

(2013) 04 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 25105 of 2012

Pushpinder Kumar

APPELLANT

Vs

State of Haryana and Other

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) LabIC 3924 : (2013) 4 SCT 323

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Ramesh Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by the State Government on 31.7.2012, whereby the petitioner was removed from service in accordance with the provisions of sub-rule (ix) of Rule 4 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short "the Rules"). The petitioner was appointed as Civil Judge (Junior Division)-cum-Judicial Magistrate, 2nd Class, Sirsa on 29.5.1998. The petitioner was served with the charge-sheet firstly on 19.5.2009 in respect of six charges and secondly on 24.4.2010 in respect of three charges. The petitioner denied the allegations in the said two charge-sheets. District & Sessions Judge-cum-Registrar (Vigilance), Punjab, was appointed as an Inquiry Officer to examine the charges in both the charge-sheets. In respect of first inquiry, the inquiry report was submitted on 22.11.2010 reporting that charge Nos. 2, 3, 4 and 6 stands proved against the petitioner, whereas in the second charge-sheet, the inquiry report was submitted by the Inquiry Officer on 7.12.2011, proving charge Nos. 1 and 2. Both the inquiry reports were supplied to the petitioner. The replies filed by the Petitioner were considered. The petitioner was also granted personal hearing in both the proceedings. In respect of the first inquiry, the Committee recommended forfeiture of five annual grade increments with permanent effect, in its meeting held on 3.11.2011, whereas in respect of second charge-sheet, the Committee

recommended major penalty of removal of service in its meeting held on 24.5.2012. The Full Court approved the recommendations of the Committee on 10.7.2012. It is, thereafter, the impugned order of removal from service has been passed.

2. At this stage, it may be mentioned that for the year 2006-07, the petitioner was graded C-Below Average (Integrity Doubtful) by the Administrative Judge of Faridabad Sessions Division. The representations dated 4.6.2007 and 17.7.2007 of the petitioner against the said report, were rejected vide order dated 25.3.2009 (Annexure P. 21). The petitioner submitted second representation, which was also declined on 14.9.2011.

3. Learned counsel for the petitioner has argued that the allegations against him in both the charge-sheets pertain to the exercise of powers as a Judicial Officer and, therefore, on such orders, the disciplinary proceedings could not have been initiated and the order of punishment passed against him. It is contended that the orders passed are in the judicial discretion of the officer and merely because the other view is possible in the matters which came up before the petitioner, he cannot be held guilty of misconduct leading to his removal from service.

4. We have heard learned counsel for the petitioner at length. The learned counsel for the petitioner could not refer to any procedural irregularity in the conduct of the inquiry proceedings or the decision thereon, which may warrant interference in exercise of the power of judicial review under Article 226 of the Constitution of India.

5. But to examine the argument that the orders, the basis of the inquiry proceedings are in judicial discretion and cannot be subject matter on inquiry, we need to examine the nature and summary of allegations against the petitioner, the reply filed, and the findings recorded by the Inquiry Officer. The following are the details:

In respect of first Charge-sheet

6. Charge No. 2 is that 18.4.2005 was declared as an unscheduled holiday. The petitioner was deputed as a Duty Magistrate to deal with the criminal matters, but he passed an order of deferring of auction to be held on 18.4.2005 in a civil suit titled as "Food and Vegetable Commission Agents Whole Sellers Association v. State of Haryana and others", though the Court, which was seized of the case has not stayed the auction. It was also the allegation that the petitioner had transferred two criminal cases registered i.e. F.I.R. No. 228 dated 1.8.2005 at Police Station Saran under Sections 148, 342 and 323 read with Section 149 I.P.C. and F.I.R. No. 231 dated 2.8.2005 registered at Police Station Saran under Sections 148, 323, 325 and 506 read with Section 149 I.P.C. against one of the accused Kuldeep Kumar alias Papu, who was the one, who filed the civil suit. The allegation against the petitioner is that he was not competent to entertain a civil matter pending in another Court as a Duty Magistrate and that the same has been taken up for an extraneous consideration.

7. The reply of the petitioner to the said charge is that the matter was of an urgent nature and if the hearing was not given, then the legal rights of the parties were itself getting jeopardized. Therefore, the arguments were heard in a larger interest and for public welfare. It was pointed out that the other cases were transferred for different reasons and not for passing the impugned order. The remand papers were transferred not because of any connection with the parties, rather for the reason that the local District Administration was very much interested and keen in both the civil as well as criminal cases for the reasons best known to them.

8. The finding of the Inquiry Officer is that in fact the cases arising out of the above mentioned F.I.R. were transferred for personal reasons vide orders Exhibits P. 4 and P. 5. It is also found from the statement of PW 2-Vijay Kumar, Reader in the Court of the petitioner, that there was no order that the Duty Magistrate could also entertain the civil work on holiday or in the absence of leave of any Judicial Officer. The Inquiry Officer has recorded the following finding:--

30. The perusal of the file of the case shows that after receipt of the suit by way of entrustment on 15.4.2005, exemption of notice as required u/s 80(2) CPC was allowed and case was adjourned for 18.4.2005 on which date notice was served upon Defendant No. 2 while State of Haryana (Defendant No. 1) was not served. Even if the service of the defendants had been effected for 18.4.2005, still interim relief could not be allowed without giving a reasonable opportunity to the State of showing cause in respect of the relief prayed for in the suit. In the present suit, firstly the State of Haryana was not duly served; secondly no opportunity was given to the State of Haryana in respect of the relief prayed for in the State before passing of injunction order. The order dated 18.4.2005 passed by the delinquent officer shows haste in which it was passed without following the relevant provisions of law. At a particular station there may be hundred of cases involving urgent matter.

31. The reference of criminal cases in which plaintiff, whose civil suit was taken up on 18.4.2005 was accused, was made to the Chief Judicial Magistrate for transfer quoting personal reasons as ground for transfer. If the officer had personal reason not to try the case of a particular accused or number of accused, it certainly reflects that he has personal motive while taking up civil case of that person despite the fact that he was not authorized to pass any order in that case.

9. Charge No. 3 is that in F.I.R. No. 228 dated 1.8.2005, "Madan Lal and others were accused", but the petitioner stayed arrest of accused Manoj Kumar etc. on an application filed by him. The reply of the petitioner to the said charge is that the F.I.R. pertained to bailable offence and, therefore, the Magistrate is bound to take bail in one such case. He further stated that Manoj Kumar was produced before him on 12.11.2005 which happened to be Sunday and he was supposed to dispose of the bail application. He stated that he was not aware that Manoj Kumar produced before him is also connected with the remand papers already

transferred to the Court of the then Chief Judicial Magistrate, Faridabad.

10. The Inquiry Officer found that vide order dated 1.8.2005, the petitioner passed an order of stay of arrest. The said order reads as under:--

An application for bail moved. F.I.R. not received so far. Another application for staying the arrest of the applicants has also been placed on file. Let, notice of the bail application be given to the IO for reply to the said application for 2.8.2005. Accused are also directed to appear before this Court tomorrow. Another application for staying the arrest also stands allowed. As such in the meanwhile, arrest of the applicants stands stayed unless any cognizable offence is made out against them.

11. It is in the said case on 4.8.2005, the petitioner passed an order for transfer of the said case due to personal reason. The Inquiry Officer has found that the Judicial Magistrate is not competent to stay arrest of the accused. Even in the cases of bailable offence, the accused has a right to get bail after his arrest, but the Magistrate cannot stay arrest of the accused in a criminal case.

12. Charge No. 4 is that in complaint case No. 512 dated 4.10.2006 titled as "Sheela Devi v. Gajender alias Pappu" for an offence u/s 376 I.P.C., the petitioner recorded the statement of accused (sic Complainant) on 4.10.2006. The evidence was closed. The petitioner ordered the summoning of the accused on 7.10.2006 for 3.11.2006, but the petitioner took up file on 2.11.2006 as the petitioner was to proceed on leave on 3.11.2006 and adjourned the case for 20.3.2007. The petitioner interpolated the order dated 2.11.2006 by changing the date from 20.3.2007 to 20.11.2006. On 20.11.2006, the case was adjourned to 8.12.2006 and then to 23.12.2006. The interpolation in the order led to issuance of the non-bailable warrants against the accused.

13. In reply the explanation of the petitioner was that the case was taken up on 11.11.2006 and on the sheet under the order dated 17.10.2006, a rubber stamp was affixed and the case was originally adjourned to 20.3.2007 for the same purpose for which it was earlier fixed and the parties and counsel were ordered to be informed. The petitioner stated that it is not comprehensible why he would commit a blunder of interpolation, when he was competent to correct it or change it the way he liked by further writing the zimni order after taking up the case file. In fact, the said date was changed either by said Advocate with active connivance of Civil Ahlmad or the Reader because if the petitioner would have changed the same, there must have been his initials on the order sheet.

14. The Inquiry Officer referred to the statement of Shri P.L. Goyal, Advocate, who appeared as PW-1. He deposed that the complaint was filed on 4.10.2006. The statement of the complainant was recorded on that very date. The preliminary evidence was closed and the case was posted for 7.10.2006. The case was adjourned for 20.3.2007. He moved bail application in which record of the case was called. At that point of time, it transpired that the date of 20.3.2007 had been altered as 20.11.2006 without any formal orders. On

20.11.2006, the report of the Process Server was received that accused had avoided to receive the summons and his warrants were issued for 20.12.2006.

15. The Inquiry Officer found that the petitioner has taken contradictory stands in defence statement. He stated that he dictated long date initially in routine, but later on, the Reader pointed out that the case in question was triable by Session and, therefore, date was corrected on 20.11.2006. The Inquiry Officer noticed that the cause list, copy of which is Exhibit P. 10, the dates against all other cases, have been printed, whereas in the case in question, there is cutting/overwriting with hand. The Inquiry Officer considered the photocopy of the order dated 2.11.2006 along with other interim orders to return a finding that there is no cutting on the photocopy of order dated. 2.11.2006, whereas, there is cutting in the record produced. The Inquiry Officer recorded the following finding:--

49. From the above discussion, all the evidence, different versions put forth by the delinquent officer in his reply to the charge-sheet, defence version, cross-examination of the witnesses and statement of defence witnesses, it is clear that ambiguity regarding cutting on the date 20.3.2007 could not be clarified. It was certainly made at a later stage. Different explanations given by the delinquent officer reflect that he has tried to explain this cutting by giving different versions.

50. There could be no harm if this cutting had been innocuous. The fact that the statement of only complainant was recorded on the same day when the complaint was filed and summoning order was passed within 3-4 days reflect that the delinquent officer had not dealt with this case in routine. He was aware that it is Sessions triable case in which the statement of all the material witnesses should have been recorded at the preliminary stage, as per the provisions of Section 202(2) of the Code of Criminal Procedure. The accused was summoned for the offence under Sections 376/511 I.P.C. which is a very serious offence and such a shortcut method is not supposed to be adopted for such a serious offence. The other evidence was material and should have been recorded at the preliminary stage. The list of witnesses in that case contains the names of seven witnesses out of whom only complainant was examined on the day, the complaint was presented.

51. The different versions given by the delinquent officer at different stages as discussed above further reflect that even he is not sure as to under what circumstances, the date was changed. He is trying to explain the change of the date by taking one plea or the other. One fact is clear that the date 20.3.2007 was originally given on 2.11.2006 and it was changed at later stage.

52.The initial plea of the officer in reply to the charge-sheet is that this cutting in the order sheet dated 2.11.2006 was at the behest of the accused in connivance with the Court staff. The plea taken at later stage by the officer that the date was changed as it was a Sessions triable case and was required to be committed, appears to be an afterthought. All the facts and circumstances discussed above indicate that the delinquent officer had changed

the date and conducted the proceedings in the case "Sheela v. Gejender" to help the complainant. This charge, as such, is held to be proved against the delinquent officer.

16. Charge No. 6 is to the effect that the petitioner dealt with Civil Suit No. 22 dated 18.1.2006 titled as "Ram Saran Bhatia v. Dakshin Haryana Bijli Vitran Nigam Limited and others". A penalty of Rs. 1,16,00,000/- was imposed by two separate demand orders besides disconnection of the electrical energy. The petitioner ordered restoration of the electricity supply within two days and ordered the extension of the same till the final decision of the suit if the plaintiff pays 50% amount of the disputed amount within 15 days on 1.2.2006. Thus, the electricity supply was ordered to be restored even without prior deposit of the amount. The reply of the petitioner is that the order passed by the petitioner is a routine order and that such order was actually affirmed at the stage of learned first Appellate Court.

17. The Inquiry Officer found that the order passed gave an option to the plaintiff to get his connection restored even without payment of the amount. In appeal against the order passed, an order was passed in respect of pre-deposit of Rs. 15 lacs with the defendants out of which an amount of Rs. 7-1/2 lacs was ordered to be deposited within three days after which electric connection was ordered to be restored and the remaining amount of Rs. 7-1/2 lacs was ordered to be deposited within a period of 45 days. It was found that the order passed by the petitioner for restoration of the electricity connection within two days even without paying a single penny in respect of a commercial establishment, proves the allegations against the petitioner.

In respect of Second Charge-sheet

18. The petitioner in reply to the second charge-sheet inter alia averred that all the charges are metamorphosed and the same are handiwork of vested interest inimical to the petitioner as well as professional jealous towards other Advocates, without any sum and substance and rather full of falsehood. The petitioner asserted that behind the anonymous and clandestine complaints, the complainants are only Shri L.S. Dhankar (the then posted A.P.P. for the Loharu Court), his wife Smt. Sunita Dhankar (Lecturer in Government College, Loharu) and Shri Surender Chaudhary, Advocate. It is further stated that in quick dispensation of justice, if any Court invoked the provisions under Sections 151 & 90-91 of the Code of Civil Procedure, the same cannot be impugned by way of complaints. The summary of specific charges against the petitioner, his reply and the findings are mentioned to give a broad view of the alleged misconduct.

19. Charge No. 1 is that the petitioner showed an undue indulgence to Shri. R.S. Bhalothia and Shri. Ashok Kumar Saini, Advocates as is evident from the wrong and illegal orders passed by the petitioner for extraneous consideration in as much as eight following cases in a manner unbecoming of a Judicial Officer and thereby misconducting himself. Such cases are:--

(i) In the case titled as Criminal case No. 203-1, dated 23.12.2002 titled "State v. Ramesh etc." pertaining to F.I.R. No. 128 dated 30.8.2002, under Sections 332, 353, 341, 186, 427 read with Section 34 I.P.C., Police Station Loharu, the accused were represented by Shri R.S. Bhalothia. The allegation against the petitioner was that he has not cared to see whether the summons of the witnesses was properly issued. The evidence of the prosecution was closed on 8.10.2007 even when the Public Prosecutor sought adjournment, which was opposed. All the accused were acquitted on 14.1.2008. In reply, the explanation of the petitioner is that the evidence was closed after five years of opportunity of hearing granted to the prosecution to lead evidence.

The Inquiry Officer found from the judgment Exhibit P. 17 that in the order passed there is reference to a judgment against which quotation, no judgment could be located. It is also found that the argument of the Public Prosecutor that four witnesses have supported the prosecution case, nowhere finds mention in the order.

(ii) Civil Suit No. 267 dated 5.9.2007 titled "Raghubir Singh Bhalothia v. State of Haryana and others", Shri. R.S. Bhalothia, Advocate, filed a suit for mandatory injunction directing the defendants to fill up the sanctioned posts of medical experts lying vacant for long at Community Health Centre, Loharu. Firstly, the petitioner exempted service of notices u/s 80 C.P.C. The notices were not served upon Director, Health Services, Haryana, one of the defendants, for 13.9.2007, but was reported that the summons of Defendants No. 1, 3 and 4 were served. Dr. Youdhvir Singh, Medical Officer appeared in the case on behalf of Defendant No. 4 and on the basis of his no objection, an order was passed on 13.9.2007. The order was of issuance of directions to the Chief Secretary, Haryana, to fill up the sanctioned posts of medical experts before the next date of hearing i.e. 28.9.2007, failing which he was ordered to appear in person. 28.9.2007 was a holiday, therefore the case was taken up on 29.9.2007, but without any application from the plaintiff, the Chief Secretary, Haryana, was impleaded as a party. Defendant No. 3 had put in appearance and placed on record, a copy of the order dated 19.9.2007, whereby six Doctors were appointed in the Community Health Centre. The case was adjourned to 11.10.2007 for filing of the written statement, but the petitioner passed an order dated 30.11.2007 appointing Shri. J.S. Dhankar, as a Local Commissioner to visit the spot and submit his report with regard to existing state of affairs in the Community Health Centre, Loharu. Shri J.S. Dhankar pointed out that he was serving as a Law Officer and not a Medical Officer and prayed for discharge of his appointment as Local Commissioner. An order was passed by the petitioner that the application is dubious and Shri. M.S. Mann, Advocate, was appointed as Local Commissioner on 4.12.2007. The suit was withdrawn on 13.3.2008.

In reply, the petitioner has asserted that it is beyond his comprehension as to how any illegality has been committed in passing the impugned orders and that every order was passed with full justification keeping in view every legal aspect

in mind. He asserted that the Government Pleader was rather playing fraud against the interests of the State. He also stated that the Revision against the order passed was dismissed as infructuous on 11.9.2008.

The Inquiry Officer found that the interim dated 13.9.2007 was passed when defendant No. 4 was holding an additional charge of Primary Health Centre of Loharu and requested for summoning of the concerned authority. On 13.9.2007, the following order in the mandatory form was passed on the very first date, when even one of the defendants was not served:--

.....From the statement of Defendant No. 4, it is crystal clear that the claim of the plaintiff is genuine and seems to be justified. The claim as prayed for is not beneficiary for him being individual, rather the Medical facilities are mandatory for the public at large. Plaintiff has argued that a number of persons have lost their lives in absence of adequate medical facilities at Loharu. He further pointed out that recently the son of one leading Advocate Shri. Kalyan Singh, Advocate, lost his life in absence of adequate medical facility at C.H.C. Loharu.

I do agree that Loharu is a Sub Division and proper and well furnished medical facilities along with latest equipments should be available at C.H.C. Loharu. This town is about 60 K.Ms. from District Headquarter, Bhiwani. Irrespective of the fact that the sanctioned posts of Medical experts are lying vacant since long at Community Health Centre, Loharu, which resulted in gross violation of rules and regulations and grave dangers to the limb and life of poor inhabitants of this area in general. The plaintiff has also placed on file the copy of News items from which it reveals that even Chief Minister, Haryana, announced in December for construction of 50 beds hospital in C.H.C. Loharu. It is also mentioned in the News items that notwithstanding the vacancies of doctors are vacant, two of the doctors have been sent on deputation reason best known to the defendants. It remained utter surprising that despite giving quick attention towards the basic and essential amenities as prayed by this suit, defendants even did not dare to appear before the Court despite of services on summons of Defendant Nos. 1 and 3. Defendant No. 4, who is also facing the dual charge could not deny the claim of the plaintiff. Once none is appearing on behalf of the State of Haryana and Chief Medical officer, General Hospital, Bhiwani, despite services of their summons, then obviously it can be observed that they have no respect of law and order, rather reflecting that this is the failure of the rules of administration of Haryana Government. Consequently, Defendants No. 1 and 3 are hereby proceeded against ex-parte.

In the light of aforesaid observations and circumstances, I feel no hesitation at this stage to issue interim direction u/s 151 of Code of Civil Procedure. Resultantly, the Chief Secretary of Haryana Government is being directed to fill up the sanctioned post of Medical experts till the next date of hearing, otherwise to appear in person for making the statement. Separate letter to this effect be issued. Besides this, the Defendant No. 2 be also again summoned through registered post, on filing of PF/RC etc., for 28.9.2007.

The Inquiry Officer in his report in respect of such proceedings concluded as under:--

23. The perusal of the orders passed in above case shows that the case was treated as Writ. Shri. R.S. Bhalothia was plaintiff. The directions were issued to the State to fill up the vacant posts of the doctors even before allowing the State to file written statement. The Chief Secretary, Haryana Government was directed to comply with the orders or to appear in person for making statement.

(iii) Civil Suit No. 372 dated 23.11.2007 titled "Kuldeep Singh Sheoran v. U.O.I. and others" was filed seeking proper implementation of the statute i.e. the Persons with Disabilities (Equal Opportunities Protection of right and Full Participation) Act, 1995 and other allied laws. The petitioner issued positive directions on 25.7.2008 as if the petitioner was vested with extra-ordinary writ jurisdiction.

The stand of the petitioner is that no mandatory directions were issued. The order Exhibit P. 24 passed reads as under:--

.....Resultantly, Defendants No. 1 and 5 should entertain the representation containing all the grounds for the welfare of handicapped person and I am of the view that same may be disposed of with speaking order by the defendants within a period of two months after the receipt of the same. The suit accordingly stands disposed of. File be consigned to the record.

It was found that such order was passed without any evidence and on the basis of written statement filed by some of the defendants. It was found that the order was a reflection of the type of orders being passed in a case where an Advocate was plaintiff and Shri R.S. Bhalothia, Advocate, was representing the plaintiff.

(iv) Civil Suit No. 306 dated 24.9.2007 titled as "Jitender Bhardwaj v. SDO, Public Health and the Principal, Vivekanand Senior Secondary School, Loharu" was for mandatory injunction directing the defendants in the suit to replace the water tank installed near the old Police Station, Loharu and also to improve the supply of drinking water. Son of the petitioner was said to be studying in the School, which was one of the defendants. The petitioner exempted service of notice u/s 80 C.P.C. and issued notice only for two days for 26.9.2007. The Sub Divisional Engineer appeared and sought time for filing of written statement. But the petitioner passed an order to the effect that since the supply of water is a basic amenity, hence the defendants are directed to fulfill the requirements as pleaded in the plaint on or before 5.10.2007. In the written statement filed, it was averred that the matter has been moved to the office of Engineer-in-Chief, PWD, Water Supply and Sanitation Department and as soon as the necessary sanction is received, the old tank would be demolished. But the petitioner passed an order on 20.12.2007 directing the defendants to install new water tank within two months.

The petitioner denied that his son was studying in the defendant-School, but was

student of Thakural Public School, Loharu and that the order was passed with full application of mind by adopting the due process of law.

The Inquiry Officer noticed the order passed by the petitioner on 26.9.2007 Exhibit P. 26 when the notice was issued to the defendants for only one day. The said order reads as under:--

Summons issued to the defendants received back served. Defendant No. 2 authorised Sh. Sardana, S.D.E. for appearing on his behalf. Date is requested on behalf of defendants for filing written statement. Since the supply of water is basic amenity, hence the defendants are thereby directed to fulfill the requirements as pleaded in the plaint on or before 5.10.2007. Written statement be also filed on that date treating it the last opportunity.

Subsequently on 20.12.2007, the petitioner passed the following order:--

Written statement on behalf of Defendant Nos. 2 to 4 not filed. Date is requested. Heard. Now to come upon 14.2.2008 for filing written statement.

Since the averments of the plaint are almost admitted by Defendant No. 1, hence defendants are directed to install the new Water Tank within two months from today after taking the approval from the concerned quarter by dasti if so required. It is further directed that water supply be continue intact.

The Inquiry Officer concluded to the following effect:--

The perusal of above order also shows that even before the written statement could be filed by Defendant Nos. 2 to 4, the directions were issued to the State to install the new water tank which amounts to allowing the relief to the plaintiff. The suit was contested by the defendants and they were yet to file written statement before the relief was allowed to plaintiff. Strangely enough suit was filed on 24.9.2010 against State and on 26.9.2010 last opportunity to file the written statement was allowed and directions in the shape of allowing relief of mandatory injunction were also allowed without making any ground of urgency involved in the matter. The State was not even allowed reasonable time as per the provisions of Order 27 Rule 5 C.P.C. for issuing instructions to the Government Pleader to appear and answer on behalf or Government.

(v) Civil Suit No. 297 of 19.9.2007, titled as "Raghubir Singh Bhalothia v. Chief Secretary to Government of Haryana" was for mandatory injunction directing the defendants to restore the public transport services rendered in the past by the defendants by plying the buses between Charkhi Dadri and Loharu. The petitioner exempted service of notice u/s 80 CPC vide order dated 19.9.2007. However, when the case was fixed for filing written statement, the bus service had been restored and the suit was withdrawn on 13.10.2007.

The petitioner, inter alia, stated that the statements of the two Roadways employees, namely, Man Singh and Hawa Singh, were recorded on behalf of defendant on 13.10.2007 and the suit was dismissed as withdrawn on the same

date.

The Inquiry Officer noticed that the suit was filed on 19.9.2007 and after exemption of notice u/s 80 CPC, notice was issued to the State for 24.9.2007 and the suit was withdrawn on 13.10.2007.

(vi) Civil Suit No. 362 dated 15.11.2007 titled as "Ashok v. Municipal Committee, Loharu" was filed for mandatory injunction directing the defendants to control the monkey menace in the town of Loharu. The petitioner passed an order appointing Gram Secretary to Block Development and Panchayat Office at Loharu as Local Commissioner to visit the town and to make his report about the existing state of affairs. The Local Commissioner was directed to emphasize upon the particular points where there is exorbitant disturbance and excess number of the monkeys in the area of Loharu. The petitioner disposed of the suit on 24.3.2008 in view of the argument of Defendant No. 1 that the town of Loharu is scantily populated by monkeys and there is no question of duty of the Administrator to depopulate the area and there had never been any complaint regarding biting of any person by monkeys? The petitioner passed an order to submit copy the plaint along with the report of the Local Commissioner visit the site, though such direction could be passed only by way of an interim relief. In reply, the petitioner has levelled allegations against Shri J.S. Dhankar, ADA. It is asserted that the petitioner issued directions as the public servants were not paying any respect to the Court.

(vii) Civil Suit No. 363 dated 15.11.2007 titled as "Ashok v. Municipal Committee, Loharu" was for mandatory injunction directing the defendants to make proper arrangement of installation of streetlights in order to avoid incidents of crimes during night in Loharu Town. The suit was entertained without any application from the plaintiff for exempting service of notice u/s 80 CPC. Subsequently, the Sub Divisional Officer, Dakshin Haryana Bijli Vitran Nigam Limited was impleaded as defendant No. 3 on 8.3.2008. The petitioner ordered that though the poles are already existing, but not functioning for want of electricity supply and that the Defendant No. 2 cannot disown its liability to the State by his inarticulate attitude. The petitioner disposed of the suit on the said date with the directions to the Collector, Bhiwani to eradicate the real controversy between the parties within one month from passing of the order in the Lok Adalat. It was alleged that the directions were issued without adopting due procedure of law exceeding jurisdiction of Court presided over by the petitioner and issuing directions in the Lok Adalat for which his Court was not competent. The petitioner was keen to become popular by passing such orders.

In reply, the petitioner asserts that when any matter comes before the Court, the Court is bound to give credence to the same.

In respect of the above noted two suits, the Inquiry Officer concluded to the following effect:--

32. The perusal of the above order shows that the matter was disposed of in the

Lok Adalat despite the fact that there was no compromise or terms of the compromise settled in the parties. Virtually the suit was decreed without contest and even before written statement could be filed by Defendant No. 3. In the same manner, directions were issued in Civil Suit No. 362 dated 15.11.2001 to defendant No. 2 without allowing the defendants to contest the suit after appearing in Court.

(viii) Bail Application in case No. 159-1 dated 13.5.2008 titled State v. Kuldeep Singh arising out of F.I.R. No. 10 dated 20.1.2008 u/s 377 I.P.C., Police Station, Loharu. The said F.I.R. was lodged on the statement of a 12 years old boy. Accused Kuldeep Singh was arrested on 25.1.2008. Application for bail was filed through Shri R.S. Bhalothia and the accused was admitted to bail without granting prosecution a reasonable notice. The petitioner granted bail for the reason that the accused is less than 18 years" of age. The allegation against the petitioner is that even if the accused was less than 18 years of age, the petitioner could at least send him to the Juvenile Home during the pendency of the bail application when the offence is punishable for life imprisonment or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

20. In reply the explanation of the petitioner is that he was option less as from the School certificate, it appeared that the accused was a juvenile and it was not feasible for the petitioner to send him to Juvenile Home at Sonapat which was far away from Loharu Sub Division.

21. The Inquiry Officer found that the order was passed without adopting the due process as contained in Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000.

22. The Inquiry Officer has also found that Shri R.S. Bhalothia, Advocate appeared as RW 5 and his attention was drawn towards the photographs. He admitted that in photograph "Z2", the faces shown in the photograph are that of his, his wife Mrs. Sushi la Devi and Mrs. Pushpinder Yadav. He stated that the photograph is result of trick photography and morphed one. He admitted that the photograph "Z3" is that of his wife and Mrs. Yadav. In photograph "Z4", Mrs. Bhalothia and Mrs. Pushpinder Yadav are standing side by side with another lady. In photograph "Z6" Shri Bhalothia, his wife are with the children of Shri Pushpinder Yadav in wildlife sanctuary. In photograph "Z7" Mrs. Pushpinder Yadav is sitting with Mrs. Bhalothia.

The Inquiry Officer recorded the following conclusion:--

42. As already discussed, there is no evidence produced by the Delinquent Officer to prove that the photographs produced in this case are morphed. It is correct that in the photographs which were put to Shri R.S. Bhalothia, Shri Pushpinder Yadav is nowhere in picture. However, this fact is proved that the family of Shri Pushpinder Yadav had affinity with the family of Shri R.S. Bhalothia, Advocate. The Delinquent Officer has not tried to explain these

photographs. He has simply tried to wriggle out of these photographs by alleging that these are not duly proved or are morphed. When the contents of the documents are admitted, it is not required to be proved in accordance with the provisions of the Evidence Act, which are otherwise not strictly applicable to the departmental proceedings as the same are quasi judicial in nature. The affinity of the family of Shri R.S. Bhalothia and the family of Shri Pushpinder Yadav could not be without the consent and permission of Shri Pushpinder Yadav himself and the evidence produced by the department in this regard is to be looked into the light of the above facts.

xxx xxx xxx

44. The perusal of the orders passed in the 8 cases as mentioned in charge No. 1, shows that except the orders Ex. P. 28 and Ex. P. 29, all the other orders passed in those cases are such which cannot be passed in routine by Judicial Officer. In these cases, Shri R.S. Bhalothia, Advocate was either plaintiff himself or representing the plaintiff or accused. In some cases, the plaintiffs were represented by Shri A.K. Saini, Advocate. It is quite strange that the Judicial Officer is giving the relief of mandatory injunction at initial stage of the case; passing the final orders granting the relief to the plaintiff without even framing the issues; deciding the case in the Lok Adalat; issuing directions to the State without any compromise in between the parties; releasing an accused on bail holding him juvenile without conducting any inquiry in this regard; directing the Chief Secretary, Haryana at the initial stage of the suit to appoint doctors in the hospital at Loharu or to appear in person in his Court; entertaining the suit which were of the type of Public Interest Litigation and acquitting the accused without even referring the evidence led by the prosecution.

23. The Inquiry Officer has considered the argument that the illegal orders passed by the Judicial Officer should not be appreciated in departmental inquiry in the manner these are appreciated as in appeal. The Inquiry Officer recorded the following finding:--

48. On care perusal of the observation of the Hon'ble Supreme Court in the case of Ramesh Chander Singh v. High Court of Allahabad (supra), I am of the considered opinion that the same are not applicable to the facts and circumstances of the present enquiry. In this enquiry the officer has not been charge-sheeted for passing any illegal order, but for passing orders against judicial norms or ethics. In various cases to favour and promote Advocates Shri R.S. Bhalothia and Shri A.K. Saini, who are practicing at Loharu where the Delinquent Officer was posted. The above fact is duly proved on the perusal of the orders passed in cases mentioned in Charge No. 1 and also with the help of the photographs that Have been placed on the file.

xx xx xx

49. In view of my above discussion, I am of the considered opinion that the charge No. 1 is duly proved and the Delinquent Officer has misconducted himself

in the discharge of duties by passing the orders as have been passed by him in the cases referred in the charge-sheet exceptive orders Ex. P. 28 and Ex. P. 29 passed in case "R.S. Bhalothia v. State" Civil Suit No. 297/2007.

24. Charge No. 2 is in three parts i.e. i) the petitioner interfered in the investigation of the case bearing F.I.R. No. 92 dated 29.5.2008, P.S. Loharu, got registered by Shri Jasvinder Singh Dhankar and also pressurized him to compromise that case; ii) the petitioner pressurized Shri Dhankar by issuing him the notice dated 10.6.2008, even before the cancellation report had been filed in the Court and conducted the proceeding on it; and iii) the petitioner did not refrain from conducting the proceedings in the said case and referred the matter to the Chief Judicial Magistrate, Bhiwani, only when Shri Dhankar filed protest petition taking the plea that the accused in the case were petitioner's relatives.

25. The petitioner alleged that the charge is totally baseless, without any iota of truth, full of falsehood and vendetta. He denied that the complainant was related to him only because he is also "Yadav" by caste. The complainant is not related to him by blood or some other relationship. He has also alleged that the Public Prosecutor has been charged u/s 182 I.P.C. for laying false information and has created drama of kidnapping at the asking of his wife, who is a Lecturer as she wanted the Principal to the her line.

26. The Inquiry Officer recorded the following findings:--

57. The perusal of the above notice shows that the Delinquent Officer had sought the explanation of SHO, PS, Loharu, vide his memo No. 283 dated 30.05.2008 i.e. on the next day, it was registered. As the Memo No. 283 dated 30.05.2008 is not on file, I am unable to make out as to what were the contents of the notice. However, from the reply of notice dated 06.06.2010, produced on file by the Delinquent Officer, it is clear that Ram Niwas, ASI informed the Court that in case bearing F.I.R. No. 92 dated 29.05.2008, for offence under Sections 365, 452, 323, 506, 34 I.P.C., the compromise was effected in the office of DSP, Loharu. Due to this reason, the special report was not sent in time. On this reply, Delinquent Officer passed the order as follows:--

Explanation qua notice u/S. 176 be issued to the D.S.P. & APP for compromise in non-compoundable offence without prior intimation of the Court.

58. The issuing of notice to the police on the day of recording of F.I.R., then issuing notice to DSP, Investigating Officer and the complainant, reflect the concern of the Judicial Officer with the recoding of F.I.R. No. 92 dated 29.05.2008. In normal course, the Court waits till the challan, untrace or cancellation report is filed and then pass appropriate order.

59. The extraordinary interest shown by the Delinquent Officer in this case is further reflected from the fact that the explanation of the SHO, Loharu, was called for sending the F.I.R. with delay of about 3 days to the Delinquent Officer. The effect of delay in sending the F.I.R. to the Magistrate, is a fact which could

be seen after the presentation of challan, at the time of decision of the bail application, or passing of final judgment. The issuing of notice to the police in this regard certainly reflects the interest which the Delinquent Officer has depicted in this case bearing F.I.R. No. 92 dated 29.05.2008. On one hand the Delinquent Officer started calling the explanation of the police and on the other hand he started criminal proceeding against the complainant in that F.I.R. which were ultimately referred to the Chief Judicial Magistrate, Bhiwani, where the complainant has been facing the proceedings. All this reflects the interest shown by the Delinquent Officer in the above referred case.

XX XX XX

63. In the cross-examination of Shri Jasvinder Singh Dhankar, PW-2, no suggestion has been given to rebut the statement of Shri J.S. Dhankar, that on 29.05.2008 he was called by the Delinquent Officer and compelled to enter into a compromise and he got the statement recorded under pressure and made complaint to the Hon'ble Chief Justice of this Court.

64. In view of the facts and circumstances discussed above, it is duly proved that the Delinquent Officer had interfered in the investigation of case pertaining to F.I.R. No. 92 dated 29.05.2008, pressurized the complainant Shri J.S. Dhankar, to compromise the matter and even thereafter exerted pressure on him. All this reflects that he was interested in the accused named in that F.I.R. The charge No. 2 is duly proved against the Delinquent Officer.

27. We have heard learned counsel for the petitioner and also gone through the enquiry record carefully.

28. The reliance of the petitioner is on the (judgment of the Hon'ble Supreme Court in Ramesh Chander Singh Vs. High Court of Allahabad and Another, but the said judgment is of no help to the argument raised. It is not only the judgment which is capable of different interpretation, which led to initiation of disciplinary proceedings against the petitioner. But in fact, the allegations of misconduct are abuse of his functions as a Judicial Officer and thereby leading institution to disrepute. The allegations are of favouritism, nepotism and exercise of jurisdiction when none vested in the petitioner. In the second charge-sheet, the reference is made to eight cases. All the eight cases are instituted by a single plaintiff. The defence of the petitioner is that as a Civil Judge, he has the jurisdiction to entertain the civil suit in terms of Section 91 of the Code of Civil Procedure. In terms of Section 91 of the Code of Civil Procedure, even if the suit pertains to a public nuisance or other wrongful acts affecting or likely to affect the public, the suit could be instituted by the Advocate General or with the leave of the Court by two or more persons even though no special damage has been caused to such person by reason of such public nuisance or other wrongful act. Since all the suits have been filed by a single plaintiff, the pre-condition of institution of the said suits itself is not satisfied. Therefore, the exercise of the jurisdiction in large number of suits without satisfaction of the basic pre-

condition shows ulterior motive in passing interim orders.

29. The suits have been filed either by Shri R.S. Bhalothia or Shri Ashok Kumar Saini. In respect of Shri Bhalothia, there is overwhelming evidence of proximity of Shri Bhalothia with the petitioner and his family evidenced by the photographs of the family of the petitioner with the family of Shri Bhalothia.

30. Even though the suits were not competent in terms of Section 91 of the Code of Civil Procedure, but the suits for mandatory injunction for directing the defendants to fill up the sanctioned posts; suit for mandatory injunction to implement the Statutes i.e. the Persons with Disabilities (Equal Opportunities Protection of right and Full Participation) Act, 1995 and other allied laws; suit for mandatory injunction to replace the water tank; suit to restore public transport service; to control the monkey menace in the town of Loharu; to make proper arrangement of installation of streetlights, shows the exercise of the jurisdiction which falls within the scope of the Public Interest Litigation more appropriately to be exercised by the writ Court. Even though the civil court is competent to entertain suits in respect of public nuisances, but the procedure required to be adopted is of suit and not that of the writ court. In all the suits, interim orders were passed though in such suits for mandatory injunctions, the relief of mandatory nature could not be granted by way of interim orders and that too without giving sufficient and reasonable opportunity to the defendants to file the reply and put forward their defence. In one of the suits to fill up the sanctioned posts of medical experts, the petitioner directed the Chief Secretary of the State to be present before the Court even when he was not impleaded as a party and that without notice or to seek reply. The passing of the orders to fill up the posts, directing the Chief Secretary to appear that too by virtue of an interim order mandating the defendants to do something, which does not fall within the scope of the jurisdiction of the Civil Court, does not show that the Petitioner was acting in bona fide discharge of his duties. Such acts shows clear abuse of powers and to bring the institute to disrepute. The said fact shows total arbitrariness. It may be stated that none of the suits led to a final judgment, as such suits were withdrawn. The Petitioner has granted the main prayer claimed in the suit by virtue of the interim orders. Therefore, the petitioner was not proceeded against for the judicial acts in discharge of his duties as a Judicial Officer in a bona fide manner, but for the manner in which the petitioner entertained the suits filed by his acquaintances and sought to pass the orders which the Civil Court could not have ever granted.

31. Not only the suits of mandatory injunction, the petitioner has passed an order of granting of bail anticipatory in nature, even though the power to grant anticipatory bail does not vest with a Judicial Magistrate. The argument of the petitioner that it was a cognizable offence, therefore the arrest was stayed, is untenable because even in a case of cognizable offence, the accused has a right to be released on bail, but he has no right to seek anticipatory bail before arrest from the magistrate.

32. Not only this, the petitioner has transferred two criminal cases of the same accused due to the personal reasons, but granted relief to the same person, in a civil suit. The petitioner has explained that the cases were transferred for the reason that the local district administration was very much interested. Even if the local administration was interested, does the petitioner mean that he was under pressure or he did not want to annoy the local administration? The reasoning is bizarre.

33. In other civil case before the petitioner, the petitioner passed an order of stay taking up the suit on a day which was declared as a holiday and even when he was not assigned the duties to take up the civil matters. The explanation of the petitioner that the matter was urgent in nature, therefore, he has passed an order will not absolve him of the misconduct as even if in the urgent matters, the competent Court to pass an order of stay is the Court of the Principal Civil Court of Original Jurisdiction i.e. a District Judge and not a Duty Magistrate.

34. In another complaint case for an offence u/s 376 I.P.C., the case was adjourned to 20.3.2007, but date was advanced by interpolation and thereby, on account of non appearance of the accused, the petitioner issued non-bailable warrants. The explanations given by the petitioner are contradictory as given in the reply and in evidence. The stand, inter alia, is that it was a case triable by the Sessions Court, therefore, the date was advanced. The case was at the summoning stage and to say that the accused would require to be charged for a charge u/s 376 I.P.C. at the stage of recording of preliminary evidence does not seem to be a bona fide action, but as alleged in the charge-sheet, it was an action for favouring the complainant.

35. There is another charge of passing an interim order against the Dakshin Haryana Bijli Vitran Nigam Limited, when a demand of Rs. 1,16,00,000/- was raised against the consumer. Though the charge-sheet does not specify the period for which the payment relates, but it needs to be mentioned that the Electricity Act, 1910 was amended by the Haryana Act No. 4 of 1998, prohibiting grant of interim order of restoration of electricity without deposit of 25% of the amount. That said Act reads as under:--

1. Short title.- This Act may be called the Indian Electricity (Haryana Amendment) Act, 1998.

2. Amendment in Section 24 of Central Act 9 of 1910.- To sub-section (1) of Section 24 of the Indian Electricity Act, 1910, the following proviso shall be added, namely:--

Provided that no Court shall take cognizance of any matter pertaining to the payment of charges due from any person to a licensee in respect of the supply of energy to him or stay the recovery thereof unless-

(i) he has exhausted all the remedies available to him under the terms and conditions governing the supply of energy to him; and

(ii) he has deposited forty percent of the amount outstanding against him, with the licensee.

36. Even if the demand pertains to the period when the Electricity Act, 2003 was in force, in that eventuality the jurisdiction of the Civil Court is expressly barred in terms of Section 145 of the Act. Therefore, in either cases, the order for restoration of the electricity connection without payment of any amount even though the demand was for Rs. 1,16,00,000/- shows lack of bona fide of the petitioner in passing the order.

37. Another allegation pertains to the grant of bail to Kuldeep Singh for the reason that he was juvenile. The petitioner has not conducted any inquiry in respect of the age of the accused and that too without associating the Public Prosecutor. Even if the arrested person was juvenile, since the case was triable by the Court of Sessions, the petitioner could not admit such person to bail, but he was required to be sent to the Juvenile Justice Home as the competent Court was the Court of Session only.

38. The question as to what extent a Judicial Officer can be charged for misconduct in respect of the orders passed in discharge of the judicial functions, is not res integra.

39. In AIR 1948 128 (Privy Council) the Court while considering the issue in respect of sanction u/s 197 Cr.P.C., held to the following effect:--

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to be within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

40. In *Union of India v. R.K. Desai*, (1993) 2 SCC 49 it was held that if in discharge of judicial functions, an Officer takes any action pursuant to corrupt motive or improper motive to oblige someone or takes revenge on someone, in such a case, it is not as if no disciplinary proceedings can be initiated at all. It was held to the following effect:--

The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

9. Again in *K. Satwant Singh Vs. The State of Punjab*, it has been observed as under:

It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable u/s 161 of the Indian Penal Code, is one of them and the offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide *Amrik Singh Vs. The State of Pepsu*, The act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide *Matajog Dobey Vs. H.C. Bhari*,

(Emphasis supplied)

10. Though, these cases relate to sanction u/s 197 of Criminal Procedure Code of 1898, yet the tests laid down as to what would constitute proper exercise of power by a public servant, could be discerned. These principles will constitute the tests for launching disciplinary proceedings as well.

11. The office may occasion the bribe. But it does not mean because the officer is exercising its quasi-judicial functions, he would not be amenable to judiciary proceedings.

12. We do not intend to lay down precisely in what cases disciplinary proceedings would lie and in what cases they do not lie because embarking upon the task of drawing such a line is cast with peril. Indeed, it is difficult to draw such a line without taking into account the concrete facts and circumstances of a case. But we are certain that if there is some degree of culpability in a large sense, disciplinary proceedings can be taken.

41. In a later three Judge-Bench Judgment reported as *Union of India and Others Vs. K.K. Dhawan*, , the Court laid down certain tests for the proposition that the disciplinary proceedings against the Government servant even with regard to exercise of quasi-judicial powers can be initiated. It was held as under:--

28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the

Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated.

42. In another judgment reported as *Union of India v. Duli Chand*, (2006) 5 SCC 680, following the view taken in *K.K. Dhawan's* case (supra), it was observed that the judgment in *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*,) case does not correctly laid down the law in view of the Larger Bench judgment in *Union of India and Others Vs. K.K. Dhawan*, . It was held to the following effect:--

9. In our opinion, Nagarkar case was contrary to the view expressed in *K.K. Dhawan* case. The decision in *K.K. Dhawan* being that of a Larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld. There will be no order as to costs.

43. In another judgment reported as *Choudhury Parveen Sultana Vs. State of West Bengal and Another*, , while considering the grant of sanction u/s 197 of the Code of Criminal Procedure, the Court observed as under:--

18. The direction which had been given by this Court, as far back as in 1971 in *Bhagwan Prasad Srivastava Vs. N.P. Mishra*, holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested

in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava case the underlying object of Section 197 Cr.P.C. is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered *de hors* the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

44. It was observed that in respect of the prosecution for excesses or misuse of the authority, no protection can be given to the public servant concerned.

45. In our view the tests specified for sanction against a public servant form a reasonable basis to examine the question of protection to a judicial officer as laid down in the R.K. Desai's case (*supra*). Section 197 of the Code of Criminal Procedure, confers protection to a public servant from prosecution. On the same analogy, the judicial officer has no protection for the acts done in abusing the process or the acts done with the *mala fide* motive. In the present case, the consistent conduct of the petitioner while posted at Loharu smacks of total arbitrary exercise of jurisdiction vested in him. The findings recorded by the Inquiry Officer and as approved by the Full Court does not warrant any interference by this Court in the present writ petition. Hence, the present writ petition is dismissed.