

(2010) 08 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No's. 1373 and 2901 of 2009 and 148, 269 to 273, 332, 384, 393, 478, 749, 750, 751, 752, 769, 786, 880, 881, 1050, 1065, 1103, 1105, 1205, 1250, 1291, 1391 and 1627 of 2010

Krupesh Ramakant Vora and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311(2)
Penal Code, 1860 (IPC) — Section 325
Special Scheme of Fast Track Courts (Sponsored by Central Government) for
Elimination of Arrears Rules, 2001 — Rule 4, 5, 6

Citation : (2010) 3 GLH 157 : (2011) 52 GLR 420

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; Anant S. Dave, J

Bench : Division Bench

Advocate : Amrita Ajmera, G.M. Joshi, Paresh Upadhyay, Ashok Yagnik, Tejal A. Vashi, M.B. Gandhi, P.M. Lakhani, Pravin Gondaliya, Bipin I. Mehta, J.M. Barat, Sachin D. Vasavada, T.S. Nanavati, Sandeep N. Bhatt, Y.F. Mehta, J.T. Trivedi, Hemant B. Raval, H.A. Raichura and P.H. Pathak, for the Appellant; Kamal B. Trivedi, General and J.B. Pardiwala, for the Respondent

Judgement

S.J. Mukhopadhaya, C.J.—In all these cases, as a common question of law is involved and similar orders of termination of services are under challenge, they were heard together and disposed of by this common judgment.

2. Pursuant to the decision of the Supreme Court in Brij Mohan Lal Vs. Union of India (UOI) and Others, Fast Track Courts were established in all the States of India including the State of Gujarat. A number of persons were appointed as ad-hoc Additional District Judges in Fast Track Courts in the Gujarat State Judiciary since 2002. Appointments were made through different sources, including promotion of Senior Civil Judges on ad-hoc basis and direct recruitment from members of the Bar.

3. The Petitioners in these cases were members of the Bar who were appointed

as ad-hoc Additional District Judges in different Fast Track Courts by direct recruitment between the year 2002 and 2004 along with others. Total 66 direct recruit Fast Track Court ad-hoc Additional District Judges were appointed from the Bar.

4. Since 2006, steps were taken to terminate the services of those Fast Track Court ad-hoc Additional District Judges who were found unsuitable, as detailed hereunder.

On 12-10-2006, services of 6 direct recruit Fast Track Court ad-hoc Additional District Judges, including the Petitioners Mansuri Mohammed Ilyas Gulamnabi, Tailor Navnit Maneklal and Shukla Manoj Dhananjay were terminated by the State on the recommendation of the High Court on the ground "having not been found suitable".

Second order was issued on 8-2-2007 by which services of another 7 direct recruit Fast Track Court ad-hoc Additional District Judges were terminated with effect from 27-12-2006, except one Judge's services were terminated on 31-12-2006, including the Petitioner Harish Hrishilal Patel. Their services were also terminated by the State on the recommendation of the High Court on the ground "having not been found suitable".

On 28-4-2008, third set of orders were passed by which services of 23 direct recruit Fast Track Court ad-hoc Additional District Judges including the Petitioners-Shah Jignesh Kalyanbhai and Kosti Chandraprakash Harilal were terminated by the State on the recommendation of the High Court on the ground "having not been found suitable".

By fourth order dated 25-9-2009, the services of 12 direct recruit Fast Track Court ad-hoc Additional District Judges including the Petitioners Shukla Chetankumar Harshadray, Sabirahmad Abdul Hasim Sheikh, Meteida Kishorsinh Sursinh, Buch Prashant Harkant, Ms. Karia Neeta Manilal, Mahida Bharatsinh Mahendrasinh, Solanki Nirmalsinh and Maisuria Dhansukhbhai Khushalbhai were terminated by the State with effect from 30-9-2009 on the recommendation of the High Court on the ground "having not been found suitable".

On 8-10-2009, the fifth order was issued by which the services of 11 direct recruit Fast Track Court ad-hoc Additional District Judges including the Petitioners Ms. Smita Narendrabhai Atri, Manojkumar Trambaklal Dhanak, Dinesh Nanalal Trivedi, Ms. Binoda Ramanlal Gajjar, Ms. Pratiksha Dineshchandra Gupta, Subhashchandra Maganlal Kapadia and Savaisinh Ramsinh Sodha were terminated by the State with effect from 15-10-2009 on the recommendation of the High Court on the ground "having not been found suitable".

The last i.e. the 6th order was issued on 14-12-2009 whereby services of 13 direct recruit Fast Track Court ad-hoc Additional District Judges including the Petitioners P.G. Trivedi, B.M. Trivedi, K.R. Vora, A.N. Mehta, J.H. Singh, P.P. Trivedi, Mrs. R.M. Patel, U.H. Bhatt, R.B. Bhatt, K.J. Trivedi, R.R. Bhatt, B.S. Oza,

Mrs. Y.H. Upadhayay were terminated by the State with effect from 15-12-2009 on the recommendation of the High Court on the ground "having not been found suitable".

5. According to the Petitioners, altogether 66 persons were appointed between the year 2002 and 2004 by direct recruitment from the Bar as Fast Track Court ad-hoc Additional District Judges. Out of the 66 persons, some persons either left or died and only 53 direct recruits remained in service. By the aforesaid impugned orders issued from time to time, only the services of direct recruits from the Bar have been terminated, discriminating vis-a-vis others who were appointed as Fast Track Court ad-hoc Additional District Judges through other source of promotion. The Senior Civil Judges who were promoted as Fast Track Court ad-hoc Additional District Judges have been retained and their services are being extended from year to year and their quota has been increased by terminating the services of direct recruits.

6. Further case of the Petitioners is that it is not the fact that the State or the High Court does not require Fast Track Courts. More than 21 lakhs cases are pending in the State in different District Courts. Fast Track Courts are required, and therefore, the Central Government has also extended the tenure of Fast Track Court ad-hoc Additional District Judge posts for another one year i.e. from 2010 to 2011. The Petitioners came to know from the reliable sources that the High Court has taken steps again to fill up the rest of the vacant posts of Fast Track Court ad-hoc Additional District Judges, both by promotion and direct recruitment. Therefore, there is need of Judges, but all the direct recruits for the reasons best known to the High Court, have been excluded and thrown out of service in complete violation of Articles 14 and 311 of the Constitution of India.

7. The learned Counsel appearing on behalf of the Petitioners made common submissions, while highlighting the aforesaid facts and also referring to one or other decisions, the gist of which is reflected hereunder.

8. The learned Counsel for the Petitioners would contend that the impugned order of removal having been qualified by the phrase "having not been found suitable" disqualifies all the Petitioners for placing their candidature in future for any State Judicial Services or State Services, amounting to dismissal from service, forfeiting the future service, and having been issued without any opportunity of hearing or notice, is violative of Article 311 of the Constitution of India.

They would contend that the impugned orders of removal further suffer from vice of it being qualified by such phrase "having not been found suitable" and the same being stigmatic in nature, no such removal would have been effected unless the grounds and criteria for such removal were offered to be made known to the Petitioners after affording them an opportunity to reply. A full-fledged inquiry was required to be conducted before alleging unsuitability.

Mala fide has been alleged in removal of the direct recruit Fast Track Court ad-

hoc Additional District Judges, retaining those who have been promoted as Fast Track Court ad-hoc Additional District Judges. The learned Counsel would contend that the action on the part of the Respondents is mala fide in law, though it may not be mala fide on facts. It was informed by some of the Counsel that the character roll of the Petitioners were all the time "good", particularly no adverse remark was communicated to them and in absence of any departmental proceedings initiated against one or other, or any allegation proved, the removal from the post of Fast Track Court ad-hoc Additional District Judges is not based on evidence.

9. The Counsel would further contend that the Petitioners have a right to be considered for absorption in the regular Gujarat State Judicial Services, but in view of the impugned orders, the right of such absorption of the Petitioners in the services of State has been taken away. They relied on the decision in the case of Brij Mohanlal (supra) wherein the scheme was framed for absorption of Fast Track Court Judges in the State Judicial Service, if they are found otherwise fit and having good performance.

Referring to the Supreme Court decision in Rudra Kumar Sain and Others Vs. Union of India and Others, it was contended that ad-hoc appointment is made for a particular purpose. Till the scheme continues, the Petitioners have acquired right to continue as on the expiry of two years from the date of appointment, the Petitioners have not been assessed to be unsuitable by the administrative side of the High Court. In absence of any misconduct or improper conduct or adverse report alleged during the continuance of the period of service, the order of removal cannot be sustained.

10. The learned Counsel for the Petitioners referring to the contradictory stand taken by the High Court and the State, stated that the High Court has not informed that they were found unsuitable. If the State Government while issuing the order of discontinuance used the expression "having not been found suitable", which has been accepted in Para 10 of the reply-affidavit of the State that the said clause was inadvertently included, such action shows non-application of mind by the State, which ground is enough to set aside the orders.

11. Reliance was placed on different decisions including the following decisions of the Supreme Court:

- (i) Samsher Singh Vs. State of Punjab and Another,
- (ii) Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others,
- (iii) Mazharul Islam Hashmi Vs. State of U.P. and Another,
- (iv) The Gujarat High Court decision reported in 1983 GLH 482 - Kanaiyalal v. District Judge.

In Samsher Singh Vs. State of Punjab and Another, the Supreme Court with regard to probationers observed that "if a probationer is discharged on ground of

misconduct or inefficiency or for similar reason without a proper inquiry and without his getting a reasonable opportunity of showing cause against his conduct, the discharge may amount to removal from service within the meaning of Article 311(2) of the Constitution of India".

In *Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others*, , the Supreme Court, while noticed the ad-hoc employment, observed that "if an ad-hoc employee is to be discontinued on the ground of unsuitability, it is proper and necessary that he should be told in advance that his work and performance are not upto the mark. In relationship of master and servant, there is an moral obligation to act fairly. Informal or formal assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defect or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability, though there may not be a regular enquiry in such cases".

In *Mazharul Islam Hashmi Vs. State of U.P. and Another*, the Supreme Court observed that "it is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving an opportunity of putting forward his case. Adequate opportunity should be given to such employee to meet the allegation".

Kanaiyalal (supra), 1983 GLH 482 is a decision of the Gujarat High Court. Therein the Court held that "under Article 311(2), protection is available even to a temporary Government servant and no penal order could be passed against a temporary servant without complying with the requirements of Article 311(2). Any termination of service in violation of the same would be void".

12. The High Court of Gujarat and the State have taken almost similar stand. According to them, the Petitioners are guided by the scheme of Fast Track Courts as sponsored by the Central Government for elimination of arrears. Under the said scheme framed by the Supreme Court in *Brij Mohanlal's* case the High Court is required to review the functioning of each of the Fast Track Court Judges periodically through a specially constituted Committee. Since 2006 onwards, different Committees kept on reviewing the cases and based on the reports of the Committees and other materials on record, the High Court kept on passing orders in this regard from time to time. In case of those Judicial Officers whose continuance was not found to be desirable, their services were discontinued. The decisions are based on the subjective satisfaction of the larger interest of the institution. In cases of all Judicial Officers, different Committees had taken into consideration the following aspects:

(i) Consolidated statement showing average assessment of disposal, vigilance complaints, departmental inquiries and administrative complaints, if any, in

respect of the Presiding Officers, Fast Track Courts.

(ii) Statement showing vigilance complaints received in the Vigilance Cell in respect of the Presiding Officers, Fast Track Courts.

(iii) Statement showing administrative complaints received in the administrative departments in respect of the Presiding Officers, Fast Track Courts.

(iv) Statement showing quarterly assessment of disposal of each Presiding Officer, Fast Track Courts and average assessment thereof.

While it was accepted that the Petitioners were all directly recruited Fast Track Court ad-hoc Additional District Judges recruited from the Bar, the allegation that they have been targeted, and thereby, discriminated vis-a-vis those appointed as Fast Track Court ad-hoc Additional District Judges from other sources like promotion has been specifically denied.

13. The learned Advocate General appearing on behalf of the High Court would contend that there is nothing on record to allege mala fide either on facts or in law, and not any document or evidence has been brought on record to show that any of the Petitioners was targeted or discriminated. He would contend that the High Court has taken appropriate steps to weed out dead-wood even from the cadre of regular appointments and in a span of last 10 months, 22 Judicial Officers of regular cadre have been discontinued.

14. On behalf of the High Court, further stand taken is that the judicial interdiction being the matters involved in a corporate decision taken by a body consisting of constitutional functionaries, after discussing in a meeting, such discussion in the meeting itself amounts to inherent safeguard against arbitrariness and want of bona fides. A meeting of the Judges of the High Court is a corporate decision emerging as a result of discussion in the meeting wherein all possible points of view are being considered and duly protected.

Reliance was placed on an unreported Division Bench decision dated 10-5-2005 of the Gujarat High Court in J.H. Joshi v. State of Gujarat (Special Civil Application No. 5691 of 2002), wherein the following observations have been made:

We are further of the view that judicial interdiction in matters involving in a corporate decision taken by a body consisting of constitutional functionaries must be avoided except when it becomes inevitable. In this context, we may usefully refer to the observations made by the Division Bench in S.N. Jog v. State of M.P. 1981 (2) SLR 352. That was a case involving challenge to the compulsory retirement of the Petitioner who was a member of M.P. Judicial Service. Speaking for the Court, J.S. Verma (as His Lordship then was) observed:

It is, however, significant that the decision in the case of a subordinate Judge, reached in a Judges meeting of the High Court is actually a corporate decision emerging as a result of discussion in the meeting, wherein all possible points of

view are likely to be visualized and duly protected. A corporate decision reached by a large body of individuals of equal authority after discussion in a meeting is an inherent safeguard against arbitrariness and want of bona fides. Such an internal check is absent where the decision is by an individual or a hierarchy of individuals of unequal authority and that too without the benefit of discussing in a meeting. It is to this extent that the case of a subordinate Judge decided in a Judges meeting of the High Court is distinguishable from that of other Government Servants, in whose cases, the decision making process is not similar and the decision is not a corporate decision of a body of persons of equal authority acting together. This is relevant where arbitrariness or want of bona fides is alleged.

The aforesaid Division Bench further observed as follows:

We may add that the position of a judicial officer is not akin to an ordinary civil servant. The judicial service is not a service in the sense of an employment. The Judges discharge their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. They must be totally committed to the cause of justice. Their conduct within and outside the Court must be exemplary. They are obliged to discharge their function in a manner which enhanced the dignity of the institution of which they are the integral part. Their functioning must be such which instill confidence in the public in general and the litigants in particular. They must not do anything which shakes the peoples' confidence in the system of administration of justice.

15. Having regard to the nature of the appointment and the Rules governing the appointment, the learned Advocate General would submit that it cannot be said that the case of the Petitioners is either removal or dismissal from service. According to the learned Advocate General, the termination is simpliciter and does not forfeit future employment, and thereby, it does not attract Article 311(2) of the Constitution of India. According to him, though the temporary Government servants are entitled to protection under Article 311(2) of the Constitution like a permanent Government servant, but in a case where subjective satisfaction is arrived at to discontinue the services on the ground of "unsuitability" based on the assessment of work, the same cannot be stated to be punishment nor any motive can be imputed on any individual or collective body.

16. Reliance was placed on the Supreme Court decision in *Mathew Areeparmatil and Others Vs. State of Bihar and Others*, wherein while deciding the question whether the Appellant of the said case was entitled to protection of Article 311(2) of the Constitution of India, the Supreme Court observed as follows:

10. We now come to the last question whether the Appellant was entitled to the protection of Article 311(2) of the Constitution, even though, he was a temporary Government servant. It is well settled that temporary servants are also entitled to the protection of Article 311(2) in the same manner as permanent

Government servants, if the Government takes action against them by meeting out one of the three punishments i.e. dismissal, removal or reduction in rank [See Parshotam Lal Dhingra Vs. Union of India (UOI), But this protection is only available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is also not disputed that the mere use of expression like "terminate" or "discharge" is not conclusive and in spite of the use of such innocuous expressions the Court has to apply the two tests mentioned in Parshotam Lal Dhingra Vs. Union of India (UOI), namely - (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. It is on these principles which have been laid down in Parshotam Lal Dhingra Vs. Union of India (UOI), that we have to decide whether the Appellant was entitled to the protection of Article 311(2) in this case.

(Emphasis added)

17. On behalf of the High Court, the learned Advocate General contended that by using the word "unsuitable" in the notification, no stigma is attached. Inefficiency of the officer will be reflected as "unsuitable". It is merely an assessment of capability of an officer to hold the post and does not physique with the evil consequences. It was also contended that in spite of satisfactory performance, it is open to authority to discontinue the services of a Judicial Officers acting on an officiating post, if the full body thinks such discontinuance in the public interest.

18. We have heard the parties, noticed the rival contentions and also gone through the records of individual officers including their character roll, vigilance record and other service records, originals of which were produced before this Court.

19. It is not in dispute that the Fast Track Court ad-hoc Additional District Judges have no right to hold the post. Their services can be terminated without any notice. They are guided by "The ad-hoc and purely urgent temporary appointment of Judicial Officers and the members of the staff in the State of Gujarat for implementing the Special Scheme of Fast Track Courts (sponsored by Central Government) for elimination of arrears Rules, 2001" (hereinafter referred to as "the Fast Track Court Rules, 2001").

From Rule 4, it will be clear that the appointment is purely on ad-hoc and urgent temporary basis and is made initially for a period of two years and is liable to be terminated at any time without any notice, as quoted hereunder:

4. The appointment made under these Rules shall be purely on ad-hoc and

urgent temporary basis and such appointments shall be initially for a period of two years and shall be liable to be terminated at any time without any notice.

Under Rule 6, no right is conferred on such officer to claim any regular promotion on the basis of his appointment on ad-hoc basis, as quoted hereunder:

6. No right is conferred on any Judicial Officer in service for claiming any regular promotion on the basis of his appointment on ad-hoc basis under the Scheme and these Rules.

The said Rules came into effect from 22-10-2001, when the notification was issued in the Gujarat Government Gazette Extraordinary.

20. The Petitioners were appointed pursuant to the said Rules with clear understanding as given therein. Therefore, it cannot be said that the Petitioners had any right to claim a notice before termination or any sort of hearing before termination as their services were liable to be terminated at any time without any notice.

Though, under the scheme originally proposed, a suggestion was given that the ad-hoc officers can be absorbed in regular services of the State, but no such provision has been made in the Gujarat Judicial Services Rules, for appointment by way of absorption from amongst Fast Track Court Judges and on the contrary Rule 5 of the Fast Track Court Rules, 2001, the Judicial Officer cannot claim any right of regular absorption or promotion on the basis of his appointment on ad-hoc basis. Therefore, the claim of the Petitioners that they had a right to be absorbed in the regular judicial services i.e. in the Gujarat State Judicial Services cannot be accepted, and thereby, is rejected.

21. Weeding out dead-wood is a known proposition in the service jurisprudence. Even those who are in regular service, whether working on temporary post or permanent post, if the services of such public servant are no longer useful to the general administration, such officer can be compulsorily retired for the sake of public interest. Such action does not attract Article 311 of the Constitution of India. For better administration, it becomes necessary to chop off dead-wood.

22. The Fast Track Court ad-hoc Additional District Judges, though they are not guided by the Rules for compulsory retirement, but the principle of termination of public servants who are no longer useful to the general administration is also applicable in the case of Fast Track Court ad-hoc Additional District Judges. The scheme for creation of Fast Track Courts was sponsored by the Central Government for eliminating or substantially bringing down the pendency of cases in the District Courts and subordinate Courts in the State, but who are ineffective and no longer useful it seems necessary to drop such persons.

23. In view of the aforesaid observation, we have noticed the law laid down by the Supreme Court and other High Courts with regard to the officers whose services are no longer useful or who are "not competent" or "unsuitable".

24. The Supreme Court in the case of State of Gujarat Vs. Umedbhai M. Patel, crystallized the principles in Paragraph 11, which reads as under:

11. The law relating to compulsory retirement as now crystallised into definite principles which could be broadly summarized thus:

(i) Whenever the service of the public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest;

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution;

(iii) For better administration, it is necessary to chop off dead-wood but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer forthcoming;

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such orders;

(v) Even uncommunicated entries in the confidential record can also be taken into consideration;

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer;

(viii) Compulsory retirement shall not be imposed as a punitive measure.

25. While dealing with a case in respect of an officer in Judicial Service, who was compulsorily retired, the Supreme Court in the case of Nawal Singh Vs. State of U.P. and Another, observed that "the judicial service cannot be treated as any other service in the sense of an employment and that a person, who is discharging his functions as a Judicial Officer, is discharging such functions while exercising his sovereign judicial power of the State". The Supreme Court highlighted as to how persons entrusted with such an onerous responsibility is expected to maintain high amount of integrity and honesty, which should be beyond doubt in order to ensure that the judicial officer dispensing justice should be impeccable and any act of the judicial officer should not leave an iota of doubt in the minds of a common man in regard to dispensation of justice. The Supreme Court has expressed its views in lucid terms in Paragraph 2, as quoted hereunder:

2. At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further, the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their

utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, this Court would not interfere with the same, particularly because the order of compulsory retirement is based on the subjective satisfaction of the authority.

From the aforesaid findings, it will be evident that the nature of judicial service is such that it cannot afford to suffer continuance in service of a person who had lost his utility.

(Emphasis added)

26. In Chandra Singh Vs. State of Rajasthan and Another, while dealing with the matter relating to compulsory retirement, the Supreme Court went on to hold that even though the order of compulsory retirement passed in that case was an illegal one, but yet the Court declined to extend the benefit of discretionary relief as the Supreme Court felt that mere illegality by itself did not render the order liable to be interfered with since the facts, which related to the compulsory retirement of the concerned Judicial Officer, cannot be ignored. The Supreme Court has expressed its views in Paragraph 44, which reads as under:

We have been taken through the annual confidential reports as against the Appellants. Having gone through the same, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction in favour of the Appellants. This Court in Brij Mohan Gupta case has also refused to exercise its discretionary jurisdiction in favour of the Appellants although the order of the High Court was found liable to be set aside being not in accordance with law.

27. The administrative decision should not be interfered with unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, in the sense that it is in defiance of logic or moral standards. The Court should not substitute its decision to that of the administrator as the scope of the judicial review is limited to the flaw in the decision-making process and not the decision itself. Such was the view of the Supreme Court in Union of India (UOI) and Another Vs. K.G. Soni,

28. In the abovesaid background of the legal principles, when we analyze the factual position with regard to the service records of the Petitioners, we set out the following facts.

The services of the Petitioners Mansuri Mohammed Ilyas Gulamnabi, Tailor Navnit Maneklal and Shukla Manoj Dhananjay were terminated on 12-10-2006. For about 3 years they did not choose to move before the Court and only in the year 2010, they have preferred their respective petitions in Special Civil Application Nos. 1105 and 1050 of 2010.

Similarly, the services of Harish Hrishilal Patel were terminated on 8-2-2007 with effect from 27-12-2006 along with others, but Mr. Patel filed the writ petition after about 3 years in Special Civil Application No. 1373 of 2009.

The services of 2 others viz. Shah Jignesh Kalyanbhai and Kosti Chandraprakash Harilal were terminated on 28-4-2008, but they moved after 2 years in Special Civil Application No. 1291 of 2010 and Special Civil Application No. 1627 of 2010.

29. Under Rule 4 of the Fast Track Court Rules, 2001, the appointment is to be made initially for a period of two years and is liable to be terminated at any time without any notice. Though such provision is there in the Rules and services were terminated more than 2 to 3 years back, the aforesaid officers whose services were terminated between 12-10-2006 and 8-4-2008 did not choose to move till other 2 officers, against whom the order of termination was passed in December, 2009, moved before the Supreme Court and interim order of status quo was ordered in their favour. For the last more than 2 to 3 years, they are not in service and they have not shown any reason for not moving the Court immediately after termination.

In the case of Chandra Singh Vs. State of Rajasthan and Another, the Supreme Court observed that even if the order is illegal, the Court may decline to extend the benefit of discretionary relief, as mere illegality by itself did not render the order liable to be interfered with which depends on facts of each case.

On the ground of delay, in moving before this Court, we are not inclined to extend the benefit of discretionary relief under Article 226 of the Constitution of India to the aforesaid 6 officers as detailed in Para 28 above.

30. We have noticed the Supreme Court decision in Mathew Areeparmatil and Others Vs. State of Bihar and Others, Therein, the Supreme Court noticed two tests as was laid down in Parshotam Lal Dhingra Vs. Union of India (UOI), viz. - (i) whether the servant had a right to the post or the rank or (ii) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished. The Supreme Court further observed that "even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant".

In the case of State of Gujarat Vs. Umedbhai M. Patel, the Supreme Court observed that "any officer who is no longer useful in the general administration, for better administration, it is necessary to chop off dead-wood. Even uncommunicated entries in the confidential record can also be taken into consideration".

31. In the present case, the Petitioners had no right to the post or the rank. The services of many of the Petitioners being not useful to the general administration and taking into consideration their inefficiency and/or unsuitability in eliminating or substantially bringing down the pendency of cases, if their services are terminated as per the contract of service and Rule 4 of the Fast Track Court

Rules, 2001, the same did not physiqe with evil consequences. Therefore, the Petitioners cannot derive the benefit under Article 311(2) of the Constitution of India and for the said reason also, we are not inclined to interfere with the order of termination of the aforesaid 6 officers, who moved before this Court after about 2 to 3? years.

32. We, therefore, hold that the order of discontinuance of services of (1) Mansuri Mohammed Ilyas Gulamnabi, (2) Tailor Navnit Maneklal, (3) Shukla Manoj Dhananjay, (4) Harish Hrishilal Patel, (5) Shah Jignesh Kalyanbhai, and (6) Kosti Chandraprakash Harilal calls for no interference. The prayers made by them are thereby rejected.

33. In the case of Union of India (UOI) and Another Vs. K.G. Soni, the Supreme Court held that the administrative decision should not be interfered with unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court. The Court should not substitute its decision to that of the administrator as the scope of the judicial review is limited to the flaw in the decision-making process and not the decision itself.

34. The question in the present case is whether the decision of the High Court from its administrative side as culminated in the decision of the State, suffers from any procedural impropriety or is illogical and whether there is a flaw in the decision-making process in terminating the services of one or other Petitioners.

Not with a view to sit in appeal, but to satisfy the conscience of the Court, whether such decision is illogical or suffers from any procedural impropriety, we have noticed the original service records of each Petitioner including their annual confidential reports, vigilance record, etc., as observed earlier.

35. With regard to following eighteen Petitioners, whose services have been terminated recently between September and December, 2009, the following facts emerge from their record:

Sr. No.	Name of Officer	Year	Knowledge of law	& Proce- dures	Capacity to do hard work	Quality of judgments	Integrity	Reputation	Grading
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1.	N.H. Tandel	2004 9-9-04 to Dec.04	Good	Good	Good	Nothing adverse brought to my notice	Nothing adverse brought to my notice	Good	
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2005	1-1-05 to Mar.06	Good	Good	Good	Nothing adverse to tomy knowledge	Nothing	Nothing tomy knowledge	Good	
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2006	Average	Good	Average	Adverse not known	Average	Average			
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2007	Average	Very Good	Average	Adverse not known except inquiry pending of Vigilance	Average	Average			
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2008	1-1-08 to 30-6-08	Average	Very good	Average	Adverse not known	Average			
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2008	1-7-08 to 31-12-08	Good	Good	Good	Nothing adverse reported	Good	Good		
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2009 1-1-09 to 18-5-09 Good Good Adequately good As per the note of RG, he need watched closely Good Good

2. K.S. Mateida 2004 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Poor Good Average Adverse not known Average Average

2007 Average Good Average -do- Average Average

2008 1-1-08 to 30-6-08 Average Good Average -do- Average Average

2008 1-7-08 to 31-12-08 Average Average Average -do- Good Average

2009 1-1-09 to 30-6-09 Average Average Average Nothing adverse report Nothing adverse report Average

3. D.K. Maisuria 2(04 6-9-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Average Average Average Adverse not known Average Average

2007 Average Average Average -do- Average Average

2008 1-1-08 to 30-6-08 Average Average Average -do- Average Average

2008 1-7-08 to 31-12-08 Good Very good Good Very good Very good Very good

2009 1-1-09 to 15-5-09 Good Good Good Good Good Good

4. P.P. Trivedi 2004 11-12-03 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good -do- -do- Good

2006 Good Good Average Adverse not known Average Average

2007 Average Good Average -do- Average Average

2008 1-1-08 to 30-6-08 Average Good Average -do- Good Average

2008 1-7-08 to 31-12-08 Good Good Good Good not doubtful Good Good

2009 1-1-09 to 30-6-09 Good Good Good No adverse noted Good Good

5. D.N. Trivedi 2004 16-2-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2(05 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Poor Average Average Adverse not known Poor Poor

2007 Poor Average Poor -do- Average Poor

2008 1-1-08 to 30-6-08 Poor Very good Average -do- Poor Poor

2008 1-7-08 to 31-12-08 Good Fairly good Fairly good Nothing adverse is on record Good Good

2009 Fairly good Has Fair Need vigil. Good Good

6. R.R. Bhatt 2004 12-12-03 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Good Average Good Adverse not known Average Average

2007 Average Poor Average -do- Average Average

2008 1-1-08 to 30-6-08 Average Average Average -do- Average Average

2008 1-7-08 to 31-12-08 Average Good Average -do- Good Good

2009 1-1-09 to 30-6-09 Good Average Average Nothing adverse known to me Average Average

7. R.M. Patel 2004 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2005 1-5-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Average Good Average Adverse not known Average Average

2007 Average Average Poor -do- Average Average

2008 1-1-08 to 30-6-08 Average Average Average -do- Good Average

2008 1-7-08 to 31-12-08 Average Good Average -do- Good Good

2009 1-1-09 to 30-6-09 Average Good Average -do- Good Average

Judicial Observation: Certain observations were made by this Court on its judicial side against this officer in Criminal Appeal No. 1994 of 2004.

8. U.H. Bhatt 2004 8-12-03 to Dec.04 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 7-2-06 to 31-12-06 Poor Average Poor Adverse not known Adverse not known Average

2007 Average Very good Good -do- Good Average

2008 1-1-08 to 30-6-08 Average Very good Good -do- Good Average

2008 1-7-08 to 31-12-08 Very good Very good Very good Good Very good Very good

2009 1-1-09 to 30-6-09 Good Average Average Nothing adverse reported Average Average

9. S.R. Sodha 2004 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2006 Average Average Average Adverse not known Good Average

2007 Good Average Average -do- Good Average

2008 1-1-08 to 30-6-08 Average Average Average Adverse not known Average Average

2008 1-7-08 to 31-12-08 Good Good Good one application pending Average Average to good

2009 1-1-09 to 14-5-09 Good Good Average Doubtthl Not above good Average Average to good

10. R.M. Vyas 2004 1-9-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2006 Poor Very good Poor Adverse not known Average Average

2007 Poor Average Poor -do- Poor Poor

2008 1-1-08 to 30-6-08 Poor Good Poor -do- Poor Poor

2008 1-7-08 to 31-12-08 Good Good Good Good Good Good

2009 1-1-09 to 30-6-09 Good Good Good Good Good Good

Judicial Observation: A note is made against this officer to the effect that the orders passed by this Officer are pathetic and he has failed to perform his duties as an Appellate Judge.

11. N.M. Karia 2004 26-8-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge

2006 Poor Good Poor Adverse not known Average

2007 Average Very good Average Adverse not known Average

2008 1-1-08 to 30-6-08 Average Very good Average -do- Average

2008 1-7-08 to 31-12-08 To be upgraded to improve, must put extra efforts
Average No complaint received so far Good

2009 1-1-09 to 18-5-09 Good Needs more efforts and concentration Good, but
deserve improvements Subject to vigilance complaint and outcome thereof,
needs to be kept vigil over. Subject to vigilance complaint and outcome thereof
needs to be kept vigil over.

12. B.M. Mahida 2004 Good Good Good Nothing adverse brought to my notice
Nothing adverse brought to my notice

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge
Nothing adverse to my knowledge

2006 Average Average Average Adverse not known Good

2007 Good Good Good -do- Average

2008 1-1-08 to 30-6-08 Good Good Good -do- Average

2008 1-7-08 to 31-12-08 Reasonably good Has Fairly good Good Good

2009 Fairly good Has Fair There have been complaint, which are filed. May be
kept under vigil, There have been complaint which are filed. May be kept under
vigil.

13. S.M. Kapadia 2004 8-12-03 to Dec.04 Good Good Good Nothing adverse
brought to my notice Nothing adverse brought to my notice

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge
Nothing adverse to my knowledge

2006 Average Very good Average Adverse not known Good

2007 Good Very good Average -do- Good

2008 1-1-08 to 30-6-08 Good Good Average -do- Average

2008 1-7-08 to 31-12-08 Good Very good Good Good Good

2009 1-1-09 to 30-6-09 Good Good Average Nothing adverse reported Good

Judicial Observation: The High Court on its judicial side made observations
against this officer in Misc. Criminal Application No. 8513 of 2009 in Criminal
Appeal No. 1296 of 2009 that "we find that at the time of the trial one of the
accused Shanker Magan has not been arraigned as an accused though he is
convicted in the judgment u/s 325 of the I.P.C. The judgment is otherwise so
sketchy and scanty that it is required to receive consideration.... "

14. B.S. Oza 2004 8-12-03 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Average Good Average Adverse not known Adverse not known Average

2007 Poor Very good Poor -do- Average Average

2008 1-1-08 to 30-6-08 Poor Very good Poor -do- Average Average

2008 1-7-08 to 31-12-08 Poor Good Average Nothing adverse pointed out No Complaint Average

2009 1-1-09 to 30-6-09 Poor Good Average Nothing adverse pointed out No complaint Average

Judicial Observation: A note is made against this officer to the effect that the orders passed by this Officer are pathetic and he has failed to perform his duties as an Appellate Judge.

15. P.H. Buch 2004 27-8-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge

2006 Good Good Good Adverse not known Good

2007 Average Average Average -do- Average

2008 1-1-08 to 30-6-08 Average Average Average -do- Average

2008 1-7-08 to 31-12-08 Average Average Poor Doubtful not upto mark Average

2009 1-1-09 to 30-6-09 Average Average Average No adverse Noted Good

Judicial Observation: A note is made against this officer to the effect that the orders passed by this Officer are pathetic and he has failed to perform his duties as an Appellate Judge.

16. S.N. Atri 2003 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2004 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2006 Poor Good Poor Adverse not known Adverse not known Poor

2007 Poor Good Poor -do- Average Average

2008 1-1-08 to 30-6-08 Poor Good Poor -do- Good Average

2009 1-1-09 to 16-5-09 Adequate Industrious Very good/attempts to be made to write such judgments in English No untoward incidence impeaching her integrity reported or noticed. Good Very good

17. P.D. Gupta 2004 8-12-03 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Average Good Average Adverse not known Adverse not known Average

2007 Average Very good Average -do- Average Average

2008 1-1-08 to 30-6-08 Average Very good Average -do- Average Average

2008 1-7-08 to 31-12-08 Good Good Good Nothing adverse reported Good Good

18. B.K. Gajjar 2004 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Average Average Average Adverse not known Average Average

2007 Average Good Average -do- Average Average

2008 1-1-08 to 30-6-08 Average Average Average -do- Average Average

2008 1-7-08 to 31-12-08 Average Reasonably good Average Not received any complaint Overall reason ably good Average

2009 1-1-09 to 30-6-09 Average Reasonably good Average Nothing adverse is reported Her judicial orders are criticized by this Court. She needs improvement. Average

2008 She is required to improve her knowledge of law and procedure as her method of appreciation of evidence is highly faulty.

Judicial Observation: Certain observations were made by the High Court on its judicial side against this officer in 3 cases bring Criminal Revision Application No. 126 of 2005, Criminal Appeal No. 1993 of 2008 and Criminal Appeal No. 835 of 2008.

From the aforesaid character roll, it will be evident that in all the aforesaid cases, most of the time, knowledge of law has been found to be "poor" or "average", quality of judgment also "average" their reputations are "average" or in some cases "doubtful", overall grading is also "average".

It has already been noticed that the Fast Track Courts have been created for

eliminating or substantially reducing down the pendency of cases. Quick disposal and disposal of substantial number of cases are two qualities of a Fast Track Judge, apart from quality of judgment. It cannot be stated that they had disposed of cases substantially bringing down the pendency. As noticed, in most of the cases, the disposal is "average", "inadequate" or "just adequate". In some of the cases, against the quality of judgment, observation has also been made by this Court from its judicial side.

In view of the aforesaid service record and average or inadequate disposal of cases, the decision of the High Court in recommending their names for discontinuance in the service cannot be held to be illogical or shocking to the conscience of the Court nor the same suffers from procedural impropriety so as to call for judicial review of such decisionmaking process.

Apart from the entries made in the confidential reports, which are to be given due weightage in passing such orders, even uncommunicated entries in the confidential report can also be taken into account as held by the Supreme Court in the case of State of Gujarat Vs. Umedbhai M. Patel, In all the aforesaid cases, the entries made in the confidential reports have been communicated. One or other Petitioners made suggestion that such remarks are not adverse, but they cannot be a ground to continue ad-hoc Fast Track Court Judges, if their standard is average including knowledge of law, quality of judgment, reputation, disposal, etc.

36. We, therefore, hold that the order of discontinuance of services of: (1) N.H. Tandel, (2) K.S. Mateida, (3) D.K. Maisuria, (4) P.P. Trivedi, (5) D.N. Trivedi, (6) R.R. Bhatt, (7) R.M. Patel, (8) U.H. Bhatt, (9) S.R. Sodha, (10) R.M. Vyas, (11) N.M. Karia, (12) B.M. Mahida, (13) S.M. Kapadia, (14) B.S. Oza, (15) P.H. Buch, (16) S.N. Atri, (17) P.D. Gupta, and (18) B.K. Gajjar calls for no interference. The prayers made by them are thereby rejected.

37. From the records, it appears that the following twelve officers have been assessed to be "good" or "very good" officer in one or other year. Their knowledge of law and procedures, capacity to work, quality of judgments, integrity, reputation, etc. will speak for the same, as shown hereunder.

Sr. No.	Name of Officer	Year	Knowledge of law & Procedures	Capacity to do hard-work	Quality of Judgments	Integrity	Reputation	Grading
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1.	K.R. Vora	2003 8-12-03 to Dec.04	Good	Good	Good	Nothing adverse brought to my knowledge	Nothing adverse brought to my knowledge	Good
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		2005	Good	Good	Good	-do-	-do-	Good
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		2006	Average	Average	Average	Adverse not known	Average	Average
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		2007	Good	Very good	Good	-do-	Good	Good
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		2008 1-1-08 to 30-6-08	Good	Good	Good	-do-	Good	Good
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2008 1-7-08 to 31-12-08 Good Good Good Very good Very good Good

2009 Good Good Good Adverse not reported or not known to me Adverse not heard Good

2. B.M. Trivedi 2003 1-9-03 to 31-12-03 Good Good Good Nothing adverse brought to my knowledge Nothing adverse brought to my knowledge Good

2004 1-1-04 to Dec.04 Good Good Good -do- -do- Good

2005 1-1-05 to Mar.06 Good Good Good -do- -do- Good

2006 Good Very good Good Adverse not known adverse not known Good

2007 Average Very good Average -do- Good Good

2008 1-1-08 to 30-6-08 Average Very good Average -do- Average Average

2008 1-7-08 to 31-12-08 Good Good Good Good not doubtful Good Good

2009 1-1-09 to 30-6-09 Good Good Good no adverse incident Good Good

3. S.A. Shaikh 2004 1-9-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good nothing adverse brought to my knowledge nothing adverse brought to my knowledge Good

2006 Good Very good Good Adverse not known Adverse not known Good

2007 1-1-07 to 31-12-07 Good Very good Good Adverse not known Good Good

2008 1-1-08 to 30-6-08 Good Very good Good -do- Good Good

2008 1-7-08 to 31-12-08 Adequate Adequate Adequately good As reported by RGIN his note dated Good Good

29-4-08 VC 517/08 is pending needs to be watched

2009 1-1-09 to 30-6-09 Good Good Good

Good Good

4. Nirmal Solanki 2004 8-9-04 to Dec.04 Good Good Good Nothing adverse brought to notice Nothing adverse brought to notice Good

2005 1-1-05 to Mar.06 Good Good Good -do- -do- Good

2006 Good Very good Good adverse not known Good Good

2007 Good Very good Good -do- Good Good

2008 1-1-08 to 30-6-08 Good Average Good -do- Good Good

2008 1-7-08 to 31-12-08 Very good Good Good Good Good Good

2009 1-1-09 to 30-6-09 Good Average Average Adverse not informed or reported

to me Adverse not reported to me Good

5. R.B. Bhatt 2003-04 11-12-03 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Good Good Good Adverse not known Adverse not known Good

2007 Good Good Good Adverse not known Adverse not known Good

2008 1-1-08 to 30-6-08 Good Good Good Adverse not known Good Good

2008 1-7-08 to 31-12-08 Good Good Good Nothing adverse has been brought to my notice Nothing adverse brought to my notice Good

2009 1-1-09 to 30-6-09 Good Good Good -do- -do- Good

6. A.N. Mehta 2004 8-12-03 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005-06 1-1-05 to Mar.06 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2006 Average Average Average adverse not known Average Average

2007 Good Good Good -do- Good Good

2008 1-1-08 to 30-6-08 Good Average Good -do- Good Good

2008 1-7-08 to 31-12-08 Good Good Good Good Good Good

2009 1-1-09 to 30-6-09 Good Good Good Good-not Compliment so far Good Good

7. K.J. Trivedi 2004 16-2-04 to Dec.04 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Good Very good Good Adverse not known Good Good

2007 Average Very good Good -do- Good Good

2008 1-1-08 to 30-6-08 Average Very good Good -do- Good Good

2008 1-7-08 to 31-12-08 Good Good Good Good Good Good

2009 1-1-09 to 30-6-09 Good Good Good Good Good Good

8. M.T. Dhanak 2003 21-4-03 to 31-12-03 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2004 Good Good Good -do- -do- Good

2005 1-1-05 to Mar.06 Good Good Good -do- -do- Good

2006 Good Very good Good Adverse not known Good Good

2007 Good Very good Good adverse not known Good Good

2008 1-1-08 to 30-6-08 Good Very good Good -do- Good Good

2008 1-7-08 to 31-12-08 Good Good Good To the best of information good To the best of information good Good

2009 1-1-09 to 15-5-09 Average Average Average Doubtful Doubtful Average

9. V.H. Upadhyay 2004 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Good Good Good Adverse not known Good Good

2007 Average Very good Good Adverse not known Good Good

2008 1-1 -08 to 30-6-08 Average Very good Good Adverse not known Good Good

2008 1-7-08 to 31-12-08 Good Good Good Good not doubtful Good Good

2009 1-1-09 to 30-6-09 Average Poor Poor Average Average Average

10. P.G. Gokani 2003 28-4-03 to 3 1-12-03 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2004 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse is brought to my knowledge Nothing adverse is brought to my knowledge Good

2006 Good Average Good Adverse not known Average Average

2007 Good Very good Good -do- Good Good

2008 1-1-08 to 30-6-08 Good Average Good -do- Good Good

2008 1-7-08 to 31-12-08 Good Average Good -do- Average Average

2009 1-1-09 to 30-6-09 Good Average Good Adverse not known or reported to me adverse not reported Average

11. J.H. Singh 2004 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 upto Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Average Very good Good Adverse not known Good Good

2007 Good Good Good Adverse not known Good Good

2008 1-1-08 to 31-6-08 Good Average Good Adverse not known Good Good

2008 1-7-08 to 31-12-08 Not good Not good Adequate average Not known Not known Average

2009 1-1-0 to 30-6-09 Good Good Good As per note of R.G. nothing adverse is reported under the period under consideration As per note of R.G. nothing adverse is reported under the period under consideration Good

12. C.H. Shukla 2004 2-9-04 to Dec.04 Good Good Good Nothing adverse brought to my notice Nothing adverse brought to my notice Good

2005 1-1-05 to Mar.06 Good Good Good Nothing adverse to my knowledge Nothing adverse to my knowledge Good

2006 Good Good Good Adverse not known Good Good

2007 Good Very good Very good Adverse not known Good Very good

2008 1-1-08 to 30-6-08 Good Very good Very good Adverse not known Good Very good

2008 1-7-08 to 31-12-08 Good Good Good Very good Good Very good

2009 1-1-09 to 30-6-09 Good Average Good Adverse not reported or informed to me Adverse not heard Good

There is no adverse observations made by the High Court or the Supreme Court from its judicial side against quality of judgments of either of the 12 officers aforesaid. In the administrative side, some complaints were received, after fact-finding inquiry, the High Court dropped the matter and ordered to file such allegation petitions, either being vague or general or being without any substance. Nothing on record to suggest as to why a decision was taken to terminate the services of the aforesaid 12 officers. From the record, it appears that since 2008, no order of extension of services were issued with regard to most of the aforesaid officers. Suddenly, in 2009, by one order their services were extended upto certain period and by another order of the same date, it was recommended to terminate their services from the date such extension comes to an end. For example, by notification dated 5-9-2009 issued by the State of Gujarat, on the recommendation of the High Court, services of 12 officers were extended from Aug./Sept. 2008 to 30th Sept., 2009 and immediately after a few days, by letter dated 23-9-2009, on the basis of overall assessment of their work and conduct, it is decided to discontinue their services with effect from 1-10-2009.

38. The learned Advocate General appearing on behalf of the High Court or the learned Counsel appearing on behalf of the State could not justify as to why the services of the aforesaid 12 officers were terminated, though their performance were found to be "good" or "very good" as noticed above and the vague and

unfounded allegation made in the administrative side, on considering, having dropped and filed by the High Court. While the services of the aforesaid 12 officers having been found suitable or extended for the period upto 14-12-2009, why their services were terminated with effect from 5-12-2009 on the ground "having not been found suitable".

39. Normally, the administrative decision should not be interfered with unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, as held by the Supreme Court in the case of Union of India (UOI) and Another Vs. K.G. Soni, But from the record of the aforesaid 12 officers, as, prima facie, it appears that the decision on the administrative side of the Court is not based on record and prima facie illogical, we are of the view that their cases require reconsideration. Nothing adverse on record is brought to our notice to suggest that the 12 officers are no longer useful to the general administration or are required to be thrown out for the sake of public interest.

40. From the record of two officers viz. M.T. Dhanak and Mrs. Y.H. Upadhaya, we have noticed their character rolls for the period from January to May/June, 2009, but we have not given much importance as they were simultaneously written while the decision was taken to terminate their services though the remarks for the earlier period are "good" or "very good" throughout the last five years.

41. We have also noticed that two officers, viz. K.R. Vora and B.M. Trivedi, were continued in service in the view of the interim order of the Supreme Court in W.P. No. 565 of 2009 which was allowed to be withdrawn by the Supreme Court to move before this Court and thereafter by way of interim order passed by this Court, they are continued in service.

42. It has been brought to our notice that the posts against which the aforesaid 12 officers were working are still lying vacant and the Central Government has extended the tenure of the post of Fast Track Court Judges for the period from 2010 to 2011. However, in absence of any formal extension of their period of service, though we are inclined to interfere with the order of termination, no specific order is passed for their reinstatement. The cases of the 12 officers viz. K.R. Vora, B.M. Trivedi, S.A. Shaikh, Nirmal Solanki, R.B. Bhatt, A.N. Mehta, K.J. Trivedi, Y.H. Upadhaya, M.T. Dhanak, P.G. Gokani, J.H. Singh and C.H. Shukla are required to be reconsidered for their continuance for the subsequent period like the other officers.

43. We accordingly set aside the order of termination so far as it relates to the aforesaid 12 officers and remit their case to the administrative side of the High Court for reconsideration of their case for extension of their service for further period, as has been allowed in the case of other Fast Track Court Judges including those who are holding the post by ad-hoc promotion. The administrative side of the High Court is expected to consider the matter at an early date and must consider prior to fresh appointment/promotion to the post of Fast Track Court ad-hoc Additional District Judges.

44. Writ petitions Spl. C.A. Nos. 148, 270, 272, 393, 478, 752, 880 and 1250 of 2010 are allowed so far as they relate to the aforesaid 12 Petitioners.

Rest of the writ petitions preferred by J.B. Rajgor (Spl. C.A. No. 2901 of 2009), N.H. Tandel (Spl. C.A. No. 269 of 2010), K.S. Metedia (Spl. C.A. No. 271 of 2010), D.K. Maisuria (Spl. C.A. No. 273 of 2010), P.P. Trivedi (Spl. C.A. No. 332 of 2010), D.N. Trivedi (Spl. C.A. No. 384 of 2010), R.R. Bhatt and R.M. Patel (Petitioners in Spl. C.A. No. 393 of 2010 so far as these 2 Petitioners are concerned), U.H. Bhatt (Spl. C.A. No. 749 of 2010), S.R. Sodha (Spl. C.A. No. 750 of 2010), R.M. Vyas and N.M. Karia (Spl. C.A. No. 751 of 2010), B.M. Mahida (Spl. C.A. No. 769 of 2010), S.M. Kapadia (Spl. C.A. No. 881 of 2010), N.M. Tailor and M.D. Shukla (Spl. C.A. No. 1050 of 2010), B.S. Oza (Spl. C.A. No. 1065 of 2010), P.H. Buch (Spl. C.A. No. 1103 of 2010), Mansuri Mohammed Ilyas Gulamnabi (Spl. C.A. No. 1105 of 2010), S.N. Atri (Spl. C.A. No. 1205 of 2010), J.K. Shah (Spl. C.A. No. 1291 of 2010), Ms. P.D. Gupta (Spl. C.A. No. 1391 of 2010), C.H. Kostli (Spl. C.A. No. 1627 of 2010), Ms. B.K. Gajjar (Spl. C.A. No. 786 of 2010) and H.H. Patel (Spl. C.A. No. 1373 of 2009) are dismissed.