

(1987) 08 KAR CK 0007
In the Karnataka High Court
Case No : W. P. No. 29928 of 1981 etc.

L. Kumara Chandra

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-08-1987

Acts Referred:

Constitution of India, 1950 — Article 136, 411 (2)
Karnataka Civil Services (Probation) Rules, 1977 — Rule 4, 5, 5 (1), 6

Citation : (1987) ILR (Kar) 2756

Hon'ble Judges : Rama Jois, J;Chandrakantaraj Urs, J

Bench : Division Bench

Advocate : G.S. Visveswara, for the Appellant; S.V. Jagannath, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.

The petitioners in these three petitions, who had been appointed as Munsiffs in the Judicial Service of the State, have presented these petitions questioning the legality of the orders by which they were discharged from service.

2. The facts of the case, in brief, are as follow: The three petitioners were selected for appointment to the posts of Munsiff in the Judicial Service of the State under the provisions of the Karnataka Munsiffs (Special Recruitment) Rules, 1978. On their appointment to the posts, they reported for duty on 13th October, 1978, before the High Court, After the completion of the period of training, they were posted to different places to work either as Munsiffs or as Magistrates. The period of probation fixed under the Rules was two years. However, as the validity of the appointments of the petitioners and others had been the subject matter of legal proceedings before this Court and subsequently before the Supreme Court, the period of probation was continuing in view of Rule 11 of the Karnataka Civil Services (Probation) Rules, 1977. The petitioners and another were discharged by an order made by the Governor on 7-11-1981 The

said order reads :

" GOVERNMENT OF KARNATAKA

No. LAW.157.LAC.81. Karnataka Government Secretariat, Vidhana Soudha, Bangalore, dated, 7th November 1981.

ORDER

In exercise of the powers conferred by Rule 5 of the Karnataka Civil Services (Probation) Rules, 1977, the Governor of Karnataka hereby orders the discharge from service, with immediate effect, of the following officers, as they are found to be unsuitable for the posts of Munsiffs.

Sriyuths :

1. Jahangir Shariff,

Munsiff & Judicial Magistrate, I Class, Indi.

2. L. Kumarachandra,

Munsiff & Judicial Magistrate, I Class, Malavalli.

3. H. Basavaraj,

Munsiff & Judicial Magistrate I Class, Belthangady.

4. L. S. Chikkanagoudar,

Munsiff & Judicial Magistrate I Class, Somwarpet.

GOVIND NARAIN GOVERNOR OF KARNATAKA

By Order and in the Name of the Governor of Karnataka.

Sd)- (S. K. Ramadevamma) Under Secretary to Government Department of Law & Party Affairs (Admn.)."

Questioning the legality of the said order, the petitioners have presented these Writ petitions.

3. Sri G.S. Visveswara, Learned Counsel for the petitioners urged the following five contentions as common to all the three petitions :

(i) The conferment of the power to discharge on the Governor is ultra vires Article 235 of the Constitution of India and consequently the impugned order of discharge issued by the Governor is invalid as violative of Article 235 of the Constitution ;

(ii) As the period of probation fixed under the Recruitment Rules is two years, the petitioners must be deemed to have been confirmed automatically on the expiry of the period of probation ;

(iii) Sub-rule (2) of Rule 5 of the Probation Rules which gives power to the

authority to keep quiet without passing any order even after the expiry of the period of probation, is arbitrary and unreasonable ;

(iv) The discharge was made during the period of probation and therefore Rule 6 of the Probation Rules was attracted and as such the discharge should have been on a ground to be specified in the order of discharge and as no such ground is specified, the order is illegal and liable to be set aside ;

(v) As increments had been granted, in view of Rule II of the Probation Rules, the petitioners must be deemed to have satisfactorily completed the period of probation ;

In the cases of the petitioners in W.P. Nos. 1327 and 3760 of 1982, the Learned Counsel for the petitioners has urged the following additional contention :

(vi) Though the order of discharge is innocuous, it is really in the nature of penalty imposed for misconduct. As no inquiry as required under Clause (2) of Article 411 of the Constitution read with Rules 11 and 11A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, was held, the order is liable to be set aside.

4. Re. first contention : Under Article 234 of the Constitution, the Governor is the Appointing Authority for the posts of Munsiffs which constitute part of Judicial Service of the State. Under Article 235 full and complete control over the members of Judicial Service is vested in the High Court. Therefore, a decision as to whether a person appointed on probation in the Judicial Service should be confirmed or discharged must be of the High Court itself. However, in view of Article 234, as the Governor is the Appointing Authority of the posts for Munsiffs, a formal order of discharge has to be issued by the Governor and not by the High Court. This position in law arising out of Articles 234 and 235 of the Constitution is beyond doubt. (See : State of Assam and Another Vs. S.N. Sen and Another, State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, Baradakanta Mishra Vs. High Court of Orissa and Another, and Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, The Karnataka Munsiffs (Special Recruitment) Rules, 1978, was made by the Governor under Article 234 of the Constitution in consultation with the High Court. It is under the said Rules the period of probation was fixed at two years and the Karnataka Civil Services (Probation) Rules were made applicable to the Munsiffs mutatis mutandis. Under the Probation Rules the Appointing Authority is the authority competent to discharge a probationer. In the present case there is no dispute that the decision to discharge the petitioners from service was taken by the High Court and a recommendation was made to the Governor to discharge them from Service. The recommendation made by the High Court, which having regard to the decisions cited above is binding on the Governor, the formal order of discharge has been issued by the Governor, Therefore, the Rules which specify the Governor as the authority competent to discharge a member of Judicial Service, is in conformity with Article 234 of the Constitution and is not inconsistent with Article 235 of the

Constitution. The Governor cannot issue an order of discharge or impose a penalty of removal from service against a member of Judicial Service, unless passing of such an order is recommended by the High Court. Therefore, there is no substance in the first contention.

5. Re. second contention : Mere expiry of the period of probation does not result in automatic confirmation of a probationer. The general principle of law is that a probationer continues to be a probationer until he is confirmed or discharged from service. (See: Sukhbans Singh Vs. State of Punjab, The only exception to this Rule is the cases in which the rules regulating recruitment and probation fix a maximum period of probation and there is no provision for extension of the period of probation as held by the Supreme Court in the case of State of Punjab Vs. Dharam Singh, . In the present case, Sub-rule (1) of Rule 4 of the Probation Rules expressly provides that the period of probation may, for reasons to be recorded in writing, be extended by the Governor. Apart from that Rule 11 of the Probation Rules reads:

"11. PROBATION WHERE VALIDITY OF APPOINTMENTS IS QUESTIONED ; Notwithstanding any thing contained in the preceding rules, where the validity of the appointment of any person as probationer is questioned in any legal proceeding before a Court of law, the period of probation of such person shall continue until the final disposal of such proceedings, and pending such disposal, the appointing authority may, if it is satisfied that the probationer has satisfactorily completed the prescribed or extended period of probation, direct that the probationer shall be entitled to draw increment in the scale of pay of the post held by such probationer from such date as may be specified in such direction and increments shall, subject to the other provisions governing the drawal of increments applicable to Government servants generally, be drawn by such probationer accordingly."

In the present case, it is not disputed that the appointments of all the 54 persons including the petitioners, had been the subject matter of challenge before this Court in the case of T.N. Manjula Devi -v.- State of Karnataka 1980 (1) KLJ 77. The Writ Petitions were dismissed on 14-6-1979. Thereafter, the petitioners therein sought the leave of the Supreme Court to appeal against the Judgment, in SLP Nos. 9110 to 9113 of 1979. The matter became final only 31-8-1981 on which date those petitions were dismissed. In view of Rule 11, extracted above, the petitioners were continuing on probation even after the expiry of the period of probation. After the challenge to the recruitment and appointments failed finally, the continued period of probation came to an end and at that stage action was taken to consider the cases of all the persons including the petitioners to find out as to whether they were suitable for being confirmed as members of Judicial Service or there were grounds to discharge any of them. The ratio in the case of Dharam Singh⁶ is not at all attracted to this case. For these reasons the contention urged for the petitioners that they must be deemed to have been automatically confirmed after the expiry of period of two years, is plainly

inconsistent with the provisions of Probation Rules.

6. Third contention : The contention of the petitioners is that Sub-rule (2) of Rule 5 of the Probation Rules confers arbitrary power on the Appointing Authority, in that it gives power to the authority to keep quiet for any period of time without making any declaration regarding satisfactory completion of the period of probation, and, therefore, it is void on the ground that it confers arbitrary power. Rule 5 of the Probation Rules reads :

"5 DECLARATION OF SATISFACTORY COMPLETION OF PROBATION ETC.-- (I) At the end of the prescribed or as the case may be the reduced or extended period of probation, the appointing authority shall consider the suitability of the probationer to hold the post to which he was appointed, and --

(a) If it decides that the probationer is suitable to hold the post to which he was appointed and has passed the special examinations or tests, if any, required to be passed during the period of probation it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation and such an order shall have effect from the date of the expiry of the prescribed, reduced or extended period of probation ;

(b) If the appointing authority decides that the probationer is not suitable to hold the post to which he was appointed or has not passed the special examinations or special tests, if any, required to be passed during the period of probation, it shall, unless the period of probation is extended under Rule 4, by order, discharge him from service.

(2) A probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. Any delay in the issue of an order under Sub-rule(1) shall not entitle the probationer to be deemed to have satisfactorily completed his probation."

It may be seen that Rule 5(1) of the Probation Rules casts a duty on the Appointing Authority to consider the suitability of a probationer to hold the post at the end of the prescribed extended or reduced period of probation. It further provides that on such consideration if it is found that the probationer had acquired all the prescribed qualifications and had also satisfactorily completed the period of probation, the Appointing Authority should issue an order declaring that the probationer had completed the period of probation satisfactorily. It is significant to point out that Clause (a) of Sub-rule (1) of Rule 5 expressly provides that such declaration made on any subsequent date after the expiry of the period of probation shall have effect from the date of the expiry of the period of probation, whether originally prescribed or reduced or extended. Clause (b) of Sub-rule (1) of Rule 5 empowers the Appointing Authority to pass an order of discharge if the Appointing Authority is of the opinion that the probationer concerned was not suitable to hold the post.

7. All that Sub-rule (2) provides is that, as in the nature of things calling for

information about the work and performance of a probationer during the period of probation and taking a decision as to whether he had satisfactorily completed the period of probation or not, requires some time, that a probationer cannot claim that he must be deemed to have completed the period of probation satisfactorily immediately on the expiry of the period of probation. The Rule does not confer power on the Appointing Authority to keep quiet without passing any order indefinitely. If any Appointing Authority fails to make the necessary declaration within a reasonable time after the expiry of the period of probation, it would be a clear failure on its part to discharge its duty cast upon it under Clauses (a) and (b) of Sub-rule (1) of Rule 5. In fact, Sub-rule (2) of Rule 5 is intended in public interest, in that, if either on account of lapse on the part of an Appointing Authority or on account of administrative delay in getting the report about the work and performance of the probationer or on account of any inadvertence on the part of the Appointing Authority, no order is made as required under Clause (a) or (b) of Rule 5(1), it should not so happen that a probationer, who is otherwise unsuitable could claim that he had completed the period of probation and to have acquired a right for confirmation against a substantive vacancy in a permanent post available immediately after the expiry of the period of probation. In other words, the rule requires application of the mind of the Appointing Authority as to the satisfactory completion of probationary period and making of a declaration in writing in the case of each of the probationers that he had completed the period of probation satisfactorily which gives him the right to be confirmed as provided in Rule 9. The effect of such a declaration is that a probationer could not thereafter be treated as probationer even if there were to be any time lag between the date of declaration and the date of confirmation, which depends upon the availability of a substantive vacancy in a permanent post. Therefore, the contention that Sub-rule(2) of Rule 5 confers arbitrary power on the Appointing Authority is incorrect and untenable.

8. Re. fourth contention : This contention is based upon Rule 6 of the Probation Rules. It reads :

"6. DISCHARGE OF A PROBATIONER DURING THE PERIOD OF PROBATION : (1) Notwithstanding anything in Rule 5, the appointing authority may, at any time during the period of probation, discharge from service a probationer on grounds arising out of the conditions, if any, imposed by the rules or in the order of appointment, or on account of his un-suitability for the service or post ; but the order of discharge except when passed by the Government, shall not be given effect to, till it has been submitted to and confirmed by the next higher authority.

(2) An order discharging a probationer under this rule shall indicate the grounds for the discharge but no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, shall be necessary."

The above Rule empowers the Appointing Authority to discharge a probationer even without waiting till the completion of the period of probation. The object of

the Rule is that if shortly after the appointment of a person as a Probationer, it comes to the notice of the Appointing Authority that there are grounds to say that the probationer is not suitable for the post to which he is appointed, there is no necessity to watch his work and performance for the whole of the period of probation and there is no necessity to keep him on probation till the end of the period of probation and to discharge him at the end of the period of probation. To illustrate, it shortly after the appointment on probation if it comes to the notice of the Appointing Authority that he had or he became subjected to any physical incapacity which renders it impossible for him to discharge the duties of the post or he suffers from some disqualification for appointment or he fails in the departmental examination, success in which is a condition for satisfactory completion of probation and no examination is due to be held within the balance of the period of probation or any other basis comes to the Appointing Authority which at once renders him unsuitable for the post, he can be discharged at once, as it would be futile to try him for the whole of the prescribed period of probation. In such a case, the requirement of the Rule is that the ground on the basis of which the Appointing Authority comes to the conclusion that the probationer is unsuitable for the post must be set out in the order of discharge and in cases when such discharge order is made by a subordinate Appointing Authority, such an order must have the approval of the next higher authority.

9. The contention of the petitioners is that in the present case the discharge of the petitioners was during the period of probation and not at the end of the period of probation and therefore, as no specific ground is stated in the order of discharge, the same is liable to be set aside.

10. In order to appreciate the contention, it is necessary to refer to Rule 3 of the Probation Rules, It reads :

"3 PERIOD OF PROBATION - The period of probation shall be as may be provided for in the rules of recruitment specially made for any service or post, which shall not be less than two years, excluding the period if any, during which the probationer was on extraordinary leave."

There is no doubt that the period of probation prescribed under the recruitment rules for Munsiffs is two years. There is also no dispute that the petitioners were not discharged during the period of probation. As stated earlier, though the period of probation came to an end on the expiry of two years, it stood automatically extended by the force of Rule 11 of the Probation Rules, and it came to an end only with the dismissal of the Special Leave Petitions by the Supreme Court, in which the validity of the appointments of the petitioners was the subject matter of challenge. Decision under Rule 5 was taken shortly thereafter. Therefore, Rule 6 of the Probation Rules has no application to the present case as the discharge was not during the period of probation as contemplated under Rule 6, but it was under Rule 5 at the end of the period of probation as extended by the force of Rule 11 of the Rules. To such a case, the provisions of Rule 5(1)(b) is attracted and not Rule 6, Therefore, there is no

substance in the fourth contention also.

11. Re. fifth contention: Learned Counsel for the petitioners contended that as annual increments had been sanctioned to the petitioners and as the sanctioning of increments particularly after the prescribed period of probation would only be on the basis that the petitioners had satisfactorily completed the period of probation, it should be held that the petitioners were no longer probationers and therefore they could not be discharged from service under Rule 5 of the Probation Rules.

12. The grant of increments to probationers is regulated by Rule 10 of the Probation Rules. It reads :

"10. INCREMENT AND PAY : (1) A probationer appointed at the initial or higher stage of a time scale may draw the increments that fell due during the prescribed period of probation ; he shall not however, draw any increments after the expiry of such period unless and until he is declared to have satisfactorily completed his probation.

(2) When a probationer is declared to have satisfactorily completed his probation he shall draw, as from the date such order takes effect, the pay he would have drawn had he been allowed the increments for the whole of his service from the date of his appointment on probation."

As can be seen from Rule 10(1), the grant of annual increments during the period of probation is, of course, but the grant of increments after the expiry of the prescribed period of probation : whether the period of probation is extended by an express order or deemed to have been continued by virtue of Rule 11 of the Rules; can only be after a declaration that the probationer had satisfactorily completed the period of probation. In the present case, the increments sanctioned were only during the period of probation. Though the learned Counsel for the petitioners at one stage asserted that increments had been paid even after the expiry of the prescribed period of probation, later admitted that no increments had been sanctioned after the expiry of the period of probation. Therefore, the contention is devoid of any merit.

13. Re. sixth contention: This contention is raised in two Writ Petitions, that is, W.P.Nos. 1327 and 3760 of 1982. The contention is that though the wording of the impugned order is innocuous, it was really in the nature of penalty. In the absence of any allegation that any person who had made any report against a probationer or that any one concerned in taking the decision had any grouse against the probationer, a bona fide decision taken by the competent authority that the probationer was not suitable for the post concerned, when the wording of the order shows that it was only a discharge simpliciter, the discharge cannot be regarded as dismissal or removal from service. In these two cases then is no such allegation against any one. Therefore, the very fact that the decision, to the effect that the petitioners were unsuitable for the post of Munsiffs, had been taken by the Full Court and the impugned order does not cast any stigma on the

character or conduct of the petitioners, is sufficient to reject the contention, as held by the Supreme Court in the case of State of Maharashtra -v.- V.R. Saboji . The relevant portion of the Judgment reads :

"14. Now coming to the facts of the instant case, I find that the allegations of mala fides were made in the writ petition only against Respondents 2 and 3 who were the immediate superior officers of Respondent No. 1 at the relevant time. No specific allegation was made against them that they made reports against him to the High Court due to any ulterior motive or to feed any grudge against Respondent No. 1. Merely to say, as was said by him in his Writ Petition, that their action was not justified and it was out of bias that they took the action, was not in the least, any allegation of mala fide. If it were to be permitted in such cases to examine all these reports in detail to find out whether the reports were justified or not and then to draw an inference of mala fide, on that basis, where will it lead to ? Then in every case the reasons for termination of service will have to be scrutinised thread-bare to arrive at a conclusion that the order passed was not mala fide. On his own showing Respondent No. 1 had earned adverse remarks before his service was terminated which clearly showed that his record was not satisfactory. The High Court, therefore, recommended to the Government that the services of Respondent No. 1 be terminated. The Government accepted the recommendation of the High Court and terminated his services. No allegation whatsoever of any hostile discrimination was made in the Writ Petition against the High Court or the Government, not even against the Chief Justice or any Judge of the High Court who might have dealt with the matter. Nor was any such allegation made against the Law Secretary or the Chief Secretary or any Minister of the Government. After all when the orders were passed against Respondent No. 1 the High Court must have examined the matter carefully and found that it was not desirable to allow Respondent No. 1 to continue in the service and must have found further that the facts did not warrant or make it expedient to hold any regular enquiry against Respondent No. 1 and to remove him from service by way of punishment. I may add that the High Court file containing the recommendation in case of Respondent No. 1 was ready in the High Court to be shown to the Division Bench which heard the Writ Petition. But the Learned Judge refused to see it because the State Counsel was not prepared to show it to Respondent No. 1. Obviously it could not be shown to him. Otherwise, he would have come out with a plea right or wrong, that the order was made against him by way of punishment. This is the delicate area where the Government and the State Counsel find themselves in a peculiar and delicate position. Mr. Phadke also informed us that the High Court file was ready with him and if we liked we may see it. On the facts and in the circumstances of this case, we did not think it necessary to see, and therefore, we did not see."

The ratio of the decision applies to these cases also and it is sufficient to hold that the discharge order, impugned in these petitions, was not punitive in nature.

14. However, the two petitioners have stated in the petitions certain incidents, in

respect of which their explanations had been called for, which constituted the basis for their discharge, and therefore the real nature of the order was penalty for misconduct. This submission of the petitioners does require careful examination and it involves the following aspects.

- (i) the extent of the right of persons appointed on probation,
- (ii) the scope of the power of the Appointing Authority in taking a decision regarding the suitability of a person appointed on probation, and
- (iii) the question as to whether a ground other than work and performance of a probationer could constitute a basis for deciding that the probationer was not suitable for the post concerned and in this case not suitable to hold a judicial post.

15. From a long line of decisions, it is established that Article 411(2) of the Constitution does not make any difference regarding the holding of inquiry as a condition precedent for the imposition of penalty or dismissal or removal from service as between persons appointed on permanent basis to a civil post or as a member of a civil service and those appointed on temporary basis or on probation to such service or post and further that Article 411(2) would be attracted even if the order by which the termination of service or discharge is made, does not state that it was being made as a measure of penalty, but in truth it is so (See *Parshotam Lal Dhingra Vs. Union of India (UOI)*, ; *Madan Gopal Vs. State of Punjab*, *The State of Orissa and Another Vs. Ram Narayan Das*, It is also clearly established that the provisions of the said Article have no application to the termination of service of a temporary employee in accordance with the conditions of service applicable to him or to the discharge of a probationer on grounds of unsuitability after holding any inquiry limited to the purpose of ascertaining his suitability. (See : *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, *Ranendra Chandra Banerjee Vs. Union of India (UOI)*, *State of Uttar Pradesh Vs. Akbar Ali Khan*, ; *Bishan Lal Gupta Vs. The State of Haryana and Others*,

16. The reason for this is, the difference in the nature of the rights of a permanent civil servant and a probationer. In the case of a permanent civil servant he would have already acquired the right to hold the post until he reaches the age of superannuation or until his tenure is determined as a measure of penalty or until he is prematurely retired, after he had put in the prescribed period of qualifying service or had crossed the prescribed age, in public interest as permitted by the Rules regulating his condition of service. But in the case of a probationer, he has no right to the post. The very fact that a person is appointed on probation means he is on trial and it is for the competent Appointing Authority to decide as to whether he should be admitted as a permanent member of the service, that is whether the right to hold the post should be conferred on him or not.

17. Thus it may be seen the difference between a permanent civil servant and a

probationer is :

Whereas in respect of a permanent civil servant, that is, a person who has already been admitted as a permanent member of the service, the question in the context of putting an end to his tenure would be whether he should be deprived of his right, to hold the post i.e. to continue in service :

Whereas in the case of the consideration of the case of a probationer for confirmation, the question would be whether the right to hold a civil post should be conferred on him or not.

If this difference between the two is borne in mind, the distinction between the nature of an inquiry for the purpose of determining the right of a permanent civil servant to continue in service and the nature of the inquiry which might become necessary in a given case to decide as to whether the right to hold a civil post should be conferred on a person who is appointed on probation or not becomes clear. In the nature of things, the two types of inquiries cannot be similar and the matter is also not *res integra*.

18. In the case of the former, compliance with Article 411 (2) would be a condition precedent, for, putting an end to the tenure of such civil servant, in whatever form would be, per-se a penalty of dismissal or removal from service. Whereas in the case of the latter, that is, a probationer, the question to be decided would be whether he is suitable for the conferment of the right to hold the post by ordering his confirmation or whether he is not suitable and he should be discharged. For taking such a decision, Article 411 (2) has no application. This aspect is fully expounded by the Supreme Court in the case of *Bishanlal Gupta*¹⁵, to which we shall refer a little later.

19. It is also necessary to bear in mind that the decision regarding the suitability of a person appointed on probation not only depends upon his work and performance during the period of probation, but also upon various other factors, which might constitute relevant grounds or deciding the suitability. This aspect has been explained by the Supreme Court in the case of *Dr. T.C. Pillai Vs. The Indian Institute of Technology, Guindy, Madras*, . In the said case the plea of the petitioner, who had been appointed as a probationer in the Institute and who had been discharged from service, was, that his suitability for the post was not decided on the basis of his work and performance in the post concerned, but he was found unsuitable because during the period of probation he insisted for extending certain service benefits, which he considered to be just, and also because, for the purpose of advancement of his prospects, he intended to apply for selection for appointment to a post in the Banaras University. The contention of the petitioner was, such a decision based upon the conduct of the petitioner during probation and not on the basis of his work and performance amounted to a penalty for misconduct and therefore bad. The contention was negatived. Relevant paragraph of the Judgment reads :

"7. It is well settled that a probationer or a temporary servant can be discharged

if it is found that he is not suitable for the post for which he is holding. This can be done without complying with the provisions of Article 411(2) unless the services are terminated by way of punishment. Suitability does not depend merely on the excellence or proficiency in work. There are many factors which enter into consideration for confirming a person who is on probation. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability or fitness for confirmation.

8. In the present case the Board of Governors consisted of a number of distinguished and well known academicians and teacher. Although there is a mention in the resolution about the confidential reports by the head of the department and the Director, they have not been placed on the record. Even assuming that those reports were favourable so far as the academic work of the appellant was concerned the Board was entitled to take into consideration the other matters which have already been mentioned for the purpose of deciding whether he should be confirmed or whether he should be given a notice of one month as per the terms of the letter of appointment, The Board decided to adopt the latter course. By no stretch of reasoning can it be said that the appellant had been punished and that his services had been dispensed with as a penal measure."

(Underlining by us)

From the above Judgment it is clear that a part from the work and performance of a probationer, a particular attitude or tendency displayed by the employee concerned during the period of probation would itself be sufficient to adjudge the suitability or otherwise of a probationer for confirmation.;

20. In the light of the above decision, the cases of discharge of probationers, which are not punitive in nature could be classified into two categories :

(i) Discharge made purely on an assessment of work and performance of a probationer during the probationary period as discernible from the confidential reports and/or performance reports, excluding from consideration any misconduct alleged against him if any in a given case; and

(ii) Discharge, adjudging a probationer unsuitable on the basis of an attitude or tendency displayed during the probationary period which in the opinion of the Appointing Authority is sufficient to hold him unsuitable for the post, in addition to adverse reports about his work and performance, if any, or even if his work and performance was good during the period of probation, by an innocuously worded order.

21. As far as the first category of cases is concerned, there is no difficulty. If the order of discharge is made solely on the basis of work and performance as disclosed by any performance reports secured or the annual confidential reports, the opinion formed by the Appointing Authority would be beyond reproach. In the second category of cases, it is necessary to hold a limited inquiry, to ascertain

the truth about the incident or incidents which disclose an attitude or tendency which could constitute the basis to adjudge the probationer unsuitable to hold the post. This inquiry is separate and distinct from an inquiry which is prescribed as a condition precedent under Article 411(2) before imposing the penalty of dismissal, removal or reduction in rank. The distinction between the two types of inquiries has been clearly laid down in the judgment of the Supreme Court in the case of Bishanlal¹⁵. The relevant portion of the Judgment reads :

"14. These observations must we think, be meant to cover in those cases where, even though the probationer may have no right to continue in service yet, the order terminating his services casts a stigma on his name. This means that the individual concerned must suffer a substantial loss of reputation which may affect his future prospects. In that case, justice requires a fuller hearing. If, however, after going into the particular facts and circumstances of a case, the Court finds, as seems to be the position in the case before us, that the enquiry conducted and notices given were intended only to arrive at a finding on the desirability of continuing a person in service and more serious action was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere form does not indicate the exact nature and result of the proceeding judged by its nature and its effects upon a probationer. To some extent the Courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that even if the reputation of a probationer was to some degree affected by what took place yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for terminating his services. There is, in such cases, no injustice

15. This Court would certainly not interfere under Article 136 of the Constitution on a merely technical plea that the case deserved a fuller enquiry. It must be shown that such an enquiry could serve a useful purpose. The facts must indicate that, if this fuller inquiry was held, the Government servant will be found to be blameless. Otherwise, further prolongation of such litigation is pointless.

16. It is impossible to lay down propositions which are so clear cut as to cover every conceivable case. Indeed, an attempt to do so may make the law too rigid. It is only if patent facts disclose a serious enough infringement of law as well as indubitably doming and undeserved consequences upon a petitioner that the Court's conscience could be so moved as to induce it to interfere under Article 136 of the Constitution. We are quite certain that this is not one of those cases. On this ground alone this case could not be one in which we could grant special leave to appeal.

17. There is, however, another point of view also, already indicated above, from which the case could be considered. It is that the High Court held that this was not really a case of punishment. On this aspect of the case, the High Court rightly seems to us to have proceeded on the view that there should be at least some difference, as to the nature of or the depth of the inquiry to be held, as between a probationer whose services can be terminated by a notice and a

confirmed Government servant who has a right to continue in service until he reaches a certain age. It is true that neither can be "punished" without a formal charge and inquiry. But a less formal inquiry may be sufficient, as it was here to determine whether a probationer, who has no fixed or fully formed right to continue in service (treated in the eye of law as a case of "no right" to continue in service) should be continued. A confirmed Government servant's dismissal or removal is a more serious matter. This difference must necessarily be reflected in the nature of the inquiries for the two different purposes."

The ratio of the above decision shows that a clear distinction exists as between a case in which the right of a civil servant to continue in service is sought to be determined and a case in which a decision has to be taken as to whether a probationer should be admitted as a member of the service and the right to hold a civil post and to continue in civil service, should be conferred on him. In the former case, an inquiry in conformity with Article 411(2) of the Constitution and the rules regulating inquiry is necessary, whereas in the latter case, a limited inquiry to ascertain the truth of the incidents reported against the probationer is sufficient.

22. The above position in law stands reinforced by the decision of the Supreme Court in the case of Union of India -v.- P.S. Bhatt AIR 1981 SC 957. The respondent in this case was holding a substantive post of Announcer on the establishment of the All India Radio. He was selected by direct recruitment and appointed as Producer on probation on 7-7-1975. During the period of probation, on 16-11-1976, in the course of a conversation in the studio between him and another he indulged in some loose talk using filthy and abusive language about the other officers of the Department. The conversation had been tape recorded and it was forwarded to the Station Director, A memo dated 12-12-1976 was issued to Sri P.S. Bhatt," which read :

"It has been brought to my notice that Shri P. S. Bhatt, Producer (Women and Children) has conducted himself in a manner not conducive to the discipline of the office by indulging himself in loose talk in the studios on 16-11-1976. A serious view is being taken of such an irresponsible lapse on his part. He is severely warned of such misdemeanour."

Thereafter, the Station Director reported the matter to the Director General, enclosing thereto the substance of the conversation which had been tape recorded. Thereafter, he was discharged from the post of Producer by an innocuous order dated 28-1-1977 and he was reverted back to his substantive post of Announcer. Thereafter, the said order was challenged before the High Court of Andhra Pradesh on the ground that though the (sic) was by an innocuous order, it was really in the nature of penalty imposed for misconduct, referred to in the memo dated 12-12-1976, extracted earlier. The Learned Single Judge allowed the Writ Petition and his order was confirmed in appeal by a Division Bench of the High Court. The Judgments were reversed by the Supreme Court in the aforesaid case. The relevant portion of the Judgment reads :

"7. The law in relation to termination of service of an employee on probation is well settled. If any order terminating the service of a probationer by an order of termination simpliciter without attaching any stigma to the employee and if the said order is not an order by way of punishment, there will be no question of the provisions of Article 411 being attracted. As the law on the question appears to be well settled, it does not become necessary to consider the various decisions which have been cited.

8. The only question which falls for determination in the present appeal is whether the impugned order was passed by way of punishment or not. It has not been argued that the impugned order attaches any kind of stigma to Shri Bhatt. We have earlier notified the order and it is clear from the order that the order is an order of termination of the employment on probation simpliciter and reversion to the old post without attaching any kind of stigma. The High Court had proceeded on the basis that the impugned order was by way of punishment.

9. It may be true that in deciding whether an order is by way of punishment or not, the relevant facts and circumstances may have to be considered. In the instant case, the broad facts, as established, appear to be as follows :

1. Shri Bhatt and Shri Prasad had indulged in loose talk and used filthy language against the Station Director and other officers of All India Radio, Vijayawada, while in office.
2. This finding has been recorded by the Learned Single Judge;
3. The tape-recording of the conversation of Shri Bhatt and Prasad had been forwarded to the Station Director ;
4. The Station Director by his memo dated 1-12-1976 which we have earlier noted, had warned Mr. Bhatt ;
5. The Station Director had further reported the matter to the Director General, All India Radio for appropriate action ;
6. The impugned order terminating the period of probation of Shri Bhatt as Producer and reverting him to his post of Announcer had thereafter been passed.

On a proper consideration of these facts, in our opinion, it cannot be said that the impugned order, was passed by way of punishment ; and, in our view, the High Court was in error in arriving at the finding that the impugned order was by way of punishment, as the report of the Station Director had influenced the Director-General to pass the said order. Loose talks and filthy and abusive language which had been used against the Station Director and the other officers may legitimately in the facts and circumstances of the case lead to the formation of a reasonable belief in the minds of the authorities that the person behaving in such fashion is not a suitable person to be employed as a Producer. This undesirable conduct on the part of Shri Bhatt might have been the motive for terminating the employment on probation and for reverting him to his old post of

Announcer. Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment. This principle has been clearly enunciated and reiterated in the case of Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali,

10. From the broad facts which we have earlier recorded, it is manifest that even if the conduct of Shri Bhatt in indulging in loose talks and filthy and abusive language may be considered to be the motive or the inducing factor which influenced the authorities to pass the impugned order the said order cannot be said to be by way of punishment. This appeal must therefore, succeed. The judgment and order of the High Court are set aside and the Writ Petition filed by Shri Bhatt is dismissed."

The ratio of the decision is that if a decision regarding the suitability of an officer on probation is taken on the basis of an admitted or undisputed conduct or behaviour during the period of probation and the discharge is by an innocuous order, it is not open for the Court to declare that the order was in the nature of penalty and non compliance with Article 411(2) renders it invalid.

23. As a contrast, we may also refer to the recent decision of the Supreme Court in the case of Daya Shankar Vs. High Court of Allahabad and Others through Registrar and Others, In this case, the petitioner therein who was a Judicial Officer in the Judicial Service of the State of Uttara Pradesh had been dismissed from service on the basis of his conduct which was not in connection with the discharge of his work and performance as a member of Judicial Service. The brief history of that case is as follows :

The petitioner therein, had taken permission for prosecuting LL.M. Course. He appeared for the first LL.M. Examination of the Aligarh University in July 1980. The University found that he had used unfair means in the examination. The Registrar of the University informed the District Judge, Aligarh, that the petitioner was found copying from the manuscript lying with his answer book. The District Judge, in turn, reported the matter to the High Court. Thereafter, the High Court instituted disciplinary proceedings against him and dismissed him from service. The decision was challenged before the Supreme Court. The Supreme Court dismissed the Writ Petition holding that a regular inquiry had been conducted. The relevant portion of the Judgment reads :

"11. In our opinion the conclusion reached by the Inquiry Officer that the petitioner used unfair means is fully justified.

No amount of denial could take him away from the hard facts revealed. The conduct of the petitioner is undoubtedly unworthy of Judicial Officer. Judicial Officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. The second contention urged for the petitioner also fails and is rejected."

(Underlining by us)

In this case the petitioner was a permanent member of the Judicial Service. Therefore, it was necessary for the Competent authority to have held an inquiry in terms of Article 411(2) of the Constitution, independent of the finding of the University that the petitioner therein had indulged in malpractice. 1 be Supreme Court has also held that the conduct of the petitioner displayed in the course of his appearance at a University Examination was such, which exhibited that he was undoubtedly unworthy of being a Judicial Officer.

24. But if the Judicial Officer who indulged in such malpractice at an examination was only on probation, in view of the ratio of the decision of the Supreme Court in the case of Bishanlal Gupta¹⁵ as well as in P.S. Bhatt's case¹⁷ as also in T.C.M.Pillai's case¹⁶ it would be open for the High Court to consider the finding recorded by the authorities of the University to the effect that he had indulged in malpractice, if that fact is admitted, indisputable or not denied after he is called upon to do so, and on that basis Come to the conclusion that in view of the attitude and tendency disclosed from that incident, he was unsuitable for the post and discharge him by an innocuous order of discharge instead of holding an inquiry and to pass an order imposing the penalty of dismissal or removal from service, because of the clear distinction between a permanent member of Judicial Service who has already acquired the right to hold the post and a probationer who is yet to acquire such right, as indicated earlier. To such a case Article 3(sic) (2) has no application and therefore it is not obligatory for the authority to hold an as inquiry was necessary and done in the case of Daya Shankar¹⁸ as he had the right to hold the post.

25. There can be no doubt that if in a given case an allegation of corruption or misappropriation of funds or any other misconduct on the part of a probationer is brought to the notice of the Appointing Authority and the Appointing Authority chooses to act on the basis of the said report without giving opportunity or acts on the basis of such allegations, even after the employee concerned had denied the allegation, in such a case even if the order communicated is an innocuous one, if the civil servant concerned alleges that he was really dismissed or removed from service on the basis of misconduct without holding an inquiry, and the innocuously worded order was only a cloak for an order of punishment, the Court has the power and the duty to find out whether the allegation was true and if it is true to set aside the order on the ground that the order of discharge though innocuous, on the face of it was really in the nature of penalty imposed for misconduct. This position in law is firmly established by the Judgment of the Supreme Court in Samsher Singh Vs. State of Punjab and Another, and the view expressed by R.S. Pathak, J, (as he then was) in his separate Judgment in Saboji's Case⁸ at paragraph 18 thereof as also in the case of Anoop Jaiswal Vs. Government of India and Another,

26. Having set out the relevant principles, we shall now proceed to consider the cases of each of the two Officers separately, as in each of them the petitioners

have stated the grounds which is different from their work and performance, on the basis of which they were adjudged unsuitable and which fact is not disputed by the Learned Government Advocate appearing for the respondents.

27. In the case of Sri L.S. Chikkanagoudar, the petitioner in W.P. No. 1327/1982, in support of the contention that the order was punitive in nature, the petitioner has stated thus in paragraph 13 of his petition. It reads :

"13. Petitioner when he was working in Belgaum had given notice to the Registrar under the Special Marriages Act to marry one lady Advocate and that agreement was cancelled by the petitioner for certain reasons which were purely personal and which had nothing to do with his official conduct. In that connection an explanation had been sought for and a written explanation was submitted by the petitioner to the Hon"ble Chief Justice of High Court of Karnataka on 3-3-1981. After transfer to Somwarpete, petitioner married a Christian lady according to Hindu rights and customs and that lady happened to be working as a Typist on the Court of Somwarpete. In that connection, petitioner reliably learns that there were some anonymous petitions against him and petitioner also reliably learns to the best of his information that the District Judge of Coorg District had been asked to conduct an enquiry into the matter by Respondent No. 2. In this behalf, the petitioner was asked to submit his reply by Respondent No. 2 and a letter was addressed by the petitioner to Respondent No. 2 as found at Annexure-D which is a true copy of the said letter. Petitioner submitted his explanation as found at Annexure-E. Petitioner had been asked by the Special Officer of Respondent No. 2 in a letter addressed to the petitioner to give his reply in the matter. The said letter copy is produced as Annexure-F. Petitioner submitted his reply to the said letter as found in Annexure-G. It is only after this, petitioner submits that he has been penalised without notice invoking Rule 5 of Rules of 1977 and without enquiry."

28. It is not disputed that the Full Court took the view that the petitioner was unsuitable to hold the judicial post on account of the two incidents referred to in paragraph 13 of the petition, extracted above.

29. Regarding the first incident, the records disclose that a complaint had been received by the Hon"ble Chief Justice from a resident of Belgaum, whose daughter was practising before the petitioner as an Advocate at Belgaum. In the complaint he stated that the petitioner who was the Presiding Officer of the II Additional Munsiff's Court, decided to marry his daughter and persuaded him to agree for the marriage. After they agreed, petitioner gave a notice of marriage before the Registrar of Marriages. After the marriage had received wide publicity, at the last moment he went back on the promise and this had caused great embarrassment and mental agony to the parents and their daughter. As stated by the petitioner himself, he was asked about it and he had admitted it in his reply dated 3-3-1981. Though he stated that he had some personal reasons for going back on the promise, the fact remains that he did not dispute the fact that he promised to marry the lady Advocate practising before him and even gave a

notice under the Special Marriage Act and subsequently resiled.

30. As regards the incident at Somwarpet to which place he was transferred after the above incident at Belgaum the records kept with his confidential records disclose that an anonymous complaint had been received by the Hon"ble Chief Justice on 25-5-1981 by post about his amorous activities with a lady Typist of his own Court and a copy of it was also received by the District Judge, Kodagu. The District Judge, Kodagu, informed the Registrar about it on telephone on 27-5-1981 which is placed on record. According to that report, the petitioner had admitted before the District Judge that he had married a lady Stenographer working under him on 30-4-1981 by way of registered marriage. In view of this report, a letter dated 5-6-1981 (Annexure"D") was addressed by the High Court to the petitioner. It reads :

From

The Registrar, Dated: 5-6-1981 High Court of Karnataka, Bangalore

To :

Sri L.S. Chikkanagoudar, Munsiff & J.M F.C, Somwarpet

Sir,

It has come to the notice of the High Court that you have married a lady Stenographer of your Court on 30-4-1981 in the form of registered marriage.

I am therefore directed to request you to clarify the matter early.

Yours faithfully, Sd/- Registrar."

To that letter, the petitioner replied on 28-7-1981 as follows:

"Respected Sir,

I am in receipt of your letter RPS 69/81 dated 24-7-1981 and noted the contents and submitting the reply as under :

I did not answer your letter No. RPS. 69/81 dated 5-6-81 sent under the covering letter No. 69/81 dated 24-6-1981 because I had already furnished the particulars in that regard as asked in your letter Mo. HVC. 117/81 dated 17-6-1981 by my D.O.L. No. 15/80 dated 20-6-1981, the copy of which is enclosed herewith.

However, I am submitting my reply to your above letter as follows with little clarification.

Sir, it is true that I have married Miss Juliana D'Souza daughter of Daniel D'Souza of Somwarpet. But it is not true that she is a lady Stenographer in Munsiff & JMFC Court, Somwarpet, but she is a Kannada Typist-Copyist. I have married her on 13-5-1981 as per Hindu Customs and not by registered marriage."

It may be seen that before the District Judge the petitioner had stated that he had married the lady Typist on 30-4-1981 by way of registered marriage. In the above reply he stated that he married the Typist on 13-5-1981 according to Hindu Custom; but as one would expect Marriage Invitation was not produced. The Learned Counsel submitted no marriage invitation was printed. Whatever that may be, the two incidents were not disputed. The petitioner has stated in his additional statement that he had made an application praying for his transfer from Somwarpet and that representation was sent to the High Court along with D.O. letter No. 25 dated 27-5-1981 addressed by the District Judge to the Registrar. The original D.O. letter is found along with the confidential records of the petitioner. In the said letter the District Judge has stated that the petitioner requested that he should be transferred away from Somwarpet and that the District Judge had told him to submit his representation to that effect by post. The District judge also stated that in the petitioner's interest his request for transfer should be considered favourably. Thus the statement made by the petitioner that his application for transfer was enclosed to the D.O. letter is not true. Whatever that may be, it is not disputed that the petitioner requested the District Judge to move for his transfer only after the compliant was received and the lady typist was continuing to work in the same office even after marriage which is stated to have taken place on 13-5-1981. The Full Court was of the opinion that in view of the attitude and tendency of the petitioner, as disclosed from the two undisputed incidents referred to above, he was not suitable to hold the judicial post and recommended for his discharge simpliciter.

31. As held by the Supreme Court in T.C.M. Pillai's case¹⁷ the Appointing Authority can form an opinion about the suitability of a probationer on the basis of the incidents which disclose an attitude or tendency, which might constitute the basis to adjudge him unsuitable for confirmation. However, we do agree that in such a case, the following two conditions must be fulfilled :

(i) The incidents must be such as would disclose an attitude or tendency on the part of the probationer as would constitute a reasonable basis for taking the view that the probationer is not suitable for the post to which he was appointed on probation and for discharging him from service;

(ii) An opportunity should be given to the probationer having due regard to the rules of natural justice to ascertain the truth of the incidents and they should have been admitted or indisputable or proved.

32. In the present case, in respect of both the incidents, notice was issued to the petitioner to state as to whether the facts were true. Both the incidents were admitted by the petitioner. The Full Court has taken the view that having regard to the fact that the post to which the petitioner was appointed was the post of a Judge for which good reputation and behaviour outside the Court was also of utmost importance and that the attitude and tendency discernible from the two admitted incidents were such as would justify a decision that the petitioner was not suitable to be a member of Judicial Service. We are unable to agree with the

submission made by the Learned Counsel for the petitioner that the two incidents do not reflect an attitude or tendency on the part of the petitioner which would constitute a reasonable basis for taking the view that the petitioner was not suitable for the post of Munsiff.

33. In the case of Basavaraju, the petitioner in W.P. No. 3760/1982, there had been adverse confidential remarks about his work and performance for the years 1979 and 1980. They had also been communicated. The petitioner has stated in his petition that a complaint had been received by the High Court to the effect that the petitioner had received a transistor-radio from a bus operator without payment and this complaint was brought to his notice and he was asked to submit his reply and this incident was taken as the basis for adjudging him unsuitable to hold the post of Munsiff. The letter addressed to the petitioner (Annexure-E) reads :

"From : The Special Officer, Dated 17-6-1981. High Court of Karnataka, Bangalore.

To : Sri H. Basavaraj, Munsiff & JMFC. Belthangady, D. K. Dist.

I am directed to state that it is complained that you had obtained a transistor from a bus operator free of cost while you were working as Additional Munsiff, JMFC, Madhugiri.

I am therefore, to request you to forward your explanation in the matter within a week from the date of receipt of this letter."

To this short query, the petitioner submitted a very long reply which is found along with his confidential records. In the reply the material allegation that he had received a Transistor-radio from a bus-operator was not disputed. He, however, explained that the bus-operator offered the transistor-radio as the petitioner had lost his transistor-radio while travelling in the bus belonging to the bus operator. He has further stated that though the bus operator offered it free as replacement for the lost transistor-radio of the petitioner, the petitioner purchased it by paying its price and secured a receipt for the purchase and that receipt had been attested by two Civil Judges, but he had lost the receipt. He did not mention the price paid. It is on consideration of the adverse confidential remarks for the years 1979 and 1980 as also the above incident in the light of the explanation in which the petitioner practically admitted the incident, the Full Court took the decision for recommending his discharge as unsuitable to hold the post. The Full Court did not want to impose the penalty of dismissal or removal from service against the petitioner, but it considered that the attitude and the tendency disclosed from the above incident was such as would justify the Full Court not to confer the right of a full member of Judicial Service on the petitioner and to discharge him from service. Such a decision has been taken not merely on the basis of the complaint but after bringing the same to the notice of the petitioner and on consideration of his reply. The adverse remarks in the confidential report, for the two years for 1979 and 1980 which had been duly

communicated to him were also taken into account. Therefore, the contention of the petitioner has to fail in view of the ratio of the decision in Bishanlal Gupta's case¹⁵. We are unable to agree that the incident to the extent which is admitted could not constitute a reasonable basis for taking the view that the petitioner was not suitable for the post of Munsiff and that he should be discharged from service.

Learned Counsel for the petitioners submitted that the ratio of the Judgment of the Supreme Court in the case of Anoop Jaiswal²⁰ who was also a probationer was applicable to the cases of the two petitioners. We are unable to agree. In the said case, though the order of discharge was innocuously worded, it was found to have been based on the alleged serious misconduct of the appellant therein that he being a ring leader had instigated other Police Officers to go late to the Police Training classes though he had emphatically denied it in his explanation to the show cause notice, without holding inquiry and that too during the middle of the period of probation (see paragraphs 13, 14 and 15 of the Judgment). Therefore, the ratio of that decision is not apposite to this case.

In the result, we make the following order :

The Writ Petitions are dismissed without any order as to costs.