

(1992) 03 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 2277 of 1982

Rangnath Banduji Salve

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Bombay Judicial Services Recruitment Rules, 1956 — Rule 4(4)
Constitution of India, 1950 — Article 311(2)

Citation : (1992) 3 BomCR 142

Hon'ble Judges : S.P. Kurdukar, J;S.H. Kapadia, J

Bench : Division Bench

Advocate : K.K. Singhvi and S.K. Singhvi, for the Appellant; L.C. Chougule, for the Respondent

Judgement

S.H. Kapadia, J.—The question involved in this writ petition under Article 226 of the Constitution of India is whether the impugned orders bearing No. CJM.4777/306/(46)-D-III dated 1st August, 1980 read with order bearing No. CJM.4777/306(46)-D-III dated 28th June, 1982 passed by the respondent the State of Maharashtra, by which the services of the petitioner as Joint Civil Judge, Junior Division, and Judicial Magistrate. First Class (Parbhani) came to be discharged, constitute an order of simple discharge or whether they constitute an order of dismissal.

2. The facts giving rise to this writ petition briefly are as follows :

(a) On 8th February, 1974 the petitioner was appointed as Civil Judge, Junior Division and Judicial Magistrate, First Class on probation period for the period of two years.

(b) On 6th March, 1974 the petitioner herein took charge as Civil Judge, Junior Division and Judicial Magistrate, First Class at Osmanabad. Initially the petitioner was required to undergo training for the period of nine weeks. He was thereafter posted at Umerga on 10th June, 1974. He was then transferred to August on

20th June, 1974, from where in May 1976 he was transferred to Nanded. In May 1980 he was transferred to Parbhani.

(c) On 6th March, 1976 the initial period of two years of the petitioner as probationer came to an end.

(d) By an order dated 9th September, 1976 passed by the Government of Maharashtra the probationary period of the petitioner came to be extended by six months commencing from 8th March, 1976. The said order was amended by corrigendum and accordingly the initial order came to be amended and the period of probation was accordingly extended from 6th March, 1976.

(e) On 7th April, 1976 a private complaint came to be filed against the petitioner by one Jadhav alleging certain misconduct against the petitioner.

(f) On the basis of certain allegations made against the petitioner with regard to his working as Judicial Officer and pursuant to the recommendations of this Court, on 1st December, 1976 the District Judge. Osmanabad, submitted his report to the Registrar, High Court.

(g) On 5th March, 1977, the petitioner's probationary period came to be further extended from 9th September 1976 for a period of 8 months.

(h) On 6th April, 1977 a show cause notice came to be issued by the respondent making certain allegations with regard to the work of the petitioner as Judicial Officer.

(i) On 30th April, 1977 the petitioner addressed his letter/reply denying various averments and/or allegations made in the show cause notice.

(j) On 16th October, 1977 the Advocates, "Bar boycotted the Court of the petitioner.

(k) On 16th April, 1980 the respondent issued order of extension of the petitioner's probationary period upto 30th April, 1980.

(l) On 1st August, 1980 the respondent issued order of simple discharge. By the said order the petitioner's services came to be discharged by way of simple discharge.

(m) On 6th September, 1980 on representation made by the petitioner to the Government the respondent herein stayed its order dated 1st August, 1980.

(n) On 15th January, 1981 the District Judge, Parbhani withdrew the pending cases from the Court of the petitioner.

(o) On 28th June, 1982 the respondent terminated the services of the petitioner with immediate effect.

(p) On 13th October, 1982 the present writ petition came to be filed by the petitioner in this Court under Article 226 of the Constitution of India inter alia

seeking to challenge the above orders dated 1st August, 1980 as also order dated 28th June, 1982.

(q) On 22nd November, 1982 the writ petition came to be dismissed in limine by the learned Single Judge, against which the petitioner preferred an appeal to the Division Bench of this Court. On 21st August, 1987 the appeal preferred by the petitioner came to be admitted and allowed and in the circumstances the present writ petition stood admitted.

3. It is the case of the petitioner in the petition that the petitioner is a member of the Scheduled Caste; that pursuant to the advertisement dated 25th January, 1973 he was selected by Maharashtra Public Service Commission for the post of C.J.J.D. & J.M.F.C.; the petitioner was thereafter appointed as Civil Judge, Junior Division and J.M.F.C. on the 8th February, 1974. According to the petitioner, he was deemed to be confirmed on expiry of two years or on 6th March, 1977 or at the highest from 9th May, 1977 when the last extension for probationary period came to an end. According to the petitioner, in the year 1975 in the course of his duties at August the petitioner convicted one advocate by name Chandrakant Bhosale and 21 others in Criminal Case No. 189 of 1975 which judgment was pronounced by the petitioner on 28th May, 1976 and on the same day when he was sitting in the house with professor Wavare, certain advocates, whose names are mentioned in paragraph 3 of the petition, came to the residence of the petitioner and insisted for interim bail. According to the petitioner, he was threatened by the said persons and the petitioner brought the said fact to the notice of the District Judge, Osmanabad. According to the petitioner, due to the said incident tension grow against him as he belonged to the Scheduled Caste and the advocates named in paragraph 3 of the petition were caste Hindus. The petitioner has also referred to certain complaints against him by anonymous letters which were received by the President of the Nanded Bar Association in which certain allegations of corruption were made against the petitioner. By the said petition, the petitioner has further alleged that while he was working at AUSA due to the incident of conviction of certain caste Hindus, Complaints were made against him by advocate Hashmi. It is further the case of the petitioner that while he was discharging his duties as Judicial Officer certain persons were antagonistic towards him and on the basis of their complaints certain action was sought to be taken against him. The petitioner further states in the petition that the learned District Judge, Osmanabad Shri N.V. Saswadkar made enquiry and recorded statements of various persons who had been convicted by him as also the statements of Saravashri Musande, Hashmi, Deshpande, Taklikar etc. who had come to his residence for interim bail and had threatened him to the certain consequences. According to the petitioner, the District Judge, Osmanabad had recorded ex parte statements behind his back and the said statements were based on hear-say evidence. According to the petitioner, the District judge, osmanabad had submitted report on the basis of the said ex parte statements to the Registrar, High Court by his confidential letter dated 1st December, 1976 and on the basis of the said report a show-cause notice referred to hereinabove was

given to him by the respondent on 6th April, 1977. According to the petitioner, the said show cause notice contained nine allegations relating to the non-payment of full purchase price of articles purchased by him, non-payment of loans, borrowing moneys from the advocates, demanding bribes, giving threats to the members of the Bar and ill-treating medical officers appearing before him as witnesses. According to the petitioner, he denied all allegations made in the said show cause notice dated 6th April, 1977. According to the petitioner, he was sought to be victimised both by the members of the Bar who at the relevant time has passed resolution boycotting his Court as he was member of the Scheduled Caste and that he was being victimised by the caste Hindus. According to the petitioner the enquiry made by the District Judge, Osmanabad Shri N.V. Saswadkar was ex parte enquiry. The petitioner in the said petition also admitted that a private complaint was filed on 7th April, 1976 in the Court of the Judicial Magistrate, First Class, Lature in which he was made accused No. 6 By his reply to the show cause notice, he had admitted the existence of the said complaint dated 7th April, 1976 but according to the petitioner the said private complaint ultimately was not proceeded with because the Government did not sanction the prosecution against him. According to the petitioner, the District Judge, Osmanabad ought not to have recorded the statement of the persons concerned behind his back and that no opportunity was given to the petitioner to cross-examination the said persons who had made the said allegations. According to the petitioner, the enquiry made by the District Judge, Osmanabad was ex parte enquiry and the letters written by the petitioner to the District Judge, Osmanabad were not considered. According to the petitioner, without holding any enquiry behind the back of the petitioner and without giving to him any chance to cross-examine the persons who had made statements against him he was served with the order of termination on 1st August, 1980. According to the petitioner, he was a permanent civil servant of the respondent because he became permanent automatically on the expiry of two years from the date of the appointment or in any event on 6th March, 1977 or in any event on 9th May, 1977 after the last extension of probationary period came to an end. The petitioner further submitted that he became permanent, in any event by reason of the resolution of the Government of Maharashtra dated 9th September, 1975 and also in view of the record of service which contained remark "Good", which was communicated to the petitioner by the then District and Sessions Judge, Osmanabad by his memo dated 21st June, 1976. According to the petitioner, therefore, he fulfilled all the conditions mentioned in the said Government Resolution dated 9th September, 1975. In the petition, the petitioner submitted that even assuming that he was not a permanent servant and that he was a probationer, even then, according to him, the order of termination amounted to dismissal from service because the said order was passed on the basis of misconduct and the said order was passed after an ex parte enquiry came to be held against him on the allegations of the gross misconduct. According to the petitioner, the said impugned order of termination was clearly in violation of Article. 311(2) of the Constitution of India as also the provisions of the Bombay

Civil Services (Conduct, Discipline and Appeal) Rules, 1932 as amended from time to time (hereinafter referred to for the sake of brevity as the Old Civil Services Rules) as also in violation of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as the Disciplinary Rules). According to the petitioner, since the allegations of gross misconduct were made against him, the respondent was under statutory obligations to follow the Disciplinary Rules of 1979 which came into force on 12th July, 1979 and as he was not served with the charge-sheet as required under the said Rules of 1979 and as he was not allowed to cross-examine the witnesses, who had given statements against him and nor was he allowed to lead evidence, the order of termination in substance was an order of dismissal based and founded on grounds of misconduct and since the order of termination was an order of dismissal and not simple discharge it violated the provisions of Article 311(2) of the Constitution of India as also the provisions of the Disciplinary Rules of 1979. In the circumstances, the petitioner prayed in the writ petition that the above order dated 1st August, 1980 and 28th June, 1982 terminating the services of the petitioner be set aside and/or quashed under Article 226 of the Constitution of India.

4. On 20th November, 1982 affidavit-in-reply came to be filed by the respondent to the said petition. On the question of the petitioner being a probationer as contended by the respondent, the said affidavit avers that the petitioner has suppressed the fact that his probationary period was extended right upto 30th April, 1980 by the order passed by the respondent on 16th April, 1980. By the said affidavit the respondent further stated that the complaints were received by the High Court when the petitioner was working as Civil Judge, Junior Division and Judicial Magistrate, First Class at Ausea, District Osmanabad from eminent advocates making allegations against the petitioner regarding his behaviour and misconduct. According to the said affidavit, the District Judge, Osmanabad was directed by the High Court to make enquiry into the said complaints and a report was made by the District Judge, Osmanabad who reported that with regard to some of the allegations made by the eminent members of the Bar there was substances regarding some of the allegations. According to the affidavit filed by the respondent, the High Court had considered the report of the District Judge, Osmanabad and had recommended to the respondent that the services of the petitioner be terminated as the conduct of the petitioner was not befitting a Judicial Officer. It is in these circumstances that a show cause notice dated 6th April, 1977 calling upon the petitioner to show cause why he should not be discharged from the Government Services came to be issued. According to the said affidavit, in view of the reply filed by the respondent, the respondent after considering the replay dated 30th April, 1977 to the said show cause notice and after taking into account the recommendations of the High Court decided to terminate the services of the petitioner by way of simple discharge and in the circumstances the impugned order dated 1st August, 1980 terminating the petitioner's services as probationer and on the ground of discharge simpliciter

came to be issued. According to the said affidavit filed by the respondent the services of the petitioner came to be terminated after following the procedure prescribed in Rule 55 of the Old Rules 1932. By the said affidavit, it was categorically mentioned by the respondent that the full fledged enquiry was not contemplated in the present case particularly in view of the fact that the petitioner was a probationer and it was only in view of the above facts that a show cause notice came to be issued. By the said affidavit the respondent reiterated that the petitioner was not a Government servant and that it was not eligible to protection under Article 311(2) of the Constitution of India.

5. Further affidavit-in-reply dated 7th February, 1992 was also filed on behalf of the respondent by the Under Secretary to the Government of Law and Judiciary Department Shri Padmanabh Shankar Badkar. By the said affidavit, it was pointed out that the proposal to terminate the service of the petitioner was initiated by the High Court under its letter dated 8th February, 1977 and as per recommendations made by the High Court the procedure was followed in the case of the petitioner and accordingly the impugned orders dated 1st August, 1980 and 28th June, 1982 came to be issued on the recommendations of the High Court. According to the said affidavit, the services of the petitioner came to be terminated as he was found unsuitable for the job. According to the said affidavit, the petitioner was a probationer and the only question which was required to be decided was the petitioner's suitability as a Judicial Officer at the relevant time. According to the said affidavit, the petitioner was a Probationer at all material time and particularly in view of Rule 4(4)(iv) of the Bombay Judicial Service Recruitment Rules, 1956 (wrongly typed as Rule 3(4)(iv) until a specific order of confirmation was given to the petitioner, which in the present case had not been done, the petitioner cannot claim to be automatically confirmed after the expiry of the initial period of two years of probation or on the expiry of the extended period of probation. According to the said affidavit-in-reply, it is further pointed out that under the above mentioned Rule 4(4)(iv) of the Recruitment Rules, it is always open to the Government to extend the period of probation. It is implicit in the Rule quoted above that the probationary period can be extended from time to time till the Judicial Officer stands confirmed on the fulfilment of the condition laid down in the said Rule 4(4)(iv) of the Recruitment Rules of 1956. According to the said affidavit filed by the respondent, there was no substance in the contention of the petitioner that the Advocates at AUSA had made false complaints against the petitioner because he belonged to the Scheduled Caste and also because he had convicted one Chandrakant Bhosale and 21 others under the Untouchability (Offences) Act, 1955. According to the affidavit filed by the respondent, the enquiry made by the District Judge, Osmanabad Shri N.V. Saswadkar was a discreet enquiry and the said enquiry was made in order to enable the District Judge, Osmanabad to make his report with regard to his enquiry made in the context of the complaints received by him. It is, in these circumstances, that the enquiry against the petitioner did not require the statements to be recorded in the presence of the petitioner as alleged by the

petitioner, since it was a preliminary enquiry. The report was submitted on 1st December, 1976 and on the basis of the said report the respondent obtained recommendations of the High Court and it is on the basis of the said report that the above show cause notice dated 6th April, 1977 came to be issued to the petitioner as to why he should not be discharged from the Government service. According to the affidavit, the reply of the petition dated 30th April, 1997 to the show cause notice was considered before his services came to be simpliciter terminated on the recommendations of the High Court. In the circumstances, according to the respondent, in the said affidavit it was stated that no further enquiry was required to be held against the petitioner as the enquiry made by the District Judge, Osmanabad was discreet enquiry and it was in the nature of preliminary enquiry only to find suitability of the petitioner with regard to the petitioner being continued as a Judicial Officer or not. As regards the Government Resolution dated 9th September, 1975, the respondent pointed out that the said resolution had no application to the facts of the present case and particularly in view of the fact that the condition requiring the petitioner to have a good service record in any event was not fulfilled and in the circumstances, according to the respondent, reliance placed by the petitioner on the said Government Resolution dated 9th September, 1975 was not correct. The affidavit, in the circumstances, proceeds on the basis that the services were terminated simpliciter without any stigma and since the petitioner was a probationer there was no question of violation of Article 311(2) of the Constitution of India and his services came to be terminated as he was found unsuitable for the job. However, since the petitioner was a probationer and since the enquiry was only a discreet enquiry to find the suitability of the petitioner to continue as a Judicial Officer, the Government felt that there was no question of holding a full fledged enquiry as contemplated under Article 311(2) of the Constitution of India. In fact, the affidavit categorically recites that the enquiry instituted against the petitioner was only to ascertain his suitability to continue in service. In the circumstances, it was submitted that the impugned orders of termination have been passed in accordance with law and there is no question of any breach of Article 311(2) of the Constitution of India.

6. Mr. Singhvi, the learned Counsel appearing on behalf of the petitioner, submitted two-fold submissions. Firstly, he submitted that even assuming for the sake of argument that the petitioner was a probationer, still the impugned orders of termination could not have been passed because the said orders were punitive in nature, and therefore, the said orders were not the orders of simple discharge but they constituted dismissal or removal under Article 311(2) of the Constitution of India. The second limb of the argument of Mr. Singhvi was that the petitioner was not a probationer as he was a confirmed employee, he was entitled to be proceeded with in accordance with law by issuance of chargesheet which, in the present case, has not been done. In the circumstances, Mr. Singhvi submitted that the termination in the present case amounted to punishment.

7. With regard to the first contention of Mr. Singhvi, it may be stated at the very

out set that the case of a permanent government servant stands on a different footing from the case of the probationer in the government service. In the former case, if the charges are of a serious nature, than the enquiry is warranted as preceded by a chargesheet. However, in the case of a probationer it will depend upon the facts of each case as to whether the impugned order of termination was an order of a punitive nature or not and for that the Court is required to go behind a the text of the order by lifting the veil and merely because the order is worded in an innocuous manner it will not preclude the Court from lifting the veil and ascertaining the true intention of the Government in passing the impugned order. The question, in the present case is that if the petitioner is a probation, then on the facts of the case, whether the impugned order is an order of simple discharge or a punishment. Mr. Singhvi also drew our attention to the various facts of the case to point out that the impugned order was punitive in nature. Mr. Singhvi also drew our attention to the report dated 1st December, 1976 made by the District Judge, Shri N.V. Saswadkar. According to the learned Counsel, the allegations enumerated in the said report indicated that there were allegations regarding corruption, receipt of loans from the advocates, borrowing of the amounts and demand of bribes as also acceptance of bribes. According to Mr. Singhvi, without going into the merits of each of the charges, it is clear, from the report dated 1st December, 1976 that serious allegations involving alleged moral turpitude were mentioned in the said report and looking to the gravity of the said charges, according to the learned Counsel for the petitioner, it was clear that the Government intended to stigmatize the character of the petitioner and therefore, looking to the nature of the said allegations, the Government was required to hold an enquiry even in the case of the petitioner who was a probationer. Mr. Singhvi thereafter referred to the show cause notice dated 6th April, 1977 and pointed out that the language used in the said show cause notice also indicated that the serious allegations were made against the petitioner and that the Government had agreed with the conclusion arrived at by the District Judge, Osmanabad that there was substance in the above allegations. According to the learned Counsel, the very fact that the show cause notice proceeded on the basis that there was substance in the allegations indicated that the petitioner was sought to be punished by the Government and in the absence of any enquiry into the said allegations, the action of the Government was punitive in nature. Mr. Singhvi also relied upon the statements used in the said show cause notice and stated that the conclusion intended to indicate that the conduct of the petitioner was not befitting the dignity of the Court and the language used to that extent in the show cause notice also clearly shows that the petitioner was sought to be punished and in view of the said allegations being substantiated as mentioned in the said show cause notice, proper enquiry ought to have been held in the present case. According to the petitioner, the reference to Rule 155 of the Civil Services Rules 1932 in the affidavit-in-reply indicated that the intention of the Government was to inflict punishment and not mere discontinuance of the employment by simple discharge, Mr. Singhvi submitted, however, that in the present case, in view of Rule 29 of the Maharashtra Civil Services (Discipline and

Appeal) Rules, 1979 the Old Rules did not apply to the facts of this case but only Rule 5 of the New Rules of 1979 applied. At this stage we may clarify that we need not go into question of applicability of the above Old Rules and the Rules of 1979 as to our mind it is well settled in views of the judgments of the Supreme Court of India that even in the case of a probationer if the action of the Government is punitive in nature then provisions regarding imposition of penalties have got to be followed.

According to Mr. Singhvi, paragraph 5 of the said show cause notice categorically refers to arrogant behaviour and gross misconduct on the part of the petitioner and in the circumstances the decision of the Government to discharge the petitioner from the Government service constituted punishment under Articles 311(2) of the Constitution of India. According to the petitioner, he has denied various allegations made in the show cause notice by his reply dated 30th April, 1977. According to the petitioner, looking to the gravity of the charges levelled against him, what was intended by the Government was not a simple discharge but amounted to punishment and in the absence of appropriate chargesheet and opportunity to offer explanation being given to him, the impugned orders of termination dated 1st August, 1980 and 28th June, 1982 were not of simple discharge but the orders of termination. Mr. Singhvi also drew our attention to the above two affidavits filed by the Government to point out that what the Government intended in effect of issuing impugned orders amounted to punishment and not a simple discharge. Mr. Singhvi relied upon paragraph 8 of the affidavit dated 20th November, 1982 and submitted that Rule 55 of the Civil Services (Classification, Control and Appeal) Rules referred to hereinabove in fact, contemplated a proper enquiry to be held and it contemplated punishment which was sought to be imposed. Mr. Singhvi referred to the provisions of Rules of the Civil Services Rules only to indicate that the Government intended to punish the petitioner and to stigmatize him. Mr. Singhvi compared the various averments in the affidavit dated 20th November, 1982 and also the affidavit dated 7th February, 1992 filed by the respondent. According to Mr. Singhvi, the averments in the said affidavit dated 7th February, 1992 clearly indicated that the enquiry was made in respect of certain serious charges against the petitioner and according to Mr. Singhvi, since the affidavit proceeds on the basis of these charges, full fledged enquiry under Article 311(2) of the Constitution was warranted.

8. On the other hand, Mr. Chougule, the learned Counsel appearing on behalf of the respondent, submitted that a discreet enquiry was made in the present case by the District Judge Shri N.V. Saswadkar who submitted his report to this Court on the basis of the said discreet enquiry. Mr. Chougule further pointed out that respondent acted in a fair and proper manner on the basis of the report of the District Judge as well as the recommendations of the High Court before issuing order of discharge. Mr. Chougule also pointed out that the petitioner was a probationer and no right available to a confirmed employee had accrued to him and the Government was entitled to find out suitability of the petitioner to

continue as Judicial Officer. According to Mr. Chougule, the affidavit filed by the respondent never intended to impose punishment as sought to be contended by the petitioner in the present case. According to Mr. Chougule, the entire exercise indicates that the Government intended to find out the suitability of the petitioner to continue as Judicial Officer and it was with this intention that the Government has issued the impugned order of discharge which cannot be construed as an order imposing punishment and in the circumstances there was no violation of Article 311(2) of the Constitution of India.

9. Before referring to the various decisions cited at the Bar by both the learned Counsel appearing on behalf of respective parties, we would like to refer to certain broad principles particularly with regard to the termination of services of the probationer in Government service. The principles which can be culled from the judgments which will be referred hereinafter broadly lay down the following principles:

(i) Firstly, there cannot be straight jacket or formula in matters of the present nature to find out as to whether the termination of services constituted a simple discharge or whether it constituted dismissal, removal or reduction in rank under Article 311(2) of the Constitution of India.

(ii) Secondly, a distinction should be maintained between a probationer and a permanent employee. In the case of permanent employee, he holds the post in a substantive capacity and when the services are sought to be terminated as a permanent employee, the degree of the charges levelled against him assume a very important role. Where the services of permanent employee are sought to be terminated it amounts a forfeiture and in the circumstances the catena of the decisions of the Supreme Court lay down that where the services of permanent Government servant are sought to be terminated on the basis of services charges levelled against him then it could only be done after giving him charge-sheet and after holding a proper enquiry under the Rules. On the other hand, in the case of a probationer, it is for the Government to decide as to whether the services of a probationer should be confirmed or not. While deciding the suitability of a probationer, therefore, the Government will have to take into consideration not only the degree of the charges levelled against the probationer but that the Government will have also to consider other surrounding circumstances, for example in judging the suitability of a probationer the Government is also required to consider the nature of office which the probationer was holding at a given point of time; whether the holding of enquiry would affect the public image of the institution as in the case of the judicial officer; the duration of the services; the future prospects of the probationer; the type of allegations involved; whether it would be in public interest to hold the enquiry, are some of the factors which the Government will have to consider. This is the essential difference between the case of dismissal of a permanent employee and the discharge of probationer. In the case of probationer, the right to hold the post has not accrued to him like the petitioner which right has

accrued in the case of a permanent employee. In the case of probationer, it is for the Government to decide as to whether the probationer should be confirmed or continued in service and therefore, the Government has a right to take into account all the factors while judging the suitability of the probationer.

(iii) It is true as held by the various judgments of the Supreme Court that even in the case of probationer if the facts and circumstances indicate that the probationer was sought to be stigmatized by the impugned action then certainly in an enquiry under Article 311(2) of the Constitution of India would become necessary. In the case of probationer, the Court has to decide the various facts and circumstances and after taking into account the facts and circumstances of the case, the Court will have to find as to whether the Government intended to punish or whether the Government sought to simply discharge the services of the probationer.

(iv) In the case of a permanent Government servant, the levelling of serious charges warrants an enquiry under the Rules. However, in the case of probationer, apart from the charges, Government has to consider all other facts and circumstances of the case and thereafter it is for the Government to decide whether to punish the probationer or simply discharge him from service.

(v) It must be also appreciated that the action of the Government in discharging the services of the probationer is presumed to be valid unless the presumption is rebutted and to that extent a heavy burden is imposed on the probationer to show that the Government intended to punish him. The facts must also indicate that the impugned order was mala fide or arbitrary and in the absence of the displacement of the said presumption the action of the Government must be presumed to be valid.

(vi) That even in the case of the probationer, where the serious allegations are made against the petitioner, the Court is entitled to lift the veil and go behind the impugned order of simple discharge to ascertain as to whether the impugned order of discharge was punitive or not and to that extent the Court had to find out the circumstances surrounding the impugned order. If the surrounding circumstances indicate that the Government intended not to punish the probationer but to judge his suitability to the post then in such a case, the order of simple discharge would be justified.

10. Taking into account the above principle enunciated, we would now refer to the various judgments cited by the learned Counsel for the petitioner. The principal judgment on which Mr. Singhvi has placed reliance is the judgment of the Supreme Court in the case of Samsher Singh Vs. State of Punjab and Another, . Mr. Singhvi while placing reliance on the said judgment submitted that the facts of Samsher Singh's case are identical to the facts of the present case. He referred to paragraph 3 and 4 of the said judgment in support of his argument that the facts are identical. In Samsher Singh's case the appellants were also holding the post in Punjab Judicial Services. By an order dated 27th

April, 1967 the services of Samsher Singh and one Ishwar Chand Agrawal came to be terminated. The said order of termination indicates that it was an innocuous order as the same purported to be an order of simple discharge. The order was passed under Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. In the said case the facts indicate that the services came to be terminated on the basis of the report of the Vigilance Officer appointed by the Punjab High Court to look into certain allegations made against both the above mentioned Judicial Officers. On the basis of the said report made by the Vigilance Officer, the services came to be terminated. In the said judgment it has been laid down by the Supreme Court that no abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination then it can never amount to a punishment. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service under Article 311(2) of the Constitution of India. It is further laid down that before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory and if the work of the probationer is not satisfactory and if the probationer is unsuitable he can be discharged and no punishment be involved. The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. In the said judgment it is further laid down that the preliminary enquiry to satisfy that there was reason to dispense with the services of a probationer cannot attract Article 311 of the Constitution of India. On the facts of the case the Supreme Court found that the allegations made against Samsher Singh were of a trivial nature and no fault could be attracted against Samsher Singh. Paragraph 85 of the said judgment clearly shows that even on fact the Supreme Court found that a mountain has been made out of a mole hill and the termination was held to be punitive. Secondly, in the Samsher Singh's case the Supreme Court was also concerned with the powers of the High Court under Article 235 of the Constitution. In the said case the Supreme Court found that the High Court should have conducted the enquiry through the District Judges and not through the Director of Vigilance as the members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The facts of the present case, therefore, are not covered by the facts of the Supreme Court judgment in Samsher Singh's case (supra). Mr. Singhvi also drew our attention to the judgment of the Supreme Court in the case of State of Uttar Pradesh and Another Vs. Sri C.S. Sharma, . Mr. Singhvi placed reliance on the said judgment of the Supreme Court to show that in the said judgment a similar position arose where the provisions of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules came to be construed by the Supreme Court. According to Mr. Singhvi, the said Rule was similar to Rule 55 of the said Old Rules of 1932 referred to hereinabove and also to the present Rules of 1979 as in the present case. Mr. Singhvi, accordingly, placed reliance in support of his case that where the Government intended to

invoke the said Rule 55, it was clear that the Government intended to impose punishment and not a simple discharge. As mentioned hereinabove whether we take into account the said Rules of 1932 or the New Rules of 1979 of the Civil Services (Classification, Control and Appeal) Rules schematic interpretation leads up to only one conclusion that where serious charges are levelled against the permanent employee the Government must hold an enquiry before terminating services of such a permanent employee. Similarly even if the Government intends to punish a probationer then an enquiry is required. But that does not mean that the Government cannot discharge a probationer if found unsuitable and therefore, it will depend upon the facts of each case as whether the action was punishment or not. These principles are well settled principles of law as laid down by various judgments of the Supreme Court. The question is with regard to application of the said principles to the given set of facts which arise in each case.

11. Mr. Singhvi, thereafter, also referred to the judgment of the Supreme Court in the case of Anoop Jaiswal Vs. Government of India and Another, . In the said case of Anoop Jaiswal (Supra), the Supreme Court considered again the question of simple discharge and laid down that the form of the order is not decisive as to whether the order is by way of punishment or not and that even an innocuously worded order could be construed to be an order of punishment if the Government finds that the alleged acts of misconduct was the cause of the order of termination and that but for the incident it would not have been passed. The facts of the case show that the appellant was selected by UPSC for appointment in the Indian Police Services. He was a probationer undergoing the training at the Sardar Vallabhai Patel National Police Academy, Hyderabad and before the expiry of the period of probation his services came to be discharged. It appears from the facts that on the day when the probationer Jaiswal was dealt with severe. In the circumstances, the Supreme Court found that but for the above incident the order of termination could not have been passed and in the circumstances, since the appellant had a legitimate explanation for being delayed a proper enquiry ought to have been held before terminating the services.

12. Mr. Chougule, the learned Counsel appearing on behalf of the respondent, in support of his contentions, referred to the judgment of the Supreme Court in the Case of Bishan Lal Gupta Vs. The State of Haryana and Others, . In the said case, the petitioner was appointed on probation in Haryana Civil Services (Judicial Branch) on 8th December, 1966. While on probation his services were terminated on 11-9-1969. He was served with show cause notices dated 22nd October, 1968 and 18th June, 1969 asking him to explain certain allegations which read as under:

"(1) the plaintiff (appellant) failed to make the payment of stitching charges to one Mani Ram tailor of Hissar while posted at Hissar;

(2) the plaintiff put unnecessary pressure on the Station House Officer, Police Station Yamuna Nagar. While posted at Jagadhri;

(3) the plaintiff convicted Bassu Ram and Dal Singh and acquitted opposite party in cross-case by accepting illegal gratification from the opponents of Bassu Ram etc. and

(4) the complaints were lodged by Sarvashri Shri Ram Hande, K. Lal, Brij Lal and Ram Niwas against the plaintiff alleging acts of criminal misconduct."

The order of termination came to be passed after the report of the District Judge was considered by the High Court. In the circumstances, the appellant filed a civil suit before the learned Subordinate Judge, First Class, Chandigarh. In the said suit the same contentions were raised as in the present case viz, that the order of terminating was in the nature of punishment. The High Court after considering the various judgments of the Supreme Court found on the facts of the case that the Government never intended to punish the appellant and although allegations were of serious nature (as mentioned herein above) were there in the facts of the case the High Court found that the order of termination was that of simple discharge. The matter was carried further by Bishan Lal to the Supreme Court. By judgment reported in Bishan Lal Gupta Vs. The State of Haryana and Others, the Supreme Court rejected the appeal by observing as follows :

" These observations must we think, be meant to cover these cases where, even though the probationer may have no right to continue in services, 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 the case justice requires a fuller bearing. If, however, 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 which 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."

13. The above principles of law also find support in the judgment of the Supreme Court in the case of Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, , where the Supreme Court has made the following observations:

"Where the short history of the service of the probationer appointed in a temporary post clearly showed that his work had never been satisfactory and he was not found suitable for being retained in service and that was why even though some sort of an enquiry was started, it was not proceeded with and no

punishment was inflicted on him and in these circumstances, if the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when appointing authority had the right to terminate the service without assigning any reasons. In such a case even if misconduct, negligence, inefficiency might be the motive of the inducing factor which influenced the employer to terminate the service of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service could not be termed as penalty or punishment. Further adverse remarks in the assessment roll and recommendation therein to extend the probationary period could not be said to indicate that the intention of the appointing authority was to proceed against the employee by way of punishment."

14. To the same effect is the judgment of the Supreme Court in the case of State of Maharashtra v. Veerappa R. Saboi, reported in : (1979)IILLJ393SC . The Supreme Court has observed in paragraph 10 as under:

"The question of violation of Art. 311(2) has to be examined in two perspectives Firstly, if it could be held in agreement with the High Court that he should be deemed to have been confirmed in the post to which he was initially appointed, it is plain that terminating his services by a notice of termination simpliciter like the one given in this case, will be violative of the requirement of Article 311(2). On my finding it is manifest that it is not so. He was continuing in the post in an officiating capacity. His services could be terminated by one month's notice simpliciter according to the terms of the employment. Secondly the question to be examined is whether the termination was by way of punishment. Even in the case of a temporary or officiating Government servant his services cannot be terminated by way of punishment casting a stigma on him in violation of the requirement of Art. 311(2). This principle is beyond any dispute but the difficulty comes in the application of the said principles from case to case. If a Government servant is compulsorily retired or one who is officiating in a higher post is reverted to his parent cadre, or when the services of an officiating or temporary Government servant are dispensed with by an order of termination simpliciter, then problems arise in finding out whether it is by way of punishment. In different kinds of situation, different views have been expressed. Yet the underlying principle remains the same, reasonable approach to the problem in such cases. Ordinarily and generally, and there may be few exceptions, any of the three courses indicated above is taken a recourse to only if there are some valid reasons for taking the action against the Government servant. If a probe in the matter is allowed to be made in all such cases then curious results are likely to follow. In a given case there may be valid reasons, may be of a serious kind, which led the authorities concerned to adopt one course or the other as the facts of a particular case demanded. If one were to say in all such cases that the action has been taken by way of punishment then the natural corollary to this would be that such action could be taken if there was no such reason in the

background of the action. Then the argument advanced is that the action was wholly arbitrary, mala fide and capricious and, therefore, it was violative of Art. 16 of the Constitution. Where to draw the line in such cases. Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order. The Government is on the horns of the dilemma in such a situation. If the reasons are disclosed, then it is said that the order of the Government was passed by way of punishment. If it does not disclose the reasons, then the argument is that it is arbitrary and violative of Art. 16. What the Government is to do in such a situation? In my opinion, therefore, the correct and normal principle which can be culled out from the earlier decisions of this Court is the one which I have indicated above."

The onus is on the Government servant who is a probationer to prove that the order of discharge was arbitrary or mala fide and in the absence of the said fact, the order passed by the Government is presumed to be valid.

15. Mr. Chougule also invited our attention to the judgment of the Supreme Court in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, . In the said case after considering the judgments of the Supreme Court it was held as follows:

"A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment of it is by way of punishment it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India, a Constitution Bench of this Court held that the mere use of expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such expressions, the Court may

determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely : (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary Government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences. The evil consequences as held in Parashotam Lal Dhingra case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra case has been reiterated and affirmed by the Constitution Bench decisions of this Court in *The State of Orissa and Another Vs. Ram Narayan Das*, , C.A. No. 590/62 decided on 23-10-1963; *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, ; *Jagdish Mitter Vs. The Union of India (UOI)*, ; *A.G. Benjamin v. Union of India*, (1967) II L.L.J. 718 ; *Samsher Singh Vs. State of Punjab and Another*, .

This decisions have been discussed and followed by a three Judge Bench in *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, ."

16. As stated hereinabove the legal principles with regard to the termination of the services of a probationer are well settled. There is no dispute that the case of a probationer stands on a different footing from that of the permanent employee in Government service. In the case of the probationer apart from the nature of the allegations, the Court is also required to ascertain the circumstances surrounding the order of discharge particularly in view of the fact that the petitioner has not acquired the right of permanency in Government service. In the case of the probationer, therefore, the entire set of circumstances surrounding the order of discharge are required to be ascertained by the Court by lifting the veil and finding the true intention of the Government; and to ascertain whether the Government intended to punish the probationer or whether the exercise undertaken by the Government only to ascertain the suitability to continue in the service.

17. In the present case, even according to the petitioner, the respondent made a discreet enquiry into the complaints against the petitioner. No charge-sheet was given to the petitioner because the Government never intended to punish the petitioner. The respondent acted in a fair manner all throughout and no allegations of mala fides have been made by the petitioner against the respondent. As regards the nature of the charges and as mentioned hereinabove the test to be applied is whether the Government could be said to have intended to punish the petitioner. In the case of the petitioner who was a probationer one cannot loose sight of the fact that the petitioner's duration was of short period; that the post he held was of responsible nature; that during this period

complaints were made by the litigants, members of the Bar and to the extent even holding of full fledged enquiry into the said complaints would not only be against the interest of the petitioner in future but such probes would be against the public interest. In the circumstances, it could not be said that the only cause of termination was the charges levelled against the petitioner. The respondent has proceeded to issue show cause notice only to judge the suitability. It was a part of preliminary enquiry as mentioned in the affidavit-in-reply and in the absence of any mala fides we see no reason why the said affidavit-in-reply filed by the Government should not been accepted. In the circumstances, we do not see any reason to interfere with the impugned orders under Article 226 of the Constitution of India. In fact, looking the short duration of the services rendered by the petitioner the Government never intended to punish the petitioner. Reading the facts as a whole and after taking into account the complaints filed against the petitioner and the reply to the show cause notice and without going into the merits of the charges we find that the respondent never intended to punish the petitioner. The petitioner has placed reliance on the Circular of the Government dated 9th September, 1975 and the memo of the respondent to indicate that his performance was good as on 21st June, 1976. As mentioned above in cases of this nature the respondent is at liberty to ascertain all the facts before coming to the conclusion as to whether the petitioner should be punished or not. The Government is entitled to judge the suitability after taking into account all the facts in totality. We have considered all the facts in the present case and we find that the respondent never intended to punish the petitioner or to stigmatize him as alleged and on the overall performance the Government was right in coming to the conclusion that the petitioner was not suitable. The matter has to be seen as a whole and not on the basis of the words of the order. In the present case the respondent has acted fairly and, therefore, no interference is called for under Article 226 of the Constitution of India.

18. Now coming to the second contention made on behalf of the petitioner namely, that the petitioner was a permanent employee who was deemed to be confirmed on the expiry of the initial period of two years or in any event the petitioner is deemed to be confirmed on 6th March, 1977 or on 9th May, 1977 is required to be considered. The learned Counsel for the petitioner, in this connection, submitted that the Government had no power to extend the period of probation and in the circumstance, on the expiry of the period of two years for which the petitioner was initially appointed, the petitioner was deemed to be confirmed. In this connection, the learned Counsel appearing for the petitioner placed reliance on Rule 4(4)(iv) of the Bombay Judicial Service Recruitment Rules, 1956 and he submitted that there was no power under the said Rules to extend the period of probation beyond the period of two years. The learned Counsel further submitted that under the above Rule there is a restriction on the power of the Government which disentitles the Government to extend the period of probation of two years. In any event, he further placed reliance on the Resolution of the Government dated 9th September, 1975 as also memorandum

issued by the Government dated 21st June, 1976 and submitted that the petitioner was entitled to be confirmed in service in view of the said Resolution of the Government dated 9th September, 1975 as also in view of the petitioner's services being good as recorded in the memorandum dated 21st June, 1976. The learned Counsel appearing on behalf of the petitioner further relied upon the judgments of the Supreme Court and submitted that in view of the judgments of the Supreme Court, the petitioner was entitled to be confirmed on the expiry of initial period of two years or in any event the petitioner was entitled to be confirmed on and from 6th March, 1977 or 9th May, 1977.

19. On the other hand, Mr. Chougule, the learned Counsel appearing on behalf of the Government, submitted that the above Rule 4(4)(iv) of the Recruitment Rules of 1956 clearly indicated that the Government had power to extend the period of probation beyond two years and which power has been exercised in the present case by the Government which has extended the period of probation by the order dated 9th September, 1976 as also by the order dated 5th March, 1977 and order dated 16th April, 1980 and in the circumstances, the petitioner cannot claim to be confirmed on the expiry of the period of two years or on and from 6th March, 1977 or 9th May, 1977 as contended.

20. At the outset before considering various judgments of the Supreme Court, it would be relevant to refer to the provisions of the Bombay Judicial Service Recruitment Rules, 1956 in order to ascertain whether the respondent had the authority and the power to extend the period of probation. In the present case, as mentioned hereinabove, we are concerned with the post of Civil Judge, Junior Division and Judicial Magistrate First Class. Rule 4 of the said Rules of 1956 deals with methods of recruitment to the Junior Branch. Rule 4(1) deals with recruitment of the Judges of small Causes at places other than Bombay. Rule 4(2) deals with the recruitment of the Civil Judges, Senior Division, Chief Judicial Magistrates and Additional Chief Judicial Magistrates. Rule 4(3) deals with the recruitment of the Judges of the Small Causes Court at Bombay and Metropolitan Magistrates. Rule 4(3A) deals with appointment to the posts of Metropolitan Magistrates, Juvenile Court, Bombay. Rule 4(3B) deals with appointment of the Chief Metropolitan Magistrates and Additional Chief Metropolitan Magistrates, Bombay. Rule 4(4)(i) deals with appointment to the posts of Civil Judges, Junior Division and Judicial Magistrate of the First Class to be made by nomination. Rule 4(4)(iv) reads as follows:

"(iv) unless otherwise expressly directed, every person appointed under the last foregoing sub-rule shall be on probation for a period of two years and on the expiry of such period he may be confirmed if-

(a) there is a vacancy, and

(b) his work is found satisfactory;"

The above Rule 4(4)(iv) of the Recruitment Rules of 1956 clearly lays down that unless otherwise expressly directed every person appointed shall be on probation

for a period of two years and on the expiry of such period he may be confirmed if there is vacancy and if his work is found to be satisfactory. The above two sub-clauses (a) and (b) of sub-rule (iv) are not restrictions as contended by the learned Counsel for the petitioner and they are not to be construed as a restriction on the power of the Government as contended. On the contrary, the said two sub-clauses (a) and (b) show that the Government has the power to confirm a probationer if there is a vacancy and if his work is found to be satisfactory. In fact, the use of the word "may" in sub-rule (iv) clearly indicates that the Government has the power to extend the period of probation from time to time. The interpretation of the above rule would also be in the public interest particularly in view of the fact that the Government ought to be conferred with such a power of extension so that the Government can extend the period and confirm the probationer only after his work is found to be satisfactory. Secondly, in a given case, where a vacancy has not arisen on the expiry of the initial period of two years of probation, the Government would be entitled to extend the period of probation. Further the said sub-rule (iv) starts with the expression "unless otherwise expressly directed." This expression also indicates that the Government has a power not only to extend the period of probation but in a given case it can also reduce the period of probation provided a vacancy has accrued and that the work of the probationer is found to be satisfactory. In the circumstances, a bare reading of the above rule clearly shows that the Government has the power to extend the period of probation from time to time and which has been done in the present case as mentioned hereinabove. It is also clarified that the above expression "unless otherwise expressly directed" makes it very clear that unless there is an express direction confirming the probationer in service and unless there is written direction to that effect, the probation cannot be deemed to be confirmed as a permanent employee as contended by the petitioner. In view of the above Rule, we do not see how the Government Resolution/Circular dated 9th September, 1975 read with the memorandum dated 21st June, 1976 could be said to confer automatic confirmation on the petitioner. In the absence of any express written order of the Government confirming the petitioner, the reliance placed by the petitioner on the above Resolution dated 9th September, 1975 as also the memorandum dated 21st June, 1976 is totally misplaced and has no relevancy to the facts of the present case.

21. The view that we have taken with regard to above Rule 4(4)(iv) of the Bombay Judicial Service Recruitment Rules, 1956 also finds support from the various judgments of the Supreme Court.

(1) In the case of *State of Maharashtra v. Veerappa R. Soboji*, reported in : (1979) IILLJ393SC, a similar Rule came to be interpreted by the Supreme Court. In that case the Supreme Court was required to consider Rule 4(2) dealing with method of recruitment of the Junior Branch, Class II and Clause (iv) of sub-rule (2) of Rule 4 reads as under:

"Unless otherwise expressly directed, every person appointed under the last foregoing sub-rule shall be on probation for a period of two years and on the expiry of such period he may be confirmed is :-

(a) there is a vacancy; and

(b) his work is found satisfactory."

While interpreting the above Rule, the Supreme Court clearly observed that the plain meaning of the Rule is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. On the expiry of the said period and on the fulfilment of the requirement of sub-clauses (a) and (b) a Government servant becomes eligible for being confirmed. The rule in the present case is identical to the above rule considered by the Supreme Court and while considering the said rule the following observations of the Supreme Court clearly show that without an express order of confirmation the Government servant cannot be said to be confirmed to the post to which he was appointed as a probationer:

"There are two parts of C1.(iv)(1) that it is imperative to put every person appointed under sub-rule (2) on probation for a minimum period of two years "unless otherwise expressly directed" and (2) on the expiry of the said period of two years the person appointed may be confirmed if there is a vacancy and if his work is found to be satisfactory. The plain meaning of the rule is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. On the expiry of the said period and on the fulfilment of the requirement of sub-clauses (a) and (b) a Government servant and becomes eligible for being confirmed. But it is a matter of common knowledge in many branches of Government service including the Judiciary that for administrative reasons or otherwise the confirmation is delayed and is made at a subsequent time. It may also be delayed for watching the work of the Government servant for a further period. The expression "unless otherwise expressly directed" governs only the first part of clause (iv) and not the second as was attempted to be argued by Mr. Nariman. In my opinion the rule in question, therefore, comes under the ordinary and normal rule that without an express order of confirmation the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. It is not covered by the exceptional rule like the one which was the subject-matter of consideration of this Court in *State of Punjab Vs. Dharam Singh*, ." (2) The above view taken by us with regard to the interpretation of Rule 4(4)(iv) finds support from the judgment of the Supreme Court in the case of *(Dhanjibhai Ramjibhai v. State of Gujarat)*, reported in AIR 1985 S.C. 6003. In the said decision also the Supreme Court observed that there was no right in the probationer to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service.

(3) In the case of Beena Tiwari and Another Vs. State of Madhya Pradesh and Another, it has been laid down that where a member of Subordinate Judicial Service should be confirmed or not is absolutely the concern of the High Court, which falls under Article 235 of the Constitution of India. In the said judgment, it is further laid down that the member of the Subordinate Judicial Service putting in temporary service for five years, who had not been issued a written order of confirmation cannot claim to be deemed to be confirmed on the expiry of the stipulated period.

(4) Similarly, in the case of Shri Kedar Nath Bahl Vs. The State of Punjab and Others, , it is laid down that where a person is appointed as a probationer and a period of probation is specified, it does not follow that at the end of the period of probation he automatically stands confirmed even no order is passed in that behalf. The observations of the Supreme Court in the said judgment are directly application to the facts of the case and the said observations are as follows:

"Where a person is appointed as a probationer in any post and it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer."

(5) A similar view has also been taken by the several other judgments of the Supreme Court and it is not necessary to multiply the authorities on this point. However, the learned Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., . In the said case the appellant was employed with Bharat Electronics as salesman from 8th December, 1973. His services were terminated from 19th October, 1974. Thereupon industrial dispute was raised. By the order of the Labour Court on the evidence led by the parties it was held that the termination was in accordance with standing order and therefore, the termination order was justified. It was also held that the employee was a probationer and therefore, the termination was valid and it would not constitute retrenchment under the Industrial Disputes Act. Against the said decision of the Labour Court the matter came to the Supreme Court. In the said case the Supreme Court found that the appellant had rendered service for 240 days and therefore, the case of the workman fell u/s 258 of the Industrial Disputes Act and therefore, the workman was deemed to be in continuous service for the purposes of Chapter V-A of the Industrial Disputes Act. We fail to appreciate the relevancy of the said judgment of the Supreme Court to the facts of the present case. In the present case we are not concerned with the case of a workman under the Industrial Disputes Act.

In the circumstances, the ratio of the said decision of the Supreme Court does not apply to the facts of the present case.

(6) The learned Counsel for the petitioner thereafter relied upon the judgment of the Supreme Court in the case of *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, . In the said case the appellant joined the service as Commercial Officer on promotion and his appointment was on probation for one year against a regular vacancy with a condition that his probationary period may be extended further. By order dated 2nd October, 1981 the probationary period of the appellant was extended for more one year till 4th September, 1982. However, no further order extending the probationary period or confirming him was issued on 4th September, 1982. In the circumstances, the appellant was reverted to the original post of Office Superintendent which came to be challenged by the appellant in the High Court by filing writ petition under Article 226 of the Constitution of India. The High Court rejected the claim of confirmation and in the circumstances, appeal was filed in the Supreme Court. The main contention which found favour with the Supreme Court was that under Regulations 17 and 18 of the U.P. Co-operative Societies Employees Service Regulations 1975 it was provided that the appointment against a regular vacancy is to be made on probation for one year and this period can be extended for one year more. It was found by the Supreme Court that Regulation 17 read with proviso restricted the power of the appointing authority in extending the period of probation beyond one year. It was found by the Supreme Court that the employee appointed against regular vacancy cannot be placed on probation for a period more than two years under Regulation No. 17 and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him, he may be discharged, but the appointing authority cannot extend the period beyond two years. In the present case as mentioned hereinabove there is no such restriction as is provided in Regulation 17 of the U.P. Co-operative Societies Employees Service Regulations, 1975. Secondly, on bare reading of the above Rule 4(4)(iv) of the Bombay Judicial Service Recruitment Rules, 1956, it is clear that no such restriction is laid down. Thirdly, as mentioned hereinabove, similar rules applicable to Civil Judges, Junior Division have been interpreted by the Supreme Court in various decisions cited above which have held that there is no such restriction on the power of the Government under the above rule. In the circumstances, the ratio of the judgment of the Supreme Court in case of *Om Prakash* (supra) does not apply to the facts of the present case.

(7) The learned Counsel appearing for the petitioner thereafter invited our attention to the judgment of the Supreme Court in the case of *Dhanjibhai Ramjibhai v. State of Gujrat* (supra). In the said case the appellant was appointed to the post of Sales Tax Officer on 22nd March, 1972 on probation for two years. The period of two years expired. The appellant continued in service and no order was made confirming his appointment. On 31st March, 1975 the services of the appellant were terminated. Against the said order of termination

writ petition was filed in the High Court which was rejected. Ultimately the matter came before the Supreme Court. One of the contentions raised by the appellant was that on the expiry of two years of probation the appellant must be deemed to be confirmed as he was allowed in continuous service even after expiry of two years. The said judgment does not support the case of the petitioner. On the contrary it supports the case of the respondent. The above argument of the appellant in Dhanjibhai Ramjibhai's case was categorically rejected by following observations:-

"The second contention on behalf of the appellant is that the appellant is that the appellant must be deemed to have been confirmed inasmuch as he was allowed to continue in service even after the expiry of the period of probation of two years specified in the order of appointment. We are of opinion that when the order of appointment recited that the petitioner would be on probation for a period of two years, it conformed to Rule 5 of the Recruitment Rules which prescribes such period of probation. The Rule states further that the period of probation may be extended in accordance with the rules. The period of two years specified in the Rule is merely the initial period for which an officer may be appointed on probation. As the terms of the same Rule indicate, the period of probation may be extended. The period of two years does not represent the maximum period of probation."

22. In view of Rule 4(4)(iv) of the Bombay Judicial Service Recruitment Rules, 1956 as interpreted in the various judgments of the Supreme Court, it is clear that the Government has a right to extend the period of probation of the petitioner and the said right has been exercised from time to time as indicated hereinabove. Further in view of the said rule the petitioner is not entitled to claim automatic confirmation on the expiry of the initial period of two years or on 6th March, 1977 or 9th May, 1977 as claimed. The various orders passed by the Government extending he period of probation on 9th September, 1976, 5th March, 1977 and 16th April, 1980 ultimately shows that the petitioner continued to be a probationer right upto the date of the impugned order of simple discharge.

23. In the circumstances, we hold that the petitioner was a probationer and the impugned orders passed by the respondent dated 1st August 1980 as also dated 28th June, 1982 are orders of simple discharge and the Government never intended to punish the petitioner as alleged and that the services of the petitioner came to be terminated on the ground of unsuitability.

24. In the circumstances, the writ petition fails. Rule is discharged. However, on the facts and circumstances, there will be no order as to costs.