommendation made by the High Court dispensing with services of the petitioners u/r. 24(1) of the Rajasthan Judicial Service Rules, 1955, who were working as Probationer Judicial Officer.

2. Both the writ petitions-D.B. Civil Writ Petition No. 1993/2006 and D.B. Civil Writ Petition No. 267/2005 are simultaneously heard and since the petitioners are Probationer Judicial Officer and aggrieved by the order dt. 30.09.2004, with the consent of the parties the writ petitions are decided by the present common order.

3. The brief facts of the case culled out from the averments made in the writ petitions are that after being selected through Rajasthan Public Service Commission the petitioners were appointed as Civil Judge (Junior Division) and Judicial Magistrate in the cadre of the Rajasthan Judicial Service vide order dt. 16.07.2002 on probation for a period of two years from the date of joining and pursuant thereto they joined service and the period of probation of all the officers was extended for a period of two months vide order dt. 28.07.2004.

However, overall performance of the petitioner along with 91 other RJS Officers was considered for confirmation by the Committee of five Hon''ble Judges, constituted by Hon''ble the Chief Justice that includes integrity of Officer, his work, knowledge of law, conduct & behavior on the basis of reports submitted by the respective District Judges and Hon''ble Inspecting Judges, ACR and further outcome/report of the complaints submitted by the Registrar (Vigilance) and after due discussion & deliberation, the Committee of Hon''ble Judges resolved to recommend confirmation of 90 RJS Officers and probation of one Officer was extended by six months and as regards the present petitioners are concerned, both were not found fit for confirmation in the Judicial Service. The said report of the Committee was placed before the Full Court, as per the orders of Hon''ble the Chief Justice where it came to be confirmed and the final recommendation was sent to the State Government holding that the petitioners are not found fit for confirmation and on the recommendation made by the High Court u/r. 24(1) of the Rules, 1955, their services were dispensed with because of their unsuitability for the post by the State Government vide order of termination simpliciter dt. 30.09.2004 and that is subject matter of challenge in the instant petitions.

4. The bone of contention advanced by petitioner's counsel is that the impugned order dt. 30.09.2004 has been passed on account of subjective notions and not by objective appreciation of the various relevant material particularly judgments/orders delivered by him, his work efficiency and his quota/work standard which was always above the prescribed limit and all other relevant considerations i.e. his moral, character, integrity, punctuality & discipline for judging the performance of a probationer Judicial Officer to retain in service has not been taken due care by the respondents and arrived to the conclusion that the petitioners failed to make sufficient use of the opportunities and failed to give satisfaction as probationer in the Rajasthan Judicial Service and the very decision of the respondents, based on subjective notions, in passing the order impugned is wholly arbitrary and violative of Art. 14 of the Constitution.

5. Further grievance is that dispensing with service by the order impugned, on the face of it, is an order of termination simpliciter, but if this court lift the veil and look behind it, the decision making process is not only punitive but also stigmatic in nature and before taking the impugned decision terminating their services, it was expected from the respondents to afford an opportunity of hearing to clarify their stand in respect of the complaints on which cognizance has been taken by the respondents while passing the order impugned.

6. It is further contended that during the period on probation, he was never given any opportunity or ever asked to improve his performance and to remove the shortcomings and no complaint against him, if any, was ever communicated and the services of the petitioners have been dispensed with after conducting enquiry by the Registrar (Vigilance) in which he was neither informed of the charges nor afforded with an opportunity of hearing in respect of those allegations, which is the minimum requirement and protection provided u/art.

311(2) of the Constitution.

7. The petitions have been resisted by the respondents pointing out that the Committee of five Hon"ble Judges, constituted under the orders of Hon"ble the Chief Justice, in its meeting dt. 10.09.2004 considered overall suitability of 93 Judicial Officers, on probation, out of which one officer's probation period was extended by six months and as regards petitioners, it was observed that the Officers have not made sufficient use of their opportunities and failed to give satisfaction as probationer in the Rajasthan Judicial Service and accordingly recommended that they are not fit for confirmation and after the recommendation was approved by the Full Court, the State Government in compliance thereof passed the order impugned terminating service of the officers vide order dt. 30.09.2004.

8. Counsel submits that discharge of a probationer on the ground of unsuitability in any manner cannot be termed as punitive and the petitioners were not required to give notice and afforded an opportunity of hearing before the decision being taken for dispensing with their services vide order dt. 30.09.2004 and further submits that the assessments made by the respondents in regard to suitability of the petitioners for their confirmation was based on objective consideration of report of the Registrar (Vigilance) along with other material available on record and in absence of expressed stigma in the order of termination/discharge, the petitioners are not entitled to complain of violation of rules of natural justice.

9. We have heard the counsel for the parties and with their assistance examined the material on record.

10. The question whether termination of service of a probationer can be treated as punitive even though the order passed by the competent authority does not contain any stigma has been considered in series of judgments by the Apex Court. In Parshotam Lal Dhingra Vs. Union of India (UOI), , the Constitution Bench of the Apex Court considered as to whether the order of reversion of an official holding a higher post in an officiating capacity could be treated as punitive and after elaborate consideration of the relevant provisions of the Constitution and judicial precedents on the subject, it was observed ad infra:-

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

11. In *State of Punjab and Another Vs. Shri Sukh Raj Bahadur, , Mitter, J.* considered several precedents and culled out the following propositions at para 16 of the judgment:-

"(1) The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

(2) The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

(3) If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

(4) An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

(5) If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article"

12. In *Samsher Singh Vs. State of Punjab and Another*, a seven-Judges Bench of the Apex Court examined the legality of discharge of two judicial officers of the Punjab Judicial Service, who were serving as probationers and the observations made at paras 63 & 80 of the judgment read ad infra:-

"63. No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

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80..... The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of *Ishwar Chand Agarwal*. The order of termination is illegal and must be set

aside."

13. The ratio as regards rights of a probationer has been further considered by the Apex Court in a later judgment in Chandra Prakash Shahi Vs. State of U.P. and Others, and it was observed in para-28 ad infra:-

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive"."

14. In State Bank of India and Others Vs. Palak Modi and Another etc., taking note of the precedents, principle regarding rights of a probationer has been further considered at para-25 which reads ad infra:-

"25. The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice"

15. From the consistent view expressed in series of decisions by the Hon'ble Supreme Court, referred to supra, it is well settled that the services of a probationer can be terminated or dispensed with during or at the end of the period of probation and the appointee does not acquire any right to hold or continue to hold such a post during the period of probation and it is open for the authority or employer to assess work of the probationer whether it is satisfactory and the appointee is suitable for the post and if the competent authority comes to the conclusion that the appointment of probationer is unsuitable for the job, it is open for authority to discharge him on account of inadequacy for the job and terminate him without assigning any reason and if the order has been passed terminating services of a probationer because of his performance not being

satisfactory, that would not make the order stigmatic or punitive. At the same time, it is also a solemn duty of the respondents to consider and appreciate the services of a Judicial Officer before confirming him in service and this is not only for judicial performance but also for probity as to how one has conducted himself is equally relevant. At the same time, upright and honest judicial officers are needed in the judiciary which is the bedrock of our judicial system.

16. In this backdrop, we may consider as to whether termination of petitioner is vitiated due to violation of principles of natural justice, as prayed for and before we may examine the question, it will be useful to notice Rules 23, 24 & 25 of the Rajasthan Judicial Service Rules, 1955 which read ad infra:-

"23. Probation.-All the candidates shall on substantive appointment to the service be placed on probation for two years, provided that such of them, as have previous to their appointment to the service officiated or served temporarily on a post in the service may be permitted by the Governor to count such officiating or temporary service towards the period of probation

24. Service when dispensed with or period of probation extended.-(1) If it appears at any time during or at the end of the period of probation that an officer has not made sufficient use of his opportunities or if he has otherwise failed to give satisfaction, the Governor may dispense with his service:

Provided that the Court, may, in special cases, extend the period of probation of such officer for specified period not exceeding one year.

(2) An officer whose services are dispensed with during or at the end of the original or extended period of probation under sub-rule (1), shall not be entitled to any compensation.

25. Confirmation.-A probationer may be confirmed in his appointment by the Court at the end of his original or extended period of probation if the Court is satisfied that he is fit for confirmation."

17. A combined reading of Rules, 23, 24 & 25 of the Rules, 1955 makes it clear that a person appointed as Judicial Officer shall be placed on probation for a minimum period of two years and at any point of time during or at the end of the period of probation, if the probationer Officer has not made sufficient use of his opportunities or has failed to give satisfaction, services of such probationer could be dispensed with. However, in special cases, period of probation of an Officer could be extended for specified period not exceeding one year and a probationer Officer may be confirmed in his appointment by the Court at the end of his original or extended period of probation, provided the Court is satisfied that he is fit for confirmation. However, in a given case, if the competent authority is of the opinion that the Officer is not fit for confirmation, it may dispense with the service under sub-rule (1) of R. 24 of the Rules. It is evident that satisfactory performance during the period of probation for judging overall suitability and sufficient use of opportunities is a sine qua non for the post constitutes and

touchstone for his confirmation.

18. In the light of principles regarding rights of a probationer deduced keeping in view the scheme of Rules, let us now consider case of the petitioners.

19. Both the petitioners were appointed after their selection, through Rajasthan Public Service Commission, as Civil Judge (Junior Division) & Judicial Magistrate vide order dt. 16.07.2002 on probation for a period of two years from the date of joining and later on the period of probation was extended for a period of two months vide order dt. 28.07.2004. During the said period, candidature of the petitioners along with 91 other RJS Officers was considered for confirmation by the Committee of five Hon'ble Judges, constituted under orders of Hon'ble the Chief Justice, and after due discussion & deliberation, the Committee finally resolved to recommend for confirmation of candidature of 90 RJS Officers but at the same time, extended the period of probation of one Officer by six months and as regards the present petitioners, the Committee, on the basis of their performance and in an objective and impartial manner, as alleged, taking note of their service record including the detailed report furnished by the Registrar (Vigilance), finally arrived at the conclusion that they are not fit for confirmation in the Judicial Service and the recommendation made by the Committee was finally approved by the Full Court and accordingly, on the recommendations of the High Court, order impugned dt. 30.09.2004 was passed by the State Government dispensing with their services.

20. There can be no manner of doubt that subject to relevant service Rules, it is open for the appointing authority/employer to engage the services of a person on probation and during the period of probation, the suitability of the recruit/appointee has to be seen and if the services are not found to be satisfactory and he is not suitable for the job, it is always open for the appointing authority/employer to terminate his services but at the same time if the termination during or at the end of the period of probation is without any reason and no supporting material is made available to substantiate the order of termination simpliciter, terminating services of the probationer, that order can certainly be challenged on the ground of being arbitrary and hit by Art. 14 of the Constitution. As a logical corollary, the services of probationer could be terminated when he is found not to be suitable for job for which he was engaged, without assigning any reason and it is always advisable not to assign reasons indicating his performance or conduct, if any, certainly the appointing authority takes risk of the allegation being made that the order itself casts a stigma. Therefore, it is always preferred that the order of termination simpliciter based on consistent judicial precedents does not mention reason why the service of probationer is being terminated but as already observed, if the order is challenged before the court of law, the authority is under obligation to substantiate the material on which the service of a probationer is being terminated, in absence whereof the order being arbitrary can certainly be quashed being violative of Art. 14 of the Constitution.

21. It is true that looking to the nature of duty to be discharged by the Judicial

Officer, it is obvious that he may have adversaries in the subordinate courts and there might be complaints on trifling matters relating to judicial orders, therefore, they need protection, otherwise it will be difficult for an Officer to discharge his duties in honest and independent manner.

22. It is also settled that the probationer remains a probationer unless he has been confirmed on the basis of work evaluation. During the period of probation an employee remains under watch and his service and conduct is under scrutiny. Around the time of completion of probationary period, an assessment is made of his work, conduct during the period of probation and on such assessment a decision has to be taken as to whether his service is satisfactory and on the basis of service and track record he deserves fit for confirmation or service should be dispensed with and terminated. But at the same time, the services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself. The significant difference between the judicial service and public service has been considered by the Apex Court in the High Court of The High Court of Judicature at Bombay, *Through Its Registrar Vs. Shashikant S. Patil and Another*, has observed *ad infra*:

"23. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious...."

23. In the light of the principle deduced herein above, let the facts of the instant petitions may be examined.

D.B. Civil Writ Petition No. 267/2005.

Kalyan Singh @ K.S. Goswami vs. State of Raj. & Another.

24. For adjudging overall suitability to hold the post, apart from the material which was available on record, the Registrar (Vigilance) conducted a fact finding enquiry and found that there is a huge resentment against the petitioner-Kalyan Singh in the Bar Association, Bari, District Dholpur and on various complaints, as per directions of the Administrative Judge, comments from the Officer dt. 28/30.07.2004 were called for and taking note of the complaints duly supported with affidavits along with copies of documents and reply of the Officer and report of the District & Sessions Judge, Dholpur dt. 25.05.2004, prepared on a surprise inspection, at that time a large number of Advocates made complaint regarding working style & behavior of the petitioner and at that time the petitioner assured for change in his working style and behaviour. The inspection report sent by the District & Sessions Judge, Dholpur to the High Court and the Registrar (Vigilance) in the detailed report, running into 34 pages, finally observed that the Officer lacks judicial aptitude befitting to the Court of Justice and the detailed report of

Registrar (Vigilance) along with other service record of the petitioner was placed before the Five Judges' Committee, constituted under the orders of Hon'ble the Chief Justice, which finally arrived at the conclusion that the petitioner has not made sufficient use of his opportunities and failed to give satisfaction as probationer in the Rajasthan Judicial Service and recommended for dispensing with his service u/r. 24(1) of the Rules, 1955 which was approved by the Full Court on 16.09.2004 and in compliance thereof, the order impugned dt. 30.09.2004 was passed by the State Government dispensing with the services of petitioner on the ground of unsuitability for the post held by him.

25. We for our perusal called for the complete record of the petitioner and from the work performance report of the petitioner for the period from 02.08.2002 to 01.02.2003; 02.02.2003 to 01.08.2003; and 02.08.2003 to 01.02.2004, it reveals that the Hon'ble Administrative Judge has recorded his remarks as "Average" but for the last quarter from 02.02.2004 to 30.05.2004, the Inspecting Judge has recorded remarks regarding quality of judgments which he delivered and observed that it was found to be just average and needs improvement and was advised to be careful in this regard. At the same time, complaints made by the staff members and the Bar Association, Bari with regard to his misbehaviour and working style duly supported with their affidavit are placed for our perusal along with his ACR Statement for 2003 Part-I and 2003 Part-II wherein the Administrative Judge has assessed him as an average Officer. Apart from it, for examining overall performance of the petitioner as to whether he has been able to make sufficient use of his opportunities and given satisfaction as probationer in the Rajasthan Judicial Service and is fit for confirmation, the inspection report submitted by the District & Sessions Judge, Dholpur dt. 25.05.2004 and report of the Registrar (Vigilance), we find that there are lot of complaints against him while posted at Bari, District Dholpuri regarding arbitrary and whimsical nature of working and some of the decisions delivered by him were also examined, obviously as there were complaints made at different point of time for discharge of his duties as a Judicial Officer. The Registrar (Vigilance) in his detailed considered report observed that the Officer lacks judicial aptitude befitting to the Court of Justice and the said report was placed before the Administrative Judge and was examined by the committee of Five Hon'ble Judges, constituted under orders of Hon'ble the Chief Justice and after taking note of the overall service record of the petitioner and so also the inspection report submitted by the Registrar (Vigilance), arrived at the conclusion that the petitioner has not made sufficient use of his opportunities and failed to give satisfaction as probationer in the Rajasthan Judicial Service and the Committee's report was placed before the Full Court which approved that the petitioner is not fit to be considered for confirmation and it was recommended to the State Government to dispense with his services u/r. 24(1) of the Rules, 1955 and pursuant thereto, the order was passed by the State Government dispensing with his services vide order dt. 30.09.2004 (Ann. P-1). From the service record of the petitioner, which is placed before us for perusal, it clearly manifests that the petitioner was not holding

good reputation as a Judicial Officer and his services were far from satisfaction.

D.B. Civil Writ Petition No. 1993/2006.

Ved Priya. Versus Rajasthan High Court & Another.

26. In the case of present petitioner, it has been stated by the respondents in their reply that after completion of training, the Officer was posted as Civil Judge (Junior Division) and Judicial Magistrate at Chomahalla in District Jhalawar vide order dt. 30.09.2002 and at the end of two years, probation period of all the Officers appointed vide order dt. 16.07.2002 including the petitioner was extended for further two months and during the extended period of probation, matter of the petitioner with regard to his confirmation was considered by the committee of Five Hon'ble Judges, constituted by Hon'ble the Chief Justice vide order dt. 02.05.2003 and the committee after examining the overall record of service of Officers on probation in its minutes dt. 06.08.2004 directed the Registrar (Vigilance) to submit before the committee the Annual Confidential Report of the Officers for the year 2003 and special report be obtained by the Registrar (Vigilance) on the complaints pending against the officers and after the reports were obtained including special report from the District Judge, the committee in its meeting held on 10.09.2004 examined and considered the entire material placed before it including his integrity, work & knowledge of law, conduct & behavior on the basis of reports submitted by the respective District Judge and Hon'ble Inspecting Judge and on consideration of material available before the committee, the committee resolved to recommend that the petitioner Ved Priya is not fit for confirmation in RJS and his services be dispensed with. The recommendations made by the committee dt. 10.09.2004 were placed before the Full Court vide Circulation Case No. 10/04 dt. 16.09.2004 and the same was approved and thereupon a letter was sent to the State Government for dispensing with the service of the petitioner Ved Priya w.e.f. 02.10.2004, in consequence thereof the order was passed by the State Government on 30.09.2004 terminating his services w.e.f. 02.10.2004. However, the averments made in para-8 of the reply that there were complaints made by some of the litigants and reference has been made of one Dayashankar S/o. Gauri Shankar, R/o. Station Road, Chomahalla dt. 13.02.2004 against the Officer which was placed by the Registrar (Vigilance) before the Hon'ble Administrative Judge and on directions for examining the record, certain files/record from the office of District & Sessions Judge, Jhalawar were called for vide letter dt. 15.03.2004 and the said record was sent to the Registrar (Vigilance) by the District & Sessions Judge, Jhalawar vide letter dt. 22.04.2004 and certain reference has been made in regard to the complaints of which reference has been made in para-10 of the reply which according to the respondents was considered by the committee while taking final decision and arriving at the conclusion that Officer has not been able to make sufficient use of his opportunities and failed to give satisfaction as probationer in the Rajasthan Judicial Service and he is not fit for confirmation and as a consequence whereof his services were dispensed with by the State

Government by order of termination simpliciter dt. 30.09.2004.

27. It is true that probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question and for determination of suitability or for retention in service or for confirmation, inquiry can certainly be held and on the basis of inquiry if a decision is taken to terminate his services, it cannot be considered to be punitive in nature. At the same time, when the matter comes for a judicial review, in absence of any material which could support in arriving at the conclusion in respect of the overall general suitability of the officer for retention in service and for confirmation, such an order can be held to be arbitrary and violative of Art. 14 of the Constitution.

28. We have looked into service record including the report regarding work performance of the petitioner Ved Priya for the period from 04.10.2002 to 31.03.2003; 01.04.2003 to 01.08.2003; 02.08.2003 to 01.02.2004; and 01.02.2004 to 31.05.2004 and the District & Sessions Judge as reporting officer rated his quality of work as Good and as regards integrity & conduct, no adverse comments were made and as regards his reputation & general behaviour, the District & Sessions Judge has made remarks that he enjoys good reputation and at the same time special features were also noted by the District Judge, as reporting officer that he works hard, writes reasoned judgments and is keen to decide old cases on priority basis and the District & Sessions Judge, as a reporting officer, in all the four quarters and in the ACR for the year 2003 overall rated him "Good" and the same was endorsed by the Hon'ble Inspecting Judge and so also by the Hon'ble Administrative Judge and finally his ACR for the year 2003 was rated as "Good". Even the Hon'ble Inspecting Judge, in all the four quarters, found him upright officer and has endorsed positive remarks in his favour regarding his work performance, integrity, conduct, reputation and general behaviour. On the contrary, it was expressed by the Hon'ble Inspecting Judge that the concerned Officer is sincere, honest and hard worker and at the same time when the matter was processed for confirmation of officers appointed in the year 2002 to RJS as Civil Judge (Junior Division) and Judicial Magistrate on probation, the request was made by the Hon'ble Inspecting Judge to send special reports and in all the three reports sent to the Hon'ble Inspecting Judge of all the four quarters apart from the fact that the reporting officer i.e. the District Judge has rated him to be a Good Officer and certified his integrity and reputation. The Hon'ble Inspecting Judge also endorsed the view expressed by the District Judge and confirmed that conduct, integrity & reputation of the officer were found to be good. At the same time, some complaints were received in office of the respondents, certain random files were called from the office of District & Sessions Judge, Jhalawar and when the matter was placed before the Hon'ble Administrative Judge, it was observed that let a spot inquiry be conducted and report be obtained, pursuant thereto from the District & Sessions Judge, sent his special report on 08.09.2004 wherefrom it can be noticed that the complaint was made by one Dayashankar S/o. Gauri Shankar R/o. Station

Road, Chomahalla but on spot inquiry conducted by the Id. District Judge, it was observed that he was unable to find out any person named Dayashankar S/o. Gauri Shankar and as regards other complaints made, it was observed that he was unable to find out any substance in either of the complaint and his final view which he expressed in his report is that such complaints are without any basis and deserves to be filed. The said report was placed by the Registrar (Vigilance) before the Hon"ble Administrative Judge along with his comments for perusal and necessary orders, who opined that the officer is not fit for confirmation and the said report was placed before the committee of Five Hon"ble Judges and the committee finally in its recommendation resolved that the petitioner is not found fit for confirmation in the RJS and his services may be dispensed with. It can be noticed from the minutes of meeting dt. 10.09.2004 that against the officers nothing has been specifically observed by the committee in its report dt. 10.09.2004 but the complete record of the officer has been placed for perusal and reference thereof has been made by the respondents in their reply and from the perusal of record which we have already noticed and are unable to get any adverse report on record which could at all prima facie substantiate and support the view which the committee of five Hon"ble Judges expressed in its report dt. 10.09.2004 and it revealed from the record that initially when the Registrar (Vigilance) forwarded the special report furnished by the District Judge dt. 08.09.2004, the Hon"ble Administrative Judge on 09.09.2004 recorded his comments holding that the officer is not fit for confirmation and the comments of the Hon"ble Administrative Judge when placed before the committee for examination on 10.09.2004, the committee confirmed his view which was finally approved by the Full Court by Circulation dt. 16.09.2004 and in compliance thereof, the State Government passed order terminating his services w.e.f. 02.10.2004.

29. In our considered view, we are not able to find any supporting material on record, which could substantiate the view expressed by the committee in its report dt. 10.09.2004 and confirmed by the Full Court on 16.09.2004 as regards the case of petitioner-Ved Priya is concerned.

30. As regards the petitioner-Kalyan Singh is concerned, we find that the report submitted by Registrar (Vigilance) is well considered report taking note of all the aspects, reflect his conduct, work performance, integrity, holding the court proceedings and in all aspect the adverse report has been considered in detail and we find that sufficient material is available on record which could support the view expressed by the committee of five Hon"ble Judges" in its report dt. 10.09.2004 of which details have already been furnished in the above paras and as we are not sitting as a court of appeal and do not find justification to interfere with the decision making process adopted by the respondents in finally arriving at the conclusion that he is not fit for confirmation.

31. Since the overall record of both the petitioners have been examined by us and we are of the considered view that as regards the case of petitioner-Ved

Priya is concerned, we do not find any material on record which could at all substantiate to support the view expressed by the committee in its report dt. 10.09.2004 holding that he is not fit for confirmation and mere opinion of committee may not be sufficient in itself unless it is supported by the material which was supposed to be placed for perusal when the matter has come up for judicial review and as we have already observed that from the material on record, we are fully satisfied that there is no material on record which could at all support the view expressed by the committee and the decision being arbitrary, the final order of his termination passed by the State Government may not hold good.

32. At the same time, so far as the case of officer Kalyan Singh is concerned, in the overall record of services of petitioner-Kalyan Singh, the Vigilance report which is taken note of for examining his overall suitability for retention in service and also for confirmation, we find that he was not able to make sufficient use of opportunities and failed to give satisfaction as probationer in the Rajasthan Judicial Service and from the overall record placed for perusal including the report furnished by Registrar (Vigilance), which is self contained and considered in detail, who finally observed in his report that the officer lacks judicial aptitude befitting to the Court of Justice, that being accepted by the committee of five Hon"ble Judges, constituted under orders of Hon"ble the Chief Justice, and approved by the Full Court vide circulation dt. 16.09.2004, we do not find any error being committed by the respondents in their decision making process while finally taking decision that he is not fit to retain in service and was found to be unsuitable for the post and the decision was rightly taken for termination of his services. In this background it cannot be said that the order of termination simpliciter, in the case of petitioner-Kalyan Singh, could be held to be violative of Art. 14 of the Constitution, as prayed for.

33. In the light of the discussion, the contentions raised by the petitioner-Ved Priya succeeds and the petition (CWP No. 1993/2006) preferred by him stands allowed. The order dt. 30.09.2004, as regards petitioner Ved Priya is concerned is quashed and set aside and the respondents are directed to reinstate the officer with continuity in service with all consequential benefits including seniority, as he was never terminated from service.

34. So far as the petition preferred by the petitioner Kalyan Singh (CWP No. 267/2005) is concerned, the same is devoid of merit, accordingly dismissed.

35. No costs.