SUPREME COURT OF INDIA

Khazia Mohammed Muzammil

Vs.

State of Karnataka

C.A.No.596 of 2007

(Dr. B.S. Chauhan and Swatanter Kumar JJ.)

08.07.2010

JUDGEMENT

SWATANTER KUMAR, J.

1. The appellant, who was a practicing advocate, was appointed as District Judge under the Karnataka Judicial Services (Recruitment) Rules 1983 (for short `the 1983 Rules') vide Notification No. DPAR 37 SHC 96 dated 9.5.1996. In furtherance to this notification letter of appointment dated 14th May 1996 was issued where after the appellant joined the service on 15th May, 1996.

However, vide order dated 20th of May, 1996, the appellant was transferred and posted as 1st Additional City Civil & Sessions Judge, Bangalore City. It is the case of the appellant that he performed his duties with utmost diligence and had an excellent track record. His rate of disposal of the cases was very good. The High Court had scrutinized his performance and neither any adverse remarks were communicated to him nor any memo or show-cause notice was served upon him during the entire period of his service. Initially in terms of the notification/letter of appointment, he was appointed on probation for two years. According to the appellant, he had completed the

probation period successfully and there was no specific communication issued to him by the authority extending his probation period. Thus, the appellant would be deemed to be a confirmed judge as per the rules. A Sub-Committee of the Hon'ble Judges constituted by the High Court had recommended to the Full Court in its meetings held on 11th Feburary, 1999 and 15th October, 1999 for discharge of the appellant from service. It appear that in October 1999, the Registrar General of the High Court addressed a communication to the Chief Secretary of the State seeking the discharge of the appellant in terms of Rule 6 (1) Kerala Civil Service (Probation) Rules, 1977 on the ground that appellant was not `suitable for the post'. Pursuant to this recommendation, the Government issued a notification on 24th March, 2000 discharging the appellant from service. According to the appellant, the notification dated 24th March, 2000 was arbitrary, contrary to rules and was unsustainable in law. The appellant had put in 3 years 10 months and 10 days in service as on that date and therefore the appellant was entitled to confirmation. Aggrieved from the said notification dated 24th March, 2000, the appellant filed the Writ Petition in the High Court of Karnataka, Bangalore which came to be registered as Writ Petition No. 11965/2000 and raised various issues including the legal submissions referable to the relevant rules. The High Court vide its judgment dated 9th July, 2004 dismissed the Writ Petition holding that the notification dated 24th March, 2000 did not suffer from any error or illegality & no interference was called for. It will be useful to reproduce the reasoning given by the High Court which reads as follows:- " A bare reading of Rule 3 makes it clear that the period of probation shall be fixed as per the rules of recruitment specially made for any service and also that the minimum period of probation shall be two years. Rule 4 deals with the extension of reduction of period of probation. Rule 5 deals with declaration of satisfactory completion of probationary period.

Sub-rule (1) (b) of Rule 5 states that the if the appointing authority decides that the probationer is not suitable to hold the post, it may discharge him from service, if the probationary period if not extended. Rule 5(2) makes it clear that there has to be an order declaring the probationer to have completed the probationary period and if there is a delay in issuing such an order, the probationer will not be deemed to have completed the probationary period. Rule 6(1) provides for discharge of a probationer during the probationary period under the circumstances like the grounds arising out of the conditions, if any, imposed in the rules or in the order of appointment or unsuitability to hold the post.

Rule 7 states that when a probationer, whether during or at the end of probation period, is terminated for any misconduct, the termination shall be in accordance with Karnataka Civil Services (Classifications, Control and Appeal) Rules, 1957 (for short `the 1957 Rules') In the instant case, the petitioner, who was appointed on probation, though he had worked for 3 years 10 months and 10 days, was not found suitable to hold the post and no order has been passed that he has satisfactory completed the probationary period. Under the circumstances, the argument that Rule 6 (1) of KCSRs cannot be invoked and the petitioner's case falls under Rule 7 of the KCSRs is not sustainable. It is seen that the petitioner has not been removed on misconduct pending probation. So the argument that Rule 7 of the KCSRs has not been considered by this Court and the decisions referred to above are not applicable, it not acceptable in the facts of the given case as Rule 7 deals with termination for misconduct during or at the end of probation period, whereas as stated in the present case on hand, the probationer has been discharged from his services as he is found unsuitable to hold the post and there is no violation of the provisions of the 1957 Rules."

2. Aggrieved from the judgment of the High Court, the appellant has preferred the present appeal to this Court under Article 136 of the Constitution of India. The challenge to the judgment of the High Court as well as notification, dated 24th of March 2000, is on the ground that the appellant could not have remained probationer beyond the period of probation. He had held the office for a period of more than 3 years. After this period, the appellant will be deemed to have been confirmed and thus his discharge from service is contrary to the rules. A confirmed employee cannot be discharged as probationer and if there is anything against the appellant, the department i.e. High Court/Government, on that plea ought to have conducted departmental enquiry in accordance with rules. Further, it is contended that the action of the High Court and the State Government is arbitrary and without any basis. The service record of the appellant was excellent and there was nothing on the record to justify that the appellant had become `unsuitable for the post'. On the contrary, the submission on behalf of the respondents is that there cannot be a deemed confirmation. The High Court, in exercise of its power of superintendence as well as under the rules found that the appellant was entirely unsuitable for his retention in service. The service record of the appellant is also such that it does not justify his retention in service being a person under surveillance of Police prior to joining the service. The appellant, being a probationer, has rightly been discharged from service and the Writ Petition has rightly been dismissed by the High Court for valid reasons and judgment of the High Court does not call for any interference. Before we proceed to discuss the merit or otherwise of the rival contention raised before us, at the very outset, we may refer to the impugned notification which reads as under:

"CONFIRM EDIT OF KARNATAKA No. PPAR 69 SHO 99. ... Karnataka Government Secretariat, Vidhan Soudha, Bangalore, Dated 24.3.2000 NOTIFICATION In exercise of the powers conferred by Rule 6 (1) of the Karnataka Civil Services (Probation) Rules, 1977, I, V.S. RAMA DEVI, Governor of Karnataka, hereby order that Sri. Kazia Mohammed Muzzammil, Ist Additional City Civil and Sessions Judge, Bangalore City be discharged from service with immediate effect as he is unsuitable to hold the post of District Judge.

Sd/- (V.S. RANA DEVI) GOVERNOR OF KARNATAKA BY ORDER AND IN THE NAME OF THE GOVERNOR OF KARNATAKA, (V.R. TLKAL) UNDER SECRETARY TO THE GOVERNMENT DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS (SERVICES .3) xxx xxx xxx xxx

3. The bare reading of the above impugned notification shows that it is ex-facie not stigmatic. It simply discharges the appellant from service as having been found unsuitable to hold the post of District Judge. Until and unless, the appellant is able to show circumstances supported by cogent material on record that this order is stigmatic and is intended to over reach the process of law provided under the rules, there is no occasion for this Court to interfere on facts. As far as law is concerned, the question raised is with regard to the applicability of the concept of `deemed confirmation', to the present case under the service jurisprudence.

4. We may also notice that conduct of the appellant, who is a Judicial Officer, belonging to the Higher Judicial Services of the State is matter of some concern. Contradictory statements have been made in the Writ Petition before the High Court, memorandum of appeal before this Court and even in the rejoinder and further affidavit filed before this Court. Strangely, the High Court has neither contested this case nor pursued it in its correct perspective. As it appears, even appearance on behalf of the High Court was not entered upon. Despite specific orders of this Court the High Court had failed to produce the records and even no responsible officer was present. This attitude of the respondents in this court compelled the Bench to pass an order dated 20th May, 2010 which reads as under:- "This case was heard at some length yesterday and was part-heard for today. At the very outset, we must notice that from the record before us, ex-facie, it appears that the appellant before this Court has sworn the false and/or incorrect affidavits. In order to demonstrate our above observation, we must refer to the following details which have been given by the appellant in various affidavits and/or pleadings of the present case, which are as follows:

Date Age Page (s) 29.3.2000 46 28/37 23.2.2001 46 51 20.9.2004 50 18 14.10.2006 54 52 22.10.2009 57 4/5 (Appln. for Early Hearing) 30.6.2010 60 - ---------- 9.5.1996 Joined Service E 20.3.2000 WP 34 15.5.95) 25.3.2000) Counter Affidavit 44 By the High Court As would be evident that if one of the dates given by the appellant is taken to be correct, he would superannuate on 30th June, 2010, and if another date is taken, he would be only 57 years of age as on 22nd October, 2009. Besides this, he had joined service as per the letter of appointment of 9th may, 1996, but at page 34 of the paper book, he claimed to have joined service on 15th May, 1995, which on the face of it, is not a correct statement of facts. We further note that the case of the appellant is that during the period of his service, no adverse entries had been made in his service record, which has been seriously disputed by the respondents who state that even complaints were received against the appellant.

With some amount of anguish, we must also notice that the High Court appears to be callous about the whole matter. The reply filed on behalf of the High Court does not specifically dispute any of the averments made by the appellant. The reply besides being vague, is intended to benefit the appellant, which is entirely uncalled for. It has become necessary for us to know the correct position of facts before we dwell upon legal submissions raised on behalf of the appellant.

This Court vide its order dated 28th April, 2006, had expressed certain doubts and directed that the records should be produced before the Court and records should be made available before this Court at the time of hearing. Despite the fact that this case has been on Board for this entire week and was heard for considerable time yesterday and was part-heard for today, still records are not available. We are unable to appreciate this attitude of the High Court towards this case, pending in the highest Court of the land. We may also notice that yesterday some papers had been shown to us showing that the name of the appellant was placed in the "rowdy" list of the police maintained by the concerned police station and his local activities were being watched. The appellant has filed the writ petition praying for quashing and deletion of his name from the said list. This fact does not find

mention either in the reply filed by the appellant before the High Court. Learned counsel for the appellant submitted that this event was subsequent to the filing of the writ petition. Whatever be the merit or otherwise of that Writ Petition, we fail to understand why this fact was not taken note of and brought to the notice of the High Court when the police gave a verification report about the appellant which was monitored prior to the appointment of the Higher Judicial Services of the State.

We find that we are unable to appreciate the conduct of the appellant as well as that of the High Court in the present proceedings and in our view certain directions need to be issued in this regard. Before we issue any such orders or consider the conduct of either of them in accordance with law, we consider it appropriate to require the appellant to file an affidavit explaining the above-mentioned events. The High Court is also at liberty to file affidavit, if any, but the Registrar General of the High Court shall be present in Court with complete records. We are compelled to pass such directions but are left with no alternative in view of the conduct of the parties in the present appeal.

List for further hearing on 28th may, 2010.

Copy of this order be sent to the Registrar General of the High Court of Karnataka by the Registry."

5. Besides the conduct of the parties which is reflected in our above order, it is also very important to notice another facet of this case. It is not in dispute that the appellant had filed a Writ Petition being Writ No. WP No. 16244 of 2000 in the High Court praying for issuance of mandamus to the Superintendent of Police, Karwar to strike off the entries against the name of the appellant, in the `rowdy and goonda register' prior to his selection as the District Judge, maintained by the concerned Police Station. The Police has sought to justify before the Court the inclusion of the appellant's name in the list and for the reasons declared in the reply affidavit filed by the State in that case. The stand of the Government in that case was that while keeping in view the antecedents and past activities of the appellant, his name was entered in the Form No. 100 being the Communal Goonda Sheet on 8th January, 1993 under order No. 9/93 dated 2.1.1993 of the then Superintenent of Police, Uttaraka Kannada. The appellant was General Secretary of an organization called Majlis-Isa-o-Tanzim and was in the habit of harbouring criminals, who were involved in serious crimes like murder and communal riots etc. There was a specific charge against the appellant for his delivering provocative communal speeches, which contributed to aggravate communal disturbance in Bhatkal in the year 1993. He was president of the Bar Association, Bhatkal and still used to provoke young people in that institution. Nineteen people were killed and many injured in a group clash. With this background under Rules 65 and 66 of State Interchange Manual the name of the appellant was inducted on the sheet of Register of Rowdies maintained by the Karnataka Police in Form No. 100 in terms of Rule 1059 of the Karnataka Police Manual which is normally treated as confidential. Keeping all these averments in mind and the judgment of the Supreme Court, the High Court vide its order dated 3rd of November 2000 dismissed the Writ Petition and declined to declare the entries as being without basis or arbitrary. The ancillary but an important issue that flows from these facts is as to how and what the Police Verification Report was submitted to the Government/High Court

before the appellant was permitted to join his duties as an Additional District Judge? Normally, the person, with such antecedents, will hardly be permitted to join service of the Government and, particularly, the post of a Judge. The High Court on the administrative side also appears to have dealt with the matter in a very casual manner. The averments made in the Writ Petition 16244 of 2000, if it were true, it was a matter of serious concern for the High Court as he was being appointed as an Additional District and Sessions Judge and would have remained as such for a number of years. It was expected of the Government as well as the High Court to have the character verification report before the appointment letter was issued. The cumulative effect of the conduct of the appellant in making incorrect averments in the Court proceedings as well as the fact that his name was in the `Rowdie list' of the concerned Police Station are specific grounds for the Courts not to exercise its discretionary and inherent jurisdiction under Articles 136 and 226 of the Constitution of India in favour of the appellant. These reasons have to be given definite significance, particularly when the High Court has declined to quash the entries against the appellant and inclusion of his name in the `Rowdie list'. Another aspect of this case, to which our attention has been invited, is that for the first time, the High Court has filed the detailed affidavit in this Court after passing of the order dated 20th May, 2010. We failed to understand why appropriate and detailed affidavit was not even filed before the Court. During the course of hearing, we have also called for the original Confidential Reports of the appellant, copies whereof have been filed. The Confidential Reports, which could have been recorded in the case of the appellant as per the rules and regulations, or resolutions of the Full Court of High Court of Karnataka, will be for the years 1996-97, 1997-98 and 1998-99.

There is only one Confidential Report on record for the year 1997 wherein the appellant has been graded as `Satisfactory'. This falsifies his claim that he had outstanding service record in regard to disposal of cases and other service related matters.

6. With some regret and anxiety, we must notice that for all the remaining years no Confidential Report of this officer, and in fact, many others, as the record now reflects, have been recorded by the High Court. We are unable to overlook this aspect, as it is just not a simplicitor question of writing the Confidential Report of a given officer but adversely affects the administration of justice on the one hand and dilutes the constitutional power & functions of Superintendence of the High court, on the other. A note was put up by the Registrar General before the then Hon'ble Acting Chief Justice that Confidential Report was put up before Hon'ble Chief Justice for recording remarks but that were not recorded and orders were being obtained now in that behalf. However, even thereafter no confidential remarks were recorded. We may also notice that reference was made to the resolution of the Full Court passed in its meeting dated 15th March,1988 which has been referred to in the office note, reads as under:- "Resolved that Judicial Officers Annual Confidential Reports shall be recorded in the Proforma at Annexure - `A' for the period from 1.1.1988 onwards."

7. Even thereafter, the records were submitted to the concerned Judge of the High court and no Confidential Reports were recorded.

All this demonstrates not a very healthy state of affairs in relation to the recording of Confidential Reports of the officers in the Judicial Services of the State of Karnataka. The Confidential Report of an officer is a proper document, which is expected to be prepared in accordance with the Rules and practice of the Court, to form the basis while considering the officer for promotion to higher post and all other service related matters, in future. Non-writing of the Confidential Reports is bound to have unfair results. It affect the morale of the members of the service. The timely written Confidential Reports would help in putting an officer at notice, if he is expected to improve in discharging of his duties and in the present days where 25% (now 10%) of the vacancies in Higher Judicial Service cadre are expected to be filled, from out of turn promotions after holding of written examination and interview. Highly competitive standard of service discipline and values are expected to be maintained by the Judicial Officers as that alone can help them for better advancement of their service career. In such circumstances, the significance of proper Superintendence of the High Court over the Judicial Officers has a much greater significance than what it was in the past years. In fact, in our view, it is mandatory that such Confidential Reports should be elaborate and written timely to avoid any prejudice to the Administration as well as to the officer concerned.

8. We do express a pious hope that Hon'ble Chief Justice of the Karnataka High Court would examine this aspect and take corrective steps. We also do hope that appropriate decisions of the High Court are in place to ensure writing of Annual Confidential Reports in a comprehensive manner at regular intervals and timely. It is a matter which should invite the attention of all concerned without any further delay. We direct the Registry to send a copy of this Judgment to Hon'ble Chief Justice of the Karnataka High Court to invite his kind attention to these aspects.

9. Having discussed in some elaboration the conduct of the appellant as well as his antecedents, now we proceed to examine the merits of the legal controversy raised in the present case on behalf of the appellant in relation to `deemed confirmation'. The `deemed confirmation' is an aspect which is known to the service jurisprudence now for a considerable time. Both the views have been taken by the Court. Firstly, there can be `deemed confirmation' after an employee has completed the maximum probation period provided under the Rules where after, his entitlement and conditions of service are placed at parity with the confirmed employee.

Secondly, that there would be no `deemed confirmation' and at best after completion of maximum probation period provided under the Rules governing the employee, the employee becomes eligible for being confirmed in his post. His period of probation remains in force till written document of successful completion of probation is issued by the Competent Authority. Having examined the various judgments cited at the bar, including that of all larger Benches, it is not possible for this Bench to state which of the view is correct enunciation of law or otherwise. We are of the considered opinion, as to what view has to be taken, would depend upon the facts of a given case and the relevant Rules in force. It will be cumulative effect of these two basics that would determine application of the principle of law to the facts of that case. Thus, it will be necessary for us to refer to this legal contention in some elucidation. According to the appellant the language of Rule 3 of 1977 Rules provides that the probation period can not be extended beyond 3 years and upon expiry

of such period the appellant would be deemed to have been confirmed. To substantiate this contention, the appellant relied upon Rules 3 and 4 of 1977 Rules and Entry 2 of schedule under Rule 2 of 1983 Rules which provide that there shall be two year probation during which period, the officer was to undergo such training, as may be specified by the High Court of Karnataka. Therefore, the submission is that once the maximum period of probation provided under these Rules has expired the officer will stand automatically confirmed and thus is incapable of being discharged under Rule 5(B) of the 1977 Rules.

We shall now proceed to discuss the judgments which have been relied upon by the appellant in support of his contentions. On merits these judgments are hardly applicable to the facts of the present case. While examining the cited judgments this Court has to keep in mind the specific rules relating to alleged automatic confirmation of the appellant and the fact that the appellant failed to satisfactorily complete the period of probation or extended period of probation in terms of Rule 5(B) of the 1977 Rules. The 1983 Rules ought to be read in conjunction with the 1977 Rules as they have duly been adopted by the High Court. The 1977 Rules are specific Rules on the subject in question while 1983 Rules are general Rules and in any case there is no conflict between the two as they seek to achieve the same object in relation to probation and effects thereof in relation to different matters.

10. Not only the Rules but even the principles of service jurisprudence fully recognizes the status of employee as probationer and a confirmed employee. Probationer in terms of Rule 2 (ii) of 1977 Rules means a Government servant on probation. Rules 3 to 6 are the relevant Rules which specifically deal with the period of probation, extension or reduction of period of probation, satisfactorily completion of the probation period and discharge of a probationer during the period of probation. The relevant Rules read as under:

"3. Period of Probation:- The period of probation shall be as may be provided for in the Rules of recruitment specially made for any service or post, which shall not be less than two year, excluding the period if any, during which the probationer was on extraordinary leave.

4. Extension or reduction of period:- (1) The period of probation may, for reason to be recorded, in writing, be extended- (i) by the Governor or the Government by such period as he or it deems fit;

(ii) by any other appointing authority by such period not exceeding half the prescribed period of probation;

Provided that if within the prescribed or extended period of probation, a probationer has appeared for any examination or tests required to be passed during the period of probation and the results

thereof are not known before the expiry of such period, then the period of probation shall be deemed to have been extended until the publication of the results of such examinations or tests or of the first of them in which he fails to pass.

(2) The Government may, by order, reduce the period of probation of a probationer by such period not exceeding the period during which he discharged the duties of the post to which he was appointed or of a post the duties of which are in the opinion of the Government, similar (and) equivalent to those of such post.

5. Declaration of satisfactory completion of probation etc.:- (1) At the end of the prescribed or as the case may be the reduced or extended period of probation the appointing authority shall consider the suitability of the probationer to hold the post to which he was appointed, and- (a) if it decides that the probationer is suitable to hold the post to which he was appointed and has passed the special examinations or test, if any, required to be passed during the period of probation it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation and such an order shall have effect from the date of expiry of the prescribed, reduced or extended period of probation;

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

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

Note:- In this Rules and Rules 6'discharge' in the case of a probationer appointed from another service or post, means reversion to that service or post.

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

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

11. Now, let us analyze these Rules. No doubt Rule 3 states that the period of probation shall be, as may be, provided for in the Rules of recruitment specially made for any service or post, which shall not be less than two years (emphasis supplied). Out of which period extraordinary leave will have to be excluded. Thus the Rules contemplate that every service provide Rules relating to probation.

But the probation period should not be less than two years. The emphasis of the Rules is that minimum period of probation has to be two years. The period of probation can be extended for reason to be recorded by the Competent Authority by such period not exceeding half of the prescribed period of probation. Interestingly, to this Rule the framers of the Rules have introduced proviso, which gives discretion to the Authorities and, in fact, introduced deemed extension in the event of the probationer has appeared for any exam or result thereof has not been declared within the period of probation and extended period. The Rule, therefore, contemplates deemed extension of probation period where the Authorities have not passed any order for extending or declining to extend the period of probation provided the circumstances stated therein are satisfied.

12. The purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the Authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation. Once these ingredients are satisfied the Competent Authority may confirm the employee under Rule 5 of the 1977 Rules. Rule 5(2) places an obligation upon the Authority that at the end of the prescribed period of probation, the Authority shall consider the suitability of the probationer to the post to which he is appointed and take a conscious decision whether he is suitable to hold the post and issue an order declaring that the probationer has satisfactorily competed his period or pass an order extending the period of probation etc. Rule 5(b) empowers the Authority that in the event it is of the view that the period of probation has not been satisfactorily completed or has not passed the special examinations, it may discharge him from service unless the period of probation is extended. Rule 5(2) has been coveted with negative language. It specifically prescribes that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. This Rule further clarifies that if there is a delay in issuance of an order under sub-Rule (1), it shall not entitle the probationer to be deemed to have satisfactorily completed his probation. In other words, the framers of the Rules have introduced a double restriction to the concept of automatic confirmation or deemed satisfactorily completion of the probation period. Firstly, the specific order is required to be issued in that regard and secondly, delay in issuance of such orders does not tilt the balance in favour of the employee. Rule 6 (1) states that the Competent Authority may, at any time, during the period of probation, discharge from service, a probationer on grounds arising out of the conditions, if any, imposed by the Rules or in the order of appointment, or on account of his unsuitability for the service of post. However, the said order of discharge would take effect only after it is confirmed by the next higher authority. Rule 6(2) specifically excludes the application or holding of formal

proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules 1957. It says that such course will not be necessary. In light of this statutory provision, let us also examine the probation period referred to under item No. 2 of Rule 2 of 1983 Rules. Rule states that probation period will be of 2 years and further mandates during that period of probation, the officer must undergo a training, as may be specified by the High Court. This itself has been indicated under the head `minimum qualifications'. It, therefore, clearly shows that it is not the provision dealing with the probation period, extension and discharge of a probationer during that period but is primarily relatable to the minimum qualifications, which are to be essentially satisfied by the officer concerned before he takes over his appointment as a regular judge. The reference to the probation period has to be examined and interpreted with reference to and in conjunction with 1977 Rules which are the primary Rules dealing with probation. These Rules have admittedly been adopted by the High Court. Under the 1983 Rules, the emphasis is on performance and training during the period of probation. In other words, the primary purpose of these Rules is only to ensure that the concerned officer undergoes training during the period of probation. While the significance under the 1983 Rules is on training, under 1977 Rules, all matters relating to probation are specifically dealt with. It would not be permissible to read the relevant part of 1983 Rules to say that it mandates that probation period shall be only for two years and not more. If that was to be accepted, all provisions under Rules 3 to 6 of 1977 Rules will become redundant and ineffective. In fact, it would frustrate the very purpose of framing the 1977 Rules. What will be the period of probation, the circumstances under which it can be extended or reduces and discharge of the Probationer Officer in the event of unsuitability etc. are only dealt with under the 1977 Rules. The 1983 Rules would have to be read harmoniously with 1977 Rules to achieve the real purpose of proper and timely training of Judicial Officers on the one hand and appropriate control over the matters relating to probation of the officers on the other. That, in fact, is the precise reason as to why 1983 Rules do not deal specifically with any of the aspects of probation. In view of this discussion the contention of the appellants has to be rejected.

13. Having referred to the specific Rules on the subject and the entire scheme under the relevant provisions relating to different aspects of probation, let us examine the law and the pronouncements of this Court in some detail. We have already noticed that two views are prevalent. Primarily, the Court has taken the diametrical opposite view. One which accepts the application of the deemed confirmation after the expiry of the prescribed period of probation, while other taking the view that it will not be appropriate to apply the concept of deemed confirmation to the officers on probation as that is not the intent of law. In our opinion, the rules and regulations governing a particular service are bound to have greater impact on determining such question and that is the precise reason that we have discussed Rules 3 to 6 of 1977 Rules in the earlier part of the judgment. What view out of the two views indicated above should be followed in the facts of the present case can be fairly stated only after we have discussed the earlier judgment of the larger as well as equi benches on this aspect. Let us, at the very outset, refer to the Constitution Bench Judgment of this Court in the case of State of Punjab v. Dharam Singh, [AIR 1968 SC 1210] In that case the Court was concerned with Rule 6(3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 which fixed certain period beyond which the probation period cannot be extended and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation. The view taken by the Court was that there would be confirmation of the employee in the post by implication. We may refer to the following paragraphs of the judgment of this Court:

"8. The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation up to October 1, 1960 by implication. But under the proviso to Rule 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to Rule 6(3), it is not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers.

9. Immediately upon completion of the extended period of probation on October 1, 1960, the appointing authority could dispense with the services of the respondents if their work or conduct during the period of probation was in the opinion of the authority unsatisfactory. Instead of dispensing with their services on completion of the extended period of probation, the authority continued them in their posts until sometime in 1963, and allowed them to draw annual increments of salary including the increment which fell due on October 1, 1962. The rules did not require them to pass any test or to fulfil any other condition before confirmation. There was no compelling reason for dispensing with their services and re-employing them as temporary employees on October 1, 1960, and the High Court rightly refused to draw the inference that they were so discharged from services and re-employed. In these circumstances, the High Court rightly held that the respondents must be deemed to have been confirmed in their posts. Though the appointing authority did not pass formal orders of confirmation in writing, it should be presumed to have passed orders of confirmation by so allowing them to continue in their posts after October 1, 1960.

After such confirmation, the authority had no power to dispense with their services under Rule 6(3) on the ground that their work or conduct during the period of probation was unsatisfactory. It follows that on the dates of the impugned orders, the respondents had the right to hold their posts. The impugned orders deprived them of this right and amounted to removal from service by way of punishment. The removal from service could not be made without following the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and without conforming to the constitutional requirements of Article 311 of the Constitution. As the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 was not followed and as the constitutional protection of Article 311 was violated, the impugned orders were rightly set aside by the High Court."

Seven Judge Bench of this Court, in the case of Shamsher vs. State of Punjab [(1974) 2 SCC 834], was concerned primarily, with the question whether termination during probation could be viewed as a punitive action in some case or always has to be as discharge simplicitor during the said period. The Court expressed the view 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, it can never amount to punishment. In the facts and circumstances of the case if the probationer is discharged on the ground of insufficiecy or for similar reasons without a proper enquiry and without his getting a reasonable opportunity to show cause against his discharge it may in a given case

amount to removal from service within Article 311 (2) of the Constitution of India. But while dealing with this principle question the Bench even discussed, at some length, whether a probationer can automatically be confirmed on the expiry of period of probation. The Court considered the earlier judgment of this Court in Dharam Singh's case (supra) discussing the case of appellant, who had completed his initial period of two years' probation on 11th November, 1967 and the maximum period of three years' probation on 11th November, 1968 and by reason of the fact that he continued in service after the expiry of the maximum period of probation he became confirmed, was the contention raised before the Bench. In that case the relevant Rule 7 (1) provided that every subordinate Judge, in the first instance, be appointed on probation for two years but this period may be extended from time to time expressly or impliedly so that the total period of probation does not exceed three years. Explanation to Rule 5 (1) further provided that period of probation shall be deemed to have been extended if a Subordinate Judge is not confirmed on the expiry of his period of probation. The appellant had also placed reliance on Dharam Singh' case (supra) to contend that the only view possible was that he would be deemed to have been confirmed. However, on the facts of the case before the Bench the Court held as under:

"Any confirmation by implication is negatived in the present case because before the completion of three years the High Court found prima facie that the work as well as the conduct of the appellant was unsatisfactory and a notice was given to the appellant on October 4, 1968 to show cause as to why his services should not be terminated.

Furthermore, Rule 9 shows that the employment of a probationer can be proposed to be terminated whether during or at the end of the period of probation. This indicates that where the notice is given at the end of the probation the period of probation gets extended till the inquiry proceedings commenced by the notice under Rule 9 come to an end. In this background the explanation to Rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation. This implied extension where a Subordinate Judge is not confirmed on the expiry of the period of probation is not found in Dharam Singh's case. (AIR 1968 SC 1210) This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh case and that a probationer is not in fact confirmed till an order of confirmation is made.

In this context reference may be made to the proviso to Rule 7(3). The proviso to the rule states that the completion of the maximum period of three years' probation would not confer on him the right to be confirmed till there is a permanent vacancy in the cadre.

Rule 7(3) states that an express order of confirmation is necessary. The proviso to Rule 7(3) is in the negative form that the completion of the maximum period of three years would not confer a right of confirmation till there is a permanent vacancy in the cadre.

The period of probation is therefore extended by implication until the proceedings commenced against a probationer like the appellant are concluded to enable the Government to decide whether a probationer should be confirmed or his services should be terminated. No confirmation by implication can arise in the present case in the facts and circumstances as also by the meaning and operation of Rules 7(1) and 7(3) as aforesaid.

It is necessary at this stage to refer to the second proviso to Rule 7(3) which came into existence on November 19, 1970. That proviso of course does not apply to the facts of the present case. That proviso states that if the report of the High Court regarding the unsatisfactory work or conduct of the probationer is made to the Governor before the expiry of the maximum period of probation, further proceedings in the matter may be taken and orders passed by the Governor of Punjab dispensing with his services or reverting him to his substantive post even after the expiry of the maximum period of probation. The second proviso makes explicit which is implicit in Rule 7(1) and Rule 7(3) that the period of probation gets extended till the proceedings commenced by the notice come to an end either by confirmation or discharge of the probationer.

In the present case, no confirmation by implication can arise by reason of the notice to show cause given on October 4, 1968 the enquiry by the Director of Vigilance to enquire into allegations and the operation of Rule 7 of the Service Rules that the probation shall be extended impliedly if a Subordinate Judge is not confirmed before the expiry of the period of probation. Inasmuch as Ishwar Chand Agarwal was not confirmed at the end of the period of probation confirmation by implication is nullified."

14. Before we discuss the subsequent judgment to these landmark judgments of this Court it will be quite appropriate to notice that the divergent views by different Benches of this Court and, more so, by different High Courts have been the subject matter of concern and have been noticed again by different Benches of this Court. In the case of Dayaram Dayal vs. State of M.P. [(1997) 7 SCC 443].

The Court specifically noticed the two line of rulings pronounced by this Court in its different judgments. At the cost of some repetition, we may notice that one line of judgments held that mere continuation of service beyond the period of probation does not amount to confirmation unless it was so specifically provided. The other line, though in very few cases, but, has been taken by this Court is that where there is provision in the Rules for initial probation and extension thereof, a maximum period of such extension is also provided beyond which it is not permissible to extend probation.

However, the Bench dealing with the case of Dayaram Dayal's case (supra) did demonstrate that there was not any serious conflict between the two sets of decisions and it depends on the conditions

contained in the order of appointment and the relevant rules applicable. Though the Bench in that case held that there was confirmation of the employee and while setting aside the order of termination, granted liberty to hold departmental enquiry in accordance with law. In order to analyze the reasoning recorded by the Bench we may refer to the following paragraphs as they would throw proper insight into the discussion:

"9. The other line of cases are those where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. A question as to its effect arose before the Constitution Bench in State of Punjab v. Dharam Singh [AIR 1968 SC 1210].

The relevant rule there provided initially for a one-year probation and then for extension thereof subject to a maximum of three years.

The petitioner in that case was on probation from 1-10-1957 for one year and was continued beyond the extended period of three years (in all four years) and terminated in 1963 without any departmental inquiry. A Constitution Bench of this Court referred Sukhbans Singh v. State of Punjab [AIR 1962 SC 1711], G.S. Ramaswamy v. Inspector General of Police [AIR 1966 SC 175] and State of U.P. v. Akbar Ali Khan [AIR1966 SC 1842] cases and distinguished the same as cases where the rules did not provide for a maximum period of probation but that if the rule, as in the case before them provided for a maximum, then that was an implication that the officer was not in the position of a probationer after the expiry of the maximum period. The presumption of his continuing as a probationer was negatived by the fixation of a maximum time-limit for the extension of probation. The termination after expiry of four years, that is after the maximum period for which probation could be extended, was held to be invalid. This view has been consistently followed in Om Parkash Maurya v. U.P. Coop. Sugar Factories' Federation [(1986) Supp. SCC 95]; M.K. Agarwal v. Gurgaon Gramin Bank [{1987) Supp SCC 643] and State of Gujarat v. Akhilesh C. Bhargav [(1987) 4 SCC 482] which are all cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as the officer must be deemed to have been confirmed.

10. The decision of the Constitution Bench in State of Punjab v. Dharam Singh [AIR 1968 SC 1210] was accepted by the seven-Judge Bench in Samsher Singh v. State of Punjab [(1974) 2 SCC 831]. However it was distinguished on account of a further special provision in the relevant rules applicable in Samsher Singh case. The rule there provided for an initial period of 2 years of probation and for a further period of one year as the maximum. One of the officers, Ishwar Chand Agarwal in that case completed the initial period of 2 years on 11-11-1967 and the maximum on 11-11-1968, and after completion of total 3 years his services were terminated on 15-12-1969. But still Dharam Singh case was not applied because the Rules contained a special provision for continuation of the probation even beyond the maximum of 3 years. The Explanation to Rule 7(1) stated (see p. 852) that the period of probation shall be deemed extended if a Subordinate Judge is not confirmed

on the expiry of his period of probation. The Court held (p. 853) that this provision applied to the extended period of probation. It observed:

(SCC para 71) "71. ... This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh case and that a probationer is not in fact confirmed till an order of confirmation is made.

(emphasis supplied)"

Thus Samsher Singh case while it accepted Dharam Singh case is still not covered by that case because of the special Explanation which clearly deemed the probation as continuing beyond the maximum period of probation as long as no confirmation order was passed.

11. Similarly, the case in Municipal Corpn. v. Ashok Kumar Misra [(1991) 3 SCC 325 accepted Dharam Singh case and the cases which followed it but distinguished that line of cases on account of another special provision in the rules. There the relevant rule provided for a maximum of one year for the extended period of probation but there was a Note under Rule 8(2) of the Madhya Pradesh Government Servants General Conditions of Service Rules, 1961. Rule 8(2) of the Rules and the Note read:

"8. (2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

Note.--A probationer whose period of probation is not extended under this sub-rule, but who has neither been confirmed nor discharged from service at the end of the period of probation shall be deemed to have been continued in service, subject to the condition of his service being terminable on the expiry of a notice of one calendar month given in writing by either side."

It was held by this Court as follows: (SCC p. 328, para 4) "4. ... Under the Note to sub-rule (2) if the probationer is neither confirmed nor discharged from service at the end of the period of probation, he shall be deemed to have been continued in service as probationer subject to the condition of his service being terminated on the expiry of a notice of one calendar month given in writing by either side." The consequence of the Note was explained further as follows: (pp. 328-29) "As per sub-rule (6), on passing the prescribed departmental examination and on successful completion of the period of probation, the probationer shall be confirmed in the service or post to which he has been appointed. Then he becomes an approved probationer. Therefore, after the expiry of the period of

probation and before its confirmation, he would be deemed to have been continued in service as a probationer.

Confirmation of probation would be subject to satisfactory completion of the probation and to pass in the prescribed examinations. Expiry of the period of probation, therefore, does not entitle him with a right of deemed confirmation. The rule contemplates to pass an express order of confirmation in that regard. By issue of notice of one calendar month in writing by either side, the tenure could be put to an end, which was done in this case."

(emphasis supplied) It is clear that the Court distinguished Dharam Singh, Om Parkash Maurya, M.K. Agarwal, and Akhilesh Bhargava because of the Note under Rule 8(2), even though the rule itself provided a maximum of one year for extension of probation.

12. Thus, even though the maximum period for extension could lead to an indication that the officer is deemed to be confirmed, still special provisions in such rules could negative such an intention.

13. It is, therefore, clear that the present case is one where the rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore the case squarely falls within the second line of cases, namely, Dharam Singh case and the provision for a maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. It is also significant that in the case before us the effect of the rule fixing a maximum period of probation is not whittled down by any other provision in the rules such as the one contained in Samsher Singh case or in Ashok Kumar Misra case. Though a plea was raised that termination of service could be effected by serving one month's notice or paying salary in lieu thereof, there is no such provision in the order of appointment nor was any rule relied upon for supporting such a contention."

15. Similar view was also taken by another Bench of this Court in the case of Karnataka State Road Transport Corporation vs. S. Manjunath [(2000) 5 SCC 250]. In that case the employees had claimed that after the expiry of prescribed period of probation they would be deemed to be confirmed employees and their services were not liable to be terminated simplicitor. Regulation 11 (8), which was pressed into service by the Corporation, provided that a person should not be considered to have satisfactorily completed the period of probation unless specific order to that effect is made and the delay in issuance of certificate would not entitle the person to be deemed to have satisfactorily completed the period of probation. This Court, while noticing that Rule 11(8) was applicable to promotees alone because of the expression of `officiating' having been used, the appellants, before the Court were direct recruits, therefore, covered under Regulation 11 (1) which provides that the probation period shall be for two years extendable by one year and that the period of probation shall not be further extended. In this view of the matter and while referring to the case of Dharam Singh (supra) and Wasim Beg vs. State of U.P. [(1998) 3 SCC 321] the Court further

noticed that the two view theory expressed in the case of Dayaram (supra) was further extended in the case of Wasim Beg (supra) and after discussing the entire gamut of law such cases were classified into three categories. After detailed discussion on the subject the Court held as under:

"10. This Court had an occasion to review, analyse critically and clarify the principles on an exhaustive consideration of the entire case-law in two recent decisions reported in Dayaram Dayalv. State of M.P. [(1997) 7 SCC 443] and Wasim Beg v. State of U.P. [(1998) 3 SCC 321]. One line of cases has held that if in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed and there is no bar on the power of termination of the officer after the expiry of the initial or extended period of probation. This is because at the end of probation he becomes merely qualified or eligible for substantive permanent appointment. The other line of cases are those where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The Constitution Bench which dealt with the case reported in State of Punjab v. Dharam Singh[AIR 1968 SC 1210] while distinguishing the other line of cases held that the presumption about continuation, beyond the period of probation, as a probationer stood negatived by the fixation of a maximum time- limit for the extension of probation.

Consequently, in such cases the termination after expiry of the maximum period up to which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

11. The principles laid down in Dharam Singh case though were accepted in another Constitution Bench of a larger composition in the case reported in Samsher Singh v. State of Punjab [(1974)2SCC831] the special provisions contained in the relevant Rules taken up for consideration therein were held to indicate an intention not to treat the officer as deemed to have been confirmed, in the light of the specific stipulation that the period of probation shall be deemed to be extended if the officer concerned was not confirmed on the expiry of his period of probation. Despite the indication of a maximum period of probation, the implied extension was held to render the maximum period of probation a directory one and not mandatory. Hence, it was held that a probationer in such class of cases is not to be considered confirmed, till an order of confirmation is actually made. The further question for consideration in such category of cases where the maximum period of probation has been fixed would be, as to whether there are anything else in the rules which had the effect of whittling down the right to deemed confirmation on account of the prescription of a maximum period of probation beyond which there is an embargo upon further extension being made, and such stipulation was found wanting in Dayaram Dayal case.

14. As indicated by us, the Regulation deals with two different categories of cases -- one about the "probation" of an appointee other than by way of promotion and the other relating to "officiation" of

a person appointed on promotion. The similarity of purpose and identity of object apart, of such provision, there is an obvious difference and positive distinction disclosed in the manner they have to be actually dealt with. The deliberate use of two different phraseology "probation" and "officiation" cannot be so lightly ignored obliterating the substantial variation in the method of handling such categories of persons envisaged by the Regulations. The mere fact that a reference is made to sub- regulation (3) also in the later part of sub- regulation (8) of the Regulation could not be used to apply all the provisions relating to the category of appointees on "officiation" to the other category of appointees on "probation".

The stipulation in sub-regulation (8) of the Regulation when making the passing of an order, a condition precedent for satisfactory completion specifically refers only to the completion of "period of officiation". Similarly, notwithstanding a reference made to sub- regulation (3) along side sub-regulation (4), in stipulating the consequences of any delay in making an order declaring satisfactory completion, the reference is confined only to deemed satisfaction and completion of "the period of officiation", and not of probation.

Sub-regulation (9) of the Regulation insofar as it provides for confirmation as a sequel to declaration, only deals with a promotee to a temporary post and not of the other category.

While dealing with the termination of a candidate, not found suitable for the post, sub-regulation (3) of the Regulation envisages such termination being made at any time "within the period of probation", and not at any time after the completion of such maximum period of probation. Consequently, the cases on hand also would fall within the category of cases dealt with in Dayaram Dayal case and Wasim Beg case and the services of the respondents could not be put an end to except by means of departmental disciplinary proceedings, after following the mandatory requirements of law. Therefore, the High Court cannot be faulted for interfering with the orders of termination of the services of the respondents."

Therefore, the appeals referred by the Corporation came to be dismissed as the employee had attained the status of confirmed employee.

16. Now let us examine the other view where the Courts have declined to accept the contention that the employees were entitled to automatic confirmation after expiry of the probation period. In the case of High Court of Madhya Pradesh vs. Satya Narayan Jhavar [(2001) 7 SCC 161] a three Judge Bench of this Court reiterated the three line of cases while referring to Rule 24(1) which provided maximum period of probation, examined the question of confirmation of such a probationer depending upon his fitness for such confirmation and his passing of the departmental examination by the higher standards. Thus declined to accept the principle of automatic or deemed confirmation the Court held as under:

"11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation.

The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test he cannot be deemed to have been confirmed merely because the said period has expired.

xxx xxx xxx xxx 35 In the case on hand, correctness of the interpretation given by this Court to Rule 24 of the Rules in the case of Dayaram Dayal v. State of M.P. [(1997) 7 SCC 443] is the bone of contention. In the aforesaid case, no doubt, this Court has held that a maximum period of probation having been provided under sub-rule (1) of Rule 24, if a probationer's service is not terminated and he is allowed to continue thereafter it will be a case of deemed confirmation and the sheet anchor of the aforesaid conclusion is the Constitution Bench decision of this Court in the case of State of Punjab v. Dharam Singh [AIR 1968 SC 1210]. But, in our considered opinion in the case of Dayaram Dayal. Rule 24 of the Rules has not been interpreted in its proper perspective. A plain reading of different sub- rules of Rule 24 would indicate that every candidate appointed to the cadre will go for initial training for six months whereafter he would be appointed on probation for a period of 2 years and the said period of probation would be extended for a further period not exceeding 2 years. Thus, under sub-rule (1) of Rule 24 a maximum period of 4 years' probation has been provided. The aforesaid sub-rule also stipulates that at the end of the probation period the appointee could be confirmed subject to his fitness for confirmation and to his having passed the departmental examination, as may be prescribed. In the very sub-rule, therefore, while a maximum period of probation has been indicated, yet the question of confirmation of such a probationer is dependent upon his fitness for such confirmation and his passing of the departmental examination by the higher standard, as prescribed. It necessarily stipulates that the question of confirmation can be considered at the end of the period of probation, and on such consideration if the probationer is found suitable by the appointing authority and he is found to have passed the prescribed departmental examination then the appointing authority may issue an order of confirmation. It is too well settled that an order of confirmation is a positive act on the part of the employer which the employer is required to pass in accordance with the Rules governing the question of confirmation subject to a finding that the probationer is in fact fit for confirmation. This being the position under sub-rule (1) of Rule 24, it is difficult for us to accept the proposition, broadly laid down in the case

of Dayaram Dayal and to hold that since a maximum period of probation has been provided thereunder, at the end of that period the probationer must be held to be deemed to be confirmed on the basis of the judgment of this Court in the case of Dharam Singh."

17. This view was followed by another two Judge Bench of this Court in a subsequent judgment relating to judicial officers in Registrar, High Court of Gujarat vs. C.G. Sharma [(2005) 1 SCC 132] holding that termination was proper, no opportunity ought need to be granted because it was a matter of pure subjective satisfaction relating to overall performance. Referring to Rule 5(4) of Gujarat Judicial Service Recruitment Rules, 1961 the Court held as under:

"26. A large number of authorities were cited before us by both the parties. However, it is not necessary to go into the details of all those cases for the simple reason that sub- rule (4) of Rule 5 of the Rules is in pari materia with the Rule which was under consideration in the case of State of Maharashtra v. Veerappa R Saboji [(1979) 4 SCC 466] and we find that even if the period of two years expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, work has to be satisfactory which is a prerequisite or precondition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years as mentioned in the Rule, there is no question of deemed confirmation. The language of the Rule itself excludes any chance of giving deemed or automatic confirmation because the confirmation is to be ordered if there is a vacancy and if the work is found to be satisfactory. There is no question of confirmation and, therefore, deemed confirmation, in the light of the language of this Rule, is ruled out. We are, therefore, of the opinion that the argument advanced by learned counsel for the respondent on this aspect has no merits and no leg to stand. The learned Single Judge and the learned Judges of the Division Bench have rightly come to the conclusion that there is no automatic confirmation on the expiry of the period of two years and on the expiry of the said period of two years, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory. The Rule also does not say that the two years' period of probation, as mentioned in the Rule, is the maximum period of probation and the probation cannot be extended beyond the period of two years. We are, therefore, of the opinion that there is no question of automatic or deemed confirmation, as contended by the learned counsel for the respondent. We, therefore, answer this issue in the negative and against the respondent.

43. But the facts and circumstances in the case on hand are entirely different and the administrative side of the High Court and the Full Court were right in taking the decision to terminate the services of the respondent, rightly so, on the basis of the records placed before them. We are also satisfied, after perusing the confidential reports and other relevant vigilance files, etc. that the respondent is not entitled to continue as a judicial officer. The order of termination is termination simpliciter and not punitive in nature and, therefore, no opportunity needs to be given to the respondent herein. Since the overall performance of the respondent was found to be unsatisfactory by the High Court during the period of probation, it was decided by the High Court that the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of

Articles 14, 16 and 311 of the Constitution. The law on the point is crystallised that the probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Under the relevant Rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and in that view of the matter, the contentions of the respondent that the respondent's services were deemed to have been continued on the expiry of the probation period, are misconceived."

18. On a clear analysis of the above enunciated law, particularly, the Seven Judge Bench judgment of this Court in the case of Samsher Singh (supra) and three Judge Bench judgments, which are certainly the larger Benches and are binding on us, the Courts have taken the view with reference to the facts and relevant Rules involved in those cases that the principle of `automatic' or `deemed confirmation' would not be attracted. The pith and substance of the stated principles of law is that it will be the facts and the Rules, which will have to be examined by the Courts as a condition precedent to the application of the dictum stated in any of the line of the cases afore noticed. There can be cases where the Rules require a definite act on the part of the employer before officer on probation can be confirmed. In other words, there may a Rule or Regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction issue an order of confirmation. Where the Rules are of this nature the question of automatic confirmation would not even arise. Of course, every authority is expected to act properly and expeditiously. It cannot and ought not to keep issuance of such order in abeyance without any reason or justification. While there could be some other cases where the Rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties, even in those cases it is difficult to attract the application of this doctrine. However, there will be cases where not only such specific Rules, as noticed above, are absent but the Rules specifically prohibit extension of the period of probation or even specifically provide that upon expiry of that period he shall attain the status of a temporary or a confirmed employee.

In such cases, again, two situations would rise: one, that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The Courts have repeatedly held that it may not be possible to prescribe a straight jacket formulae of universal implementation for all cases involving such questions. It will always depend upon the facts of a case and the relevant Rules applicable to that service.

19. Reverting back to the Rules of the present case it is clear that Rule 3, unlike other Rules which have been referred in different cases, contains negative command that the period of probation shall not be less than two years. This period could be extended by the competent authority for half of the period of probation by a specific order. But on satisfactory completion of the probation period, the authorities shall have to consider suitability of the probationer to hold the post to which he was appointed. If he is found to be suitable then as soon as possible order is to be issued in terms of Rule 5(1)(a). On the other hand, if he is found to be unsuitable or has not passed the requisite examination and unless an order of extension of probation period is passed by the competent authority in exercise of its power under Rule 4, then it shall discharge the probationer from service

in terms of Rule 5 (1)(b). At this juncture Entry 2 of schedule under Rule 2 of 1983 Rules would come into play as it is a mandatory requirement that the probationer should complete his judicial training. Unless such training was completed no certificate of satisfactory completion of probation period could be issued. Obviously, power is vested with the appropriate authority to extend the probation period and in alternative to discharge him from service. The option is to be exercised by the authorities but emphasis has been applied by the framers on the expression `as soon as possible' they should pass the order and not keep the matters in abeyance for indefinite period or for years together. The language of Rule 5(2) is a clear indication of the intent of the framers that the concept of deeming confirmation could not be attracted in the present case. This Rule is preceded by the powers vested with the authorities under Rules 4 and 5(1) respectively. This Rule mandates that a probationer shall not be deemed to have satisfactorily completed the probation unless a specific order to that effect is passed. The Rule does not stop at that but further more specifically states that any delay in issuance of order shall not entitle the probationer to be deemed to have satisfactorily completed his probation. Thus, use of unambiguous language clearly demonstrates that the fiction of deeming confirmation, if permitted to operate, it would entirely frustrate the very purpose of these Rules.

On the ground of unsuitability, despite what is contained in Rule 5, the competent authority is empowered to discharge the probationer at any time on account of his unsuitability for the service post. That discharge has to be simplicitor without causing a stigma upon the concerned probationer. In our view, it is difficult for the Court to bring the present case within the class of cases, where `deemed confirmation' or principle of `automatic confirmation' can be judiciously applied. The 1977 Rules are quite different to the Rules in some of the other mentioned cases. The 1977 Rules do not contain any provision which places a ceiling to the maximum period of probation, for example, the probation period shall not be extended beyond a period of two years. On the contrary, a clear distinction is visible in these Rules as it is stated that probation period shall not be less than two years and can be extended by the authority by such period not exceeding half the period. The negative expression is for half the period and not the maximum period totally to be put together by adding to the initial period of probation and to extended period.

Even if, for the sake of argument, we assume that this period is of three years, then in view of the language of Rules 5 (1) and 5(2) there cannot be automatic confirmation, a definite act on the part of the authority is contemplated. The act is not a mere formality but a mandatory requirement which has to be completed by due application of mind. The suitability or unsuitability, as the case may be, has to be recorded by the authority after due application of mind and once it comes to such a decision the other requirement is that a specific order in that behalf has to be issued and unless such an order is issued it will be presumed that there shall not be satisfactorily completion of probation period. The Rules, being specific and admitting no ambiguity , must be construed on their plain language to mean that the concept of `deemed confirmation' or `automatic confirmation' cannot be applied in the present case.

20. Another aspect, which would further substantiate the view that we have expressed, is that proviso to Rule 4 shows that where during the period of probation the results of an examination

have not been declared which the probationer was required to take, in that event the period of probation shall be deemed to have extended till completion of the act i.e. declaration of result. Applying this analogy to the provisions of Rule 5 unless certificate is issued by the competent authority the probation period would be expected to have been extended as it is a statutory condition precedent to successful completion of the period of probation and confirmation of the probationer in terms of this Rule.

21. In the present case, the appellant was appointed to the post vide letter dated 9/10th May, 1996 and he reported for his duty on 15th May, 1996. He was on probation for a period of two years.

Thereafter, as it appears from the record, no letter of extension of probation or order stating that the appellant has completed the period of probation successfully in terms of Rule 5(1) was ever issued. Rule 5 (2), therefore, would come into play and till the issuance of such an order and certificate of satisfactorily completion of probation period, the appellant cannot claim to be a confirmed employee by virtue of principle of automatic or deemed confirmation.

His services were terminated vide order dated 24th March, 2000. It was discharge from service simplicitor without causing any stigma on the appellant. We have already discussed in some detail the conduct of the appellant as well as the fact that even prior to his selection as a member of the Higher Judicial Services of State of Karnataka, his name had been placed for surveillance on the of Police Station, Karwar. The original service record of the appellant also does not reflect that he was an officer of outstanding caliber or had done extraordinary judicial work. He is an officer who is not aware of his date of birth and mentioned his age as per his convenience. In these circumstances, we do not feel that, it is a case where in exercise of jurisdiction of this Court under Article 136 of the Constitution of India, we should interfere with the judgment of the High Court as the same does not suffer from any factual or legal infirmity.

22. Before we part with this file, it is required of this Court to notice and declare that the concerned authorities have failed to act expeditiously and in accordance with the spirit of the relevant Rules.

Rule 5 (2) of 1977 Rules has used the expression `as soon as possible' which clearly shows the intent of the rule framers explicitly implying urgency and in any case applicability of the concept of reasonable time which would help in minimizing the litigation arising from such similar cases. May be, strictly speaking, this may not be true in the case of the appellant but generally every step should be taken which would avoid bias or arbitrariness in administrative matters, no matter, which is the authority concerned including the Haryana State Electricity Board (1988) Supp. SCC 669] this Court had the occasion to notice that due to delay in recording satisfactory completion of probation period where juniors were promoted, the action of the authority was arbitrary and it resulted in infliction of even double punishment. The Court held as under:

"While there is some necessity for appointing a person in government service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probationary period. If during the period a government servant is found to be unsuitable, his services may be terminated. On the other hand, if he is found to be suitable, he would be allowed to continue in service. The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or mala fide giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the government servants of becoming victims of arbitrary actions."

We reiterate this principle with respect and approval and hope that all the authorities concerned should take care that timely actions are taken in comity to the Rules governing the service and every attempt is made to avoid prejudicial results against the employee/probationer. It is expected of the Courts to pass orders which would help in minimizing the litigation arising from such similar cases. Timely action by the authority concerned would ensure implementation of rule of fair play on the one hand and serve greater ends of justice on the other. It would also boost the element of greater understanding and improving the employer employee relationship in all branches of the States and its instrumentalities.

The Courts, while pronouncing judgments, should also take into consideration the issuance of direction which would remove the very cause of litigation. Boni judicis est causes litium dirimere.

23. It will be really unfortunate that a person, who is involved in the process of judicial dispensation, is dealt with in a manner that for years neither his confidential reports are written nor the competent authority issues an order of satisfactory completion of probation period or otherwise. Another very important aspect is that in the present days of high competition and absolute integrity and even to satisfy the requirements of out of turn promotions by competition it is expected of the High Court to inform the concerned judicial officer as of his draw backs so as to provide him a fair opportunity to improve.

We certainly notice it with some sense of regret that the High Court has not maintained the expected standards of proper administration.

There is a constitutional obligation on the High Court to ensure that the members of the judicial services of the State are treated appropriately, with dignity and without undue delay. They are the face of the judiciary inasmuch as a common man, primarily, comes in contact with these members of the judicial hierarchy. It is a matter of concern, as we are of the considered view, that timely action on behalf of the High Court would have avoided this uncalled for litigation as it would have been a matter of great doubt whether the appellant could at all be inducted into the service in face of the admitted position that the name of the appellant was stated to be on the rowdy list at the relevant time.

24. Although for the reasons afore recorded we find no merit in this appeal and dismiss the same. While dismissing the appeal we feel constrained to issue the following directions:

1. The judgment of this Court shall be placed before the Hon'ble the Chief Justice of Karnataka High Court for appropriate action. We do express a pious hope that steps will be taken to ensure timely recording of the confidential reports of the judicial officers by appropriate authority (which in terms of Chapter VI with particular reference to the provisions of Article 235 of the Constitution is the High Court) and in an elaborate format depicting performance of the judicial officers in all relevant fields, so as to ensure that every judicial officer in the State will not be denied what is due to him in accordance with law and on the basis of his performance;

2. We direct the Secretary of the Union of India, Ministry of Personnel, Public Grievances and Pension as well as all the Chief Secretaries of the States to issue appropriate guidelines, in the light of this judgment, within eight weeks from the date of the pronouncement of this judgment;

3. We further direct that all the High Courts would ensure that `police verification reports', conducted in accordance with law, are received by the concerned authority before an order of appointment/posting in the State Judicial Service is issued by the said authority.

With the above directions, the appeal is dismissed. However, the parties are left to bear their own costs.