IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 10052 of 2025

KAUSTUBH KHERA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Petitioner in person.

Shri Aditya Adhikari, learned Senior Advocate along with Ms. Divya Pal, learned counsel for respondent No.2-High Court of Madhya Pradesh.

ORDER

(Reserved on: 29/04/2025)
(Pronounced on:07/05/2025)

Per. Justice Vivek Jain

By way of this petition, the petitioner who is a discharged Judicial Officer and held the post of Civil Judge, Junior Division in M.P. Judicial Services has put to question the order dated 05/09/2024 passed by the State Government, Department of Law and Legislative Affairs based upon the recommendations of the Administrative Committee of the High Court dated 08.8.2024 as ratified by the Full Court on 20/08/2024, whereby he has been discharged from services. The said order has been passed by exercising powers under Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (for short hereinafter referred to as 'Rules 1994').

2. The aforesaid order has been issued mentioning that the petitioner has been unable to complete the probation period satisfactorily and successfully and therefore, as per decision of the Administrative Committee

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of the High Court dated 08/08/2024 and of the Full Court dated 20/08/2024, the petitioner has been recommended to be discharged from services. The consequential discharge order has been issued by the State Government vide Annex.P/1 dated 05/09/2024.

3. The petitioner who appeared in person, while assailing the aforesaid order of discharge from services has submitted that he was appointed in M.P. Judicial Services vide order dated 12/03/2019 (Annex.P/5) and joined the services as probationer. It is his case that he received B (very good) in the first ACR for the year 2019, C (good) in the ACR for the year 2020, C (good) in the ACR for the year 2021, C (good) in the ACR for the year 2022, B (very good) in the ACR for the year 2023, which was the last ACR prior to his discharge from services on 05/09/2024.

4. The petitioner has argued that the order though worded as discharge simpliciter, is actually a punitive order and not discharge simpliciter because it is founded on allegations of misconduct against the petitioner. By placing reliance on the documents obtained by him under Right to Information and collectively placed on record as Annexure P/21, it is argued that various complaints in the matter of working of petitioner were placed before the Administrative Committee, which were seven in number, relating to misbehavior with Advocates appearing in his Court, initiating contempt of Court proceedings, trying and dropping the said proceedings against Advocates, President of Bar Association and Police personnel without any authority to initiate contempt of Court proceedings, leaving headquarter without permission, passing penalty order of fine against his Court peon and sentencing his Court peon to two months imprisonment for committing misconduct without having authority to pass such orders, etc. It is further argued by the petitioner on the strength of documents obtained by him under Right to Information Act that the Administrative Committee and the Full Court were also placed with material of complaints against him by the Court staff including women staff regarding verbal abuse to the Court staff during Court hours, running after the Court staff sitting on their seats by leaving his dais and giving chase to the staff, and the staff had to save

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themselves by running from their seats to avoid being slapped and assaulted by the petitioner, etc. It is further contended that there were complaints made by Bar Association, Portfolio Judge, Principal District Judge and by the Chief Judicial Magistrate against the petitioner in the aforesaid matter which establishes that Administrative Committee and the Full Court have passed the order by way of penalty, and it is not discharge simpliciter.

5. It is further contended that a preliminary enquiry was ordered by the Principal District Judge and one Shri Nadeem Khan, District Judge was asked to conduct discrete enquiry and the report of discrete enquiry has been obtained by him under RTI Act, in which the instances of misbehavior with staff, verbal abuses to staff, etc. were enquired including such behavior to female staff and the Enquiry Officer conducting discrete enquiry, who is a District Judge has opined that prima facie complaints are substantiated against the petitioner. Therefore, it is contended that in fact he has been punished in the name of discharge.

6. The petitioner in person while arguing his case apart from arguing that the order is founded on misconduct has also tried to justify his conduct by stating that he infact had been drawing contempt of Court proceedings against the Police personnel, Advocates, etc. and two such order sheets are placed on record as Annex.12 and Annexure P/13, in which the petitioner has himself closed the contempt of Court proceedings after recording finding against the alleged contemners and accepted their apologies. It was argued by the petitioner in person that he drew the contempt of Court proceedings only with a purpose to refer the matter to the High Court in terms of Section 10 of Contempt of Court's Act, 1971 but since the parties tendered apology, he closed the proceedings without referring matter to the High Court. However, it was accepted by him that he initiated contempt of Court proceedings against Bar Association President and various police personnel, recorded findings and closed the cases after accepting apology. It was further argued by the petitioner that the allegations against him as narrated in the various complaints were in fact justified and it has been argued that he was compelled to issue written directions to certain Class III and Class IV staff of

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the Court presided over by him in light of their dereliction from duty and had to take action against them for better functioning of the Court. It is further argued that he was bombarded with complaints which were well coordinated counter blast by Police, Bar Association and employees of the Court and a barrage of false complaints were opened against him before the senior officials of District Judiciary of District Alirajpur, wherein he was posted at Jobat which is an outlying Court Centre in District Alirajpur.

7. It is further argued that his judicial functioning was very good and though initially his disposal rate was slow but thereafter he had picked up the speed of work and his disposal units were excellent and much above the requisite minimum units required from a Civil Judge, Junior Division.

8. It is further argued that he was kept on probation for nearly five and a half years though the Rules of 1994 provide a mandatory condition that the probation period shall not exceed three years, therefore, his services stood automatically confirmed upon completion of 3 years of service. It is further argued that the examination notification provided that one month notice is requisite for discharging a probationer but no such notice was given to him. However, it is admitted that the statutory rules do not contain such a stipulation though it was contained in the advertisement.

9. Per contra, it is contended by learned counsel for the High Court that though complaints were made against the conduct of the petitioner and were received by the High Court and the High Court had also ordered for discrete enquiry into the said complaints but the action against the petitioner has not been founded on allegation of misconduct and therefore, no enquiry was necessary. It is argued that the order issued to the petitioner is not a stigmatic order and therefore, no enquiry was required to be conducted. He was only a probationer and a satisfaction was reached that he will not shape into a suitable Judicial Officer and therefore, the decision was taken to discharge him from service without casting any stigma and even not disqualifying him for future appointments.

10. The learned senior counsel further argued that the adverse material

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which is against the petitioner could have only constituted material to form opinion whether he would shape into suitable Judicial Officer or not but it is not intended to pass a punitive order nor a punitive order has been passed against him. It is also argued that the competent authority would obviously take into consideration some material to reach at conclusion whether the officer concerned has utilized his probation period satisfactorily and would shape into a suitable Judicial Officer. Consideration of such material does not amount to taking a punitive action if the concerned authority reaches to a conclusion that the officer concerned would not shape into suitable Judicial Officer.

11. It was further argued that the order that was communicated to the petitioner, so also the resolution of the Administrative Committee as also of the Full Court do not allege any misconduct against the petitioner and a simpliciter decision has been taken to discharge the petitioner. Only because the petitioner has later on obtained some material under RTI Act and has got to lay hands on the material which was before the Administrative Committee and before the Full Court while taking decision not to confirm the petitioner in service and to discharge the petitioner as a probationer, it does not constitute that the petitioner has been punished for such conducts or such instances which were before the Administrative Committee and the Full Court before taking decision to discharge him as a probationer and not to confirm him in service. It is argued that mere non confirmation of a probationer and simpliciter discharge during period of probation does not amount to punitive action because the decision was not founded on or motivated by any misconduct so that enquiry might has been necessary and further that even the discharge order does not mention any instance of misconduct and simply mentions that the competent authority i.e. Administrative Committee and Full Court have reached the conclusion that the petitioner has been unable to carry out the probation period satisfactorily and successfully and this is the all reason which has been communicated in the impugned order. Therefore, it is a case of discharge simpliciter without any further consequences and even it does not amount to future

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disqualification. Therefore, the order impugned does not need to be interfered with by this Court in exercise of judicial review and further that the order is fully justified and deserves to be maintained.

12. The learned senior counsel has further argued by referring to the ACRs of the petitioner recorded from time to time that sufficient comments had been marked in the ACRs of the petitioner from time to time and these comments so also the entire material available on record was considered by the Administrative Committee and by the Full Court and they reached to a correct conclusion that the petitioner would not shape into a suitable Judicial Officer and therefore, decided to discharge him prior to confirmation of services.

13. Heard.

14. In the present case it was argued by the petitioner in person that there were various complaints against the petitioner and he has got copy of the entire material available against the petitioner under RTI Act and therefore, the impugned discharge order has to be treated as punitive order and since it was not followed by a regular enquiry, therefore, it is a case of punitive order being passed without an enquiry and therefore, needs to be interfered with. The discharge order against the petitioner mentions the only reason that he has been unable to successfully and satisfactorily carry out the probation period and is as under:

भोपाल, दिनांक 05 सितम्बर, 2024

फा. क्रमांक 3610/2024/21-ब (एक), मध्यप्रदेश न्यायिक सेवा के सदस्य श्री कौस्तुभ खेडा, व्यवहार न्यायाधीश, कनिष्ठ खण्ड, जोबट जिला अलीराजपुर के द्वारा परिवीक्षा अवधि का निर्वहन संतोषजनक एवं सफलतापूर्वक नहीं कर पाने के फलस्वरूप उच्च न्यायालय, मध्यप्रदेश की प्रशासनिक समिति (मध्यप्रदेश न्यायिक सेवा) की बैठक दिनांक 08.08.2024 तथा फलकोर्ट मीटिंग दिनांक 20.08.2024 में लिये गये निर्णय के अनुक्रम में उच्च न्यायालय मध्यप्रदेश, जबलपुर द्वारा मध्यप्रदेश न्यायिक सेवा (भर्ती तथा सेवा शर्त) नियम, 1994 के नियम-11 (ग) के अंतर्गत उक्त न्यायिक अधिकारी को सेवा से उन्मुक्त (Discharge from Service) करने की अनुशंसा की गई है।

उक्त न्यायिक अधिकारी के संबंध में उच्च न्यायालय, मध्यप्रदेश की अनुशंसा

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के साथ संलग्न सहपत्रों से सहमत होते हूए राज्य शासन ने यह निर्णय लिया है कि श्री कौस्तुभ खेडा, व्यवहार न्यायाधीश कनिष्ठ खण्ड, जोबट जिला अलीराजपुर को आदेश दिनांक से सेवा से उन्मुक्त (Discharge from Service) किया जाए।

अतः मध्यप्रदेश न्यायिक सेवा (भर्ती तथा सेवा शर्तें) नियम 1994 के नियम 11(ग) के अंतर्गत एतद्द्वारा राज्य शासन श्री कौस्तुभ खेड़ा, व्यवहार न्यायाधीश, कनिष्ठ खण्ड, जोबट जिला अलीराजपुर को सेवा से उन्मुक्त (Discharge from Service) करता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार

(नरेन्द्र प्रताप सिंह)
प्रमुख सचिव,
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

15. The said order dated 05/09/2024 was preceded by resolution of the Administrative Committee which was as under:

> *The matter of Shri Kaustubh Khera, Civil Judge, Junior Division, Jobat (Alirajpur) (S.No. 2 of the consideration list) is being taken up along with Item No. 9.*
> *Discussed and resolved that Shri Kaustubh Khera did not utilize his probation period successfully and satisfactorily, therefore having considered the overall circumstances the Committee resolves to recommend that services of Shri Kaustubh Khera is no more required to be continued and refuses to grant him confirmation. Accordingly, it is resolved to recommend that Shri Kaustubh Khera be discharged from service as per Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Service) Rules, 1994. This discharge will not be disqualification for future appointment.*
> *The matter be placed before the Full Court for approval.*

Sd/-
(MANOJ KUMAR SHRIVASTAVA)
REGISTRAR GENERAL

16. The Full Court considered the matter in its meeting dated 20/08/2024, and item No.1 was regarding complaints against the petitioner

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while item No.2 was regarding confirmation of Judicial Officer. The resolution of Full Court was as under:

> *The Administrative Committee (M.P. Judicial Service) in its meeting dated 08.08.2024 resolved that since Shri Kaustubh overall Khera did not utilise his probation period successfully and satisfactorily, therefore having considered the circumstances, the Administrative Committee (M.P. Judicial Service) recommended that Shri Kaustubh Khera be discharged from service as per Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Service) Rules, 1994.*
> *The Full Court, after going through the recommendation of Administrative Committee (M.P. Judicial Service) in respect of Shri Kaustubh Khera, resolved to accept the recommendation of Administrative Committee (M.P. Judicial Service) dated 08.08.2024 that Shri Kaustubh Khera be discharged from service as per Rule 11(c) of M.P. Judicial Service (Recruitment and Conditions of Service) Rules, 1994. This discharge will not be disqualification for future appointment.*
>
> *Sd/-*
> *(MANOJ KUMAR SHRIVASTAVA)*
> *REGISTRAR GENERAL*

17. The aforesaid resolution of the Full Court duly establishes that the Full Court did not pass any punitive order against the petitioner and its simply decided to discharge the petitioner from service by holding that he did not utilize his probation period successfully and satisfactorily.

18. It is evident from the aforesaid discharge order, so also the resolutions of the Administrative Committee and the Full Court that though material was before the Administrative Committee and the Full Court, but the Full Court decided to simply discharge him from service without any disqualification from future appointment. Therefore, it cannot be held to be a punitive order because neither the Administrative Committee nor the Full Court had resolved to punish the petitioner in any manner. It is settled in law that the competent authority of the employer would take into some material

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in consideration to reach to a satisfaction or conclusion whether the officer concerned would shape into suitable officer or not, or that he has completed his probation period successfully or not, and that is the only purpose of placing the officer under probation. There has to be some material before the competent authority on which it would reach to such a conclusion that whether his performance and conduct during the probation period has been such so as to confirm the employee's service or to discharge him. If the competent authority has some material before it on which it reaches to a conclusion that the officer concerned would not shape into suitable officer, then it cannot be said that a punitive action has been taken against the said officer. The action to discharge the officers simply is not an action which is founded on misconduct or motivated on misconduct. Taking a punitive action for misconduct is one thing and arriving at a satisfaction that whether the officer would shape into a suitable officer or not, on the basis of performance during probation period is altogether different thing. There is a whole lot of difference between the two and in the present case, it is duly established from the aforesaid orders and resolutions that the petitioner has not at all been punished nor the discharge order, from any angle, is punitive in nature.

19. Even the proposal in minutes of the Administrative Committee and of the Full Court, which are on record have been perused by us. The said proposal or information in minutes nowhere mentioned that the conduct of the petitioner is doubtful or unbecoming of a Judicial Officer in view of complaints being received against him or that prima facie some doubts have been cast on the conduct of the petitioner on the basis of the said complaints. The information and proposals put up before the Administrative Committee and the Full Court simply mention to have received complaints because once the Administrative Committee and the Full Court were considering the suitability of the petitioner for confirmation or otherwise then it was an imperative for the Committee to have before it all the material available in the service record of the petitioner. The petitioner cannot argue that the pendency of complaints against him and investigation into the said

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complaints should have been suppressed from the Administrative Committee or the Full Court before the said committee and Full Court reached to a conclusion regarding fate of the petitioner who was a probationer. We have already held above that the minutes of Administrative Committee or of the Full Court do not indicate that the ultimate decision of the Administrative Committee or of the Full Court was founded on the allegations contained in the said complaints.

20. The Hon'ble Supreme Court in the case of **SBI v. Palak Modi, (2013) 3 SCC 607** has held has under:-

> *"25 [Ed.: Para 25 corrected vide Official Corrigendum No. F.3/Ed.B.J./9/2013 dated 31-1-2013.]. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him.* ***If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive.*** *However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.*
>
> *36. There is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour.* ***In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects*** *but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination*

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simpliciter, the employer has punished the employee for an act of misconduct."

(Emphasis ours)

21. In the present case, the petitioner was unable to establish before this Court that in any manner the Administrative Committee or Full Court have taken into consideration the allegations as contained in the complaints received against the petitioner which were put to discrete enquiry but no further punitive action took place. In absence of any material to indicate that the said complaints or the allegations contained in the said complaints have solely been the reason, and thus, became the foundation `of the decision taken by the authorities, it cannot be inferred that the order is punitive. Neither the minutes of the committee nor the ultimate termination order indicate that the decision has been founded on the allegations against the petitioner as contained in the complaints received against the petitioner. The impugned termination order simpliciter mentions that the petitioner was unable to carry out the probation period satisfactorily and successfully. No other reason is assigned. Therefore, the order cannot be termed to be punitive by any stretch of imagination. It is simply a case of discharge/termination simpliciter upon adjudging suitability of the officer concerned for confirmation and being found unsuitable.

22. The aforesaid issue is no longer *res integra*. The Hon'ble Supreme Court in the case of **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences reported in (2002) 1 SCC 520** held as under:-

"29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a

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probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. ***In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."***

(Emphasis ours)

23. In the case of State **of Punjab v. Sukhwinder Singh reported in (2005) 5 SCC 569** it was held as under:-

"20. In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of the Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh v. State of Punjab [(1983) 2 SCC 217 : 1983 SCC (L&S) 303 : AIR 1983 SC 494] the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the

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respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules".

24. The Hon'ble Supreme Court in the case of **State of Punjab v. Jaswant Singh, (2023) 9 SCC 150,** has held that once no foundation of misconduct is alleged in the discharge order and the order is discharged simpliciter, then it cannot be inferred that the discharge is punitive. In the said case, the discharge is based on recommendation of the supervisory authority of the training centre that the probationer has not been taken interest in training, has no sense of responsibility and hence he cannot prove to be a good and efficient officer. The Supreme Court in the aforesaid case distinguished with those cases wherein the probationer is issued with a notice of misconduct and thereafter discharged from service, where it can be inferred that the discharge was punitive. However, in the present case, no show cause notice was given to the petitioner nor any allegation has been mentioned in the discharge order which is simpliciter discharge order not casting any stigma. Therefore, ultimately in the aforesaid case, the Hon'ble Supreme Court set aside the order of the High Court and held the discharge to be legal and valid. The Hon'ble Supreme Court held as under:-

21. In view of the principles as reiterated in various judgments by this Court, if we examine the facts of the case in hand leading to the order of discharge, then it is crystal clear that the respondent-plaintiff was appointed as a constable and joined the duties on 12-11-1989 on probation. During probation, while he was on training, he along with other trainee constables was deputed for law and order duty in Amritsar District on 24-11-1990. The respondent-plaintiff and other recruits were relieved from the said duty and reported back at the Training Centre, except the respondent-plaintiff, who remained on prolonged absence without any intimation to the Training Centre. The SP, Training Centre, vide Memorandum dated 21-2-1991, made a recommendation to SSP that the respondent-plaintiff had not shown any interest in the training and lacks sense of responsibility, further recommending that he is unlikely to prove himself as a good and efficient police officer, hence, he may be discharged under Rule 12.21 of PPR. From perusal of the said Rule, it is apparent that in case a

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probationary constable is found unlikely to prove an efficient police officer, he may be discharged by the Senior Superintendent of Police at any time within three years from the date of enrolment. The SSP relying upon the recommendation of the supervising officer (SP, Training Centre) formed an opinion that the probationary constable is found unlikely to prove an efficient police officer owing to his demeanour as reported and discussed hereinabove.

23. Similarly, in Amar Kumar [Amar Kumar v. State of Bihar, (2023) 9 SCC 160] , wherein the Court found that the appellant therein had instigated to do commotion/agitation/protest and also raised slogans by spreading false rumours in connection with the death of one of the trainees, which was the foundation to pass the order for termination. Thus, in the said case, the Court was of the opinion that the order of termination cannot be simpliciter. In both the cases as referred to above, the allegation of serious misconduct is common, unlike in the instant case, wherein, the foundation of discharge is not on any serious allegation or act of misconduct. The discharge order was passed on the recommendation of the supervisory authority concerned of the Training Centre due to prolonged absence from training without any intimation. The authority found that the probationer constable has no interest in training, and no sense of responsibility, hence, he cannot prove himself a good, efficient police officer. In view of above discussion, both the referred cases are distinguishable on facts.

24. For the reasons discussed above, we are of the considered opinion that the view [State of Punjab v. Jaswant Singh, 2010 SCC OnLine P&H 13405] taken by the High Court and also by the two courts below is completely erroneous in law and must be set aside. The appeals are accordingly allowed. The judgments and decree passed by the High Court [State of Punjab v. Jaswant Singh, 2010 SCC OnLine P&H 13405] and also by the first appellate court and Civil Judge (Jr. Division) are set aside, and the suit filed by the respondent-plaintiff shall stand dismissed. No order as to costs.

25. In the case of **Rajesh Kohli v. High Court of J&K, (2010) 12 SCC** which was the case of a probationary judicial officer, it was held as under:-

"28. ***In the present case, the order of termination is a fallout of his unsatisfactory service adjudged on the basis of his overall***

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performance and the manner in which he conducted himself. Such satisfaction even if recorded that his service is unsatisfactory would not make the order stigmatic or punitive as sought to be submitted by the petitioner. On the basis of the aforesaid resolution, the matter was referred to the State Government for issuing necessary orders.

31. The High Court has a solemn duty to consider and appreciate the service of a judicial officer before confirming him in service. The district judiciary is the bedrock of our judicial system and is positioned at the primary level of entry to the doors of justice. In providing the opportunity of access to justice to the people of the country, the judicial officers who are entrusted with the task of adjudication must officiate in a manner that is becoming of their position and responsibility towards the society.

32. Upright and honest judicial officers are needed not only to bolster the image of the judiciary in the eyes of the litigants, but also to sustain the culture of integrity, virtue and ethics among Judges. The public's perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct".

(Emphasis ours)

26. The petitioner has contended that the order is punitive and has tried to justify his actions on the allegations available against him. However, the said material has been obtained by the petitioner under RTI Act while the order is of discharge simpliciter. It is not so that any allegations as contained in the said material have found part of either the resolution of the Full Court or of the Administrative Committee or of the State Government.

27. The allegations against the petitioner in the material obtained by him under RTI Act were in the matter of instituting Contempt of Court proceedings against Bar members, taking their apologies, having them touch their ears and do sit-ups for apology, same treatment being given to Police personnel appearing in his Court, etc. There were complaints in the matter of

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misbehavior with the Court staff including female staff of the Court, verbal abuses, threatening with physical assault, running after them for assaulting, leaving headquarter without permission. For these conducts, the Chief Judicial Magistrate, the Principal District & Sessions Judge, Bar Association and the Superintendent of Police, reported the matter against the petitioner including one matter wherein he sentenced his own Court peon to two months simple imprisonment for misconduct and fine to the tune of Rs.50/-. It is also true that a discrete enquiry was conducted by a Senior Judicial Officer of the District namely Shri Nadeem Khan, District Judge, who found some substance in the complaints and recommended to take the matter further. However, it is not in dispute that the matter was not taken further and no charge sheet was issued to the petitioner nor any punitive action was taken against the petitioner.

28. It is also not in dispute that the Portfolio Judge of the District has also reported the matter that explosive situation has been created at Jobat, District Alirajpur in view of complaints being received against the petitioner. However, it is not in dispute that no disciplinary action was instituted against the petitioner and therefore, the order and action taken against the petitioner cannot be said to be punitive in nature and these allegations and complaints cannot be said to have become the foundation, much less sole foundation, of the impugned order.

29. We have also gone through the comments as available in the ACRs of the petitioner. In the ACR of the year 2020, he was awarded grade “C” in the annual ACR.

30. In the year 2021, the District Judge has made the following remarks:

(b). Quality of Judgment -

AVERAGE, His knowledge of procedural and substantive law is not up to the mark.

2. Quantity of work:

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He has earned 926.23 units in 177 actual working days. So his average unit is 5.23 per day, which comes under Very Good category. He has earned only 89.65 units in civil cases which is less than 30 units per month as per actual working days and as per norms fixed by the Hon'ble High Court vide D.O. No. 1154/confdl./2021/II-5-5/57 PL.- III Jabalpur Dated: 14-12-2021. It shows that he is not interested in disposal of civil cases, Improvement is required.

Units earned by the officer is 66.25 from ADR cases which is 5.35%, which is less than 10% and Units earned by the officer is 466.54 from cases pending more than three years, which is 37.65% which is more than norms fixed by the Hon'ble High Court.

3. Capacity of Management, Leadership, Initiative, Planning and Decision Making.

AVERAGE

4. Inter Personal Relationship and Team Work.

AVERAGE

5. State of Health.

GOOD

31. After giving the above remarks, final grade "C" was awarded to the petitioner, which was accepted by the Portfolio Judge and by the Chief Justice.

32. In the year 2022, the District Judge made the following remarks in the column of General Assessment:

General assessment:

(Please give an overall assessment of the officer with reference to his/her judicial, administrative work and ability reputation and character, strength and shortcomings and also by drawing attention to the qualities if any not covered by the above entries).

Shri Kaustubh Khera is person of Good character and reputation. He hastaken good interest in disposal of pending Criminal cases but he shows laziness in disposal of pending Civil cases. He is not trained

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mediator, therefore he could only refer the cases. Thus, he could not earned the 10% Units through ADR Mechanism. The attention of the judicial officer has not been in judicial work, but more on extraneous subjects. His performance required more hard work and conscientiousness toward judicial work. Considering the above entries and no explanation & reasons submitted by Mr. Kaustubh Khera, the overall performance including conduct, behavior and potential of Mr. Khera is of Average standard.

33. His overall performance was assessed as grade "D"(Average) which was upgraded by Portfolio Judge to grade "C" (Good).

34. For the year 2023, in his ACR, the District Judge Inspection awarded grade "C" which was upgraded by the Portfolio Judge to grade "B". However, the Principal District Judge made the following remarks in the column of overall view is as under*:*

11. **Overall View:**

Though he has disposed of 96 out of 100 listed cases, under debt scheme and has also earned average of 8.04 units per day, which falls in very good category, the quality of judgment/orders passed by him is below expectation. The judgments/orders are written in very slip short manner lacking discussion of evidence and marshalling. (copy of inspection note enclosed)

35. In view of above, it cannot be said that apart from the complaints which the petitioner is stressed to have been used against him, his performance was good and he deserves to be confirmed from probation. It therefore, appears to us that the Administrative Committee and the Full Court have properly and meaningfully considered the case of the petitioner and have reached to a proper and just conclusion.

36. It is settled in law that a person is put on probation only so as to enable the employer to assess his suitability for continuation and confirmation in service. On the basis of his overall performance a decision is taken so as either to continue his service or to be released from service. It is settled in law that for that purpose even uncommunicated entry can be seen because it is only for the purpose of assessing the general suitability of an

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Officer to hold the post. The Supreme Court in case of **Rajesh Kumar Srivastava v. State of Jharkhand, (2011) 4 SCC 447** has held as under:-

> *"9. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job.*
>
> *12. The order of termination passed in the present case is fallout of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and, therefore, there is no infirmity in the impugned judgment and order passed by the High Court."*

37. The said case arose from judgment of **Jharkand High Court in the case of Rajesh Kumar Shrivastava Vs. State of Jharkhand reported in 2008 SCC OnLineJhar 1279** and in that case also the judicial officer concerned had taken a plea that adverse entries/comments of ACR were not communicated and it was held by the High Court of Jharkhand that for the purpose of assessing suitability of petitioner even uncommunicated entries can be taken into consideration, and the said judgment has been affirmed by the Hon'ble Supreme Court in the case of **Rajesh Kumar Shrivastava(supra).**

38. Thus, it is clear that once no foundation of misconduct is alleged in the discharge order, it is a discharge simpliciter and cannot be lightly interfered because it is settled that it is only the superior authorities of the

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department that have to take work from the officer concerned and they are the best people to judge whether the officer concerned should be continued in service or not having regard to his performance, conduct and overall suitability for the job. Even uncommunicated entries can be considered for the purpose of assessing the suitability of a probationer. In similar facts, in the matter concerning judicial officer, in the case of **High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad, reported in 1997 (10) SCC 409**, it was held as under:-

> *"The remarks for the years 1976-77 and 1979-80 had been communicated to Respondent 1 prior to the High Court took the decision on 19-6-1985 that Respondent 1 is not fit for retention in service. The other remarks mentioned about were, however, communicated to Respondent 1 after the said decision had been taken. The question is whether the non-communication of the said adverse remarks vitiates the action that has been taken against Respondent 1, viz., termination of his services on the ground that he was not fit for confirmation on the post of Munsif. As regards a probationer, the law is well settled that he does not have a right to hold the post during the period of probation. The position of a probationer cannot be equated with that of an employee who has been substantively appointed on a post and has a right to hold that post. An order terminating the services of a probationer can be questioned only if it is shown that it has been passed arbitrarily or has been passed by way of punishment without complying with the requirements of Article 311(2) of the Constitution. Since a probationer has no right to hold the post on which he has been appointed on probation, he cannot claim a right to be heard before an order terminating his services is passed. The obligation to communicate the adverse material to a person before taking action against him on the basis of the said material is a facet of the principles of natural justice. But principles of natural justice have no application in the case of termination of the services of a probationer during the period of probation since he has no right to hold the post. It is, therefore, not possible to hold that there is an obligation to communicate the adverse material to a probationer before a decision is taken on the basis of the said material that he is not fit for being retained in service. Such material can be relied upon to show that such a decision does not suffer from the vice of arbitrariness and is not capricious. In this context it may be*

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mentioned that even with respect to persons who have been substantively appointed on a post and have a right to hold that post, it has been held that the failure to communicate the adverse remarks in the service record would not vitiate the order of compulsory retirement. (See: Union of India v. M.E. Reddy [(1980) 2 SCC 15 : 1980 SCC (L&S) 179] and Baikuntha Nath Das v. Chief Distt. Medical Officer [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] .)"

39. So far as the argument that one month's notice as provided in the recruitment notice/advertisement was not actually served on the petitioner, we see that there was no such condition in the appointment letter, nor in the recruitment rules. In the case of ***Ashish Kumar Vs. State of Uttar Pradesh and Others reported in (2018) 3 SCC 55*** (para-27), the Supreme Court has held that any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. In the case of ***Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others reported in (2006) 9 SCC 507***, the same has been held by the Supreme Court wherein it has been laid down that advertisement cannot over-ride statutory rule. Same was the ratio of judgement in ***Employees State Insurance Corporation Vs. Union of India and Others reported in (2022) 11 SCC 392***, wherein the Hon'ble Supreme Court held the advertisements for recruitment mentioning a particular Scheme would have no effect since the said clause was in contravention of the applicable Recruitment Regulations. Therefore, in this case, the petitioner cannot take benefit of the stray clause in Recruitment notice mentioning one month's notice period for discharge during probation.

40. The petitioner had argued that since no order for extension of probation was communicated to the petitioner therefore, there should be deemed confirmation of probation. However, we are not able to convince ourselves with the said contention in view of the language of the Rule 11(d) of Rules of 1994. The Rules clearly mention that on successful completion of probation the probationer shall be confirmed in service on available permanent post and if permanent post is not available then he will be confirmed as soon as permanent post becomes available, if the High Court

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decides that he has successfully completed the period of probation and he is suitable to hold the post. The relevant Rule 11 concerning probation is as under:-

> *"11. Probation-*
>
> *(a) A person appointed to category (i) of rule 3(1) shall, from the date on which he joins duty, be on probation for a period of two years.*
>
> *(b) The High court may, at any time, extend the period of probation, but the total period of probation shall not exceed three years.*
>
> *(c) It shall be competent for High Court at any time during or at the end of the period of probation in the case of Civil Judge (Entry Level) to recommend termination of his service and in the case of Senior Civil Judge, to revert him on account of unsuitability for the post.*
>
> *(d) On successful completion of probation, the probationer shall, if there is permanent post available be confirmed on the service or post to which he has been appointed and if no permanent post is available, a certificate shall be issued by the High court to the effect that he would have been confirmed, but for the nonavailability of the permanent post and as soon as permanent post become available, he will be confirmed, if the High court decides that he has successfully completed the period of probation and he is suitable to hold the post."*

41. In view of the specific language of Rule 11(d), it is clear that for a probationer to seek confirmation, it is necessary that he should have successfully completed the period of probation and found suitable to hold the post. The petitioner, cannot claim automatic or deemed confirmation of probation period. Rather, it would be a case of deemed extension of probation. In the case of **Jai Kishan Vs. Commissioner of Police, reported in 1995 Supp (3) SCC 364**, it was held as under:-

> *"6. It is contended by the learned counsel for the appellant, placing reliance on State of Punjab v. Dharam Singh [AIR 1968 SC 1210 : 1968 SLR 247] , that even if the appellant was not confirmed*

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by passing any order, on expiry of three years he must be deemed to have been confirmed as a member of the Service. Thereafter, the respondents had no jurisdiction to terminate his service. It is difficult to accept the contention. Dharam Singh case [AIR 1968 SC 1210: 1968 SLR 247] bears no relevance, as similar provision was not there in the rule concerned. Successful completion of probation is a condition precedent for confirmation as envisaged in clause (iii) of Rule 5(e) of the Rules. The authorities have power to allow maximum period of 3 years of probation. In this case instead of giving him three years, they have given a long 5 years' period so as to see whether the appellant would improve his performance in the service. Since they found that there was no satisfactory improvement, his probation was terminated and he was removed from service as a probationer. Under these circumstances, we do not find any illegality in the action taken by the respondents warranting interference."

42. In the case of **High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161**, the Hon'ble Supreme Court considered a similar argument of a judicial officer of Madhya Pradesh and it was held that the question of deemed confirmation would arise only when the service rules expressly so provide. It was held so in following manner:-

"37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] . But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to the seven-Judge Bench judgment of this Court in the case of Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and the Constitution Bench decisions in the cases of Sukhbans Singh [AIR 1962 SC 1711 : (1963) 1 SCR 416] , G.S. Ramaswamy [AIR 1966 SC 175 : (1964) 6 SCR 279] and Akbar Ali Khan [AIR 1966 SC 1842 : (1966) 3 SCR 821] ." 40. So far as the issue of non-extension of probation period is concerned, as per Rule 11 (b) of Rules of 1994, the High Court can extend the period of

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probation but total period of probation shall not be extend 3 years. In the present case, the petitioner was appointed on 31.12.2015 and got posting on completion of training period in March 2017. The performance of the petitioner up to the year ending 31st December 2019 has been considered and even if a formal order of extension of probation by one more year had been passed, even then the performance of up to that period only would have been considered by the Administrative Committee. Therefore, no prejudice has been caused to the petitioner by not formally extending the probation by a further period of one year.

43. In view of the above and in view of the Rule 11(c) of Rules of 1994 that specifically vest power in the High Court to recommend termination of services of judicial officer on probation on account of unsuitability for the post, we find no reason to interfere in the impugned order.

44. Therefore, the petition being devoid of merits, deserves to be and stands **dismissed.**

(THE CHIEF JUSTICE)
JUDGE

(VIVEK JAIN)
JUDGE

RS

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