justiciable. Of course it is, if it falls under any of the following three grounds as ruled by the Full Bench of this Court in Hukam *Singh's* case (supra) :

1. That the authority, which purported to have exercised the power, had no jurisdiction to exercise the same.
2. That the impugned order goes beyond the extent of the power conferred by the provisions of law under which it is purported to be exercised.
3. That the order has been obtained on the ground of fraud or that the same having been passed taking into account extraneous considerations, not germane to the exercise of the power conferred or, in other words, that the order is a result of mala fide exercise of power.

(11) The upshot of the above discussion is that we have been led to respectfully disagree with the view expressed in R. Raghupathy's case (supra) of the Madras High Court and inevitably have to overrule the decision in Baljit Singh v. State of Punjab (supra). The matter may now be placed before the learned Single Judge for disposal of the petition.

R.N.R.

Before R. N. Mittal and D. V. Sehgal, JJ.

ISHWAR CHAND JAIN,—*Petitioner.*

versus

High Court of Punjab and Haryana at Chandigarh and another,—*Respondents.*

Civil Writ Petition No. 2213 *of* 1986.

December 9, 1986.

Constitution of India, 1950—*Articles* 235 *and* 311(2)—*Punjab Superior Judicial Service Rules,* 1963, *as applicable to the State of Haryana—Rule* 10(3)—*Petitioner appointed to the service on probation by direct recruitment from the Bar against one of permanent vacancies—Preliminary fact finding enquiry held against the probationer by a sitting Judge of the High Court on the basis*

of a number of complaints—Enquiring Judge finding the complaints not without basis and suggesting further investigation and directing that the matter be placed before the Full Court—Full Court considering the report as also the service record of the official and recommending to the Governor that the services of the probationer be dispensed with—Officer appointed on probation against a permanent post—Whether can be said to have a right to the post—Order terminating the service not stigmatic but preceeded by a preliminary fact finding enquiry—Whether can by itself be said to be by way of punishment—Rule 10(3) *requiring that formal order of termination of service be passed by the Governor—Said rule—Whether impinges on the control of the High Court over the Subordinate judiciary and therefore ultravires Article* 235 *of the Constitution—Inspecting Judge giving satisfactory report to the probationer—Said report—Whether the sole factor to be taken into account in determining whether the work and conduct of the officer was satisfactory entitling him to confirmation—Order terminating services to be passed by the Governor in consultation with the High Court—High Court—Whether to record the reasons for its decision to recommend to the Governor to dispense with the service of the probationary Judicial Officer.*

Held, that where a person is appointed on probation to a government post the said government servant has no right to continue to hold such post any more than a servant employed on probation by a private employer. The termination of services of a probationer does not operate as a forfeiture of any right of a servant to hold the post, for he has no such right and such a termination cannot be a dismissal, removal or reduction in rank as envisaged by Article 311(2) of the Constitution of India, 1950. As such the termination of service of the probationer during or at the end of the period of probation will not ordinarily by itself be a punishment. It is also settled law that the form of the order is not decisive and whether an order is a simple order of termination or by way of punishment is dependent upon the facts and circumstances of each case. For this purpose the Court must lift the veil to see the real nature of the order. Where allegations of serious and grave mis-conduct are the foundation of an order though innocuously worded as a simple order of termination such an order is by way of punishment and if passed without affording a reasonable opportunity to the government servant is in violation of Article 311(2) of the Constitution of India. However, the mere fact that before arriving at a decision as to whether or not the probationer is suitable to be retained in service or his services should be dispensed with in accordance with the terms and conditions of his employment some preliminary fact-fiding enquiry is held but no definite finding of misconduct is arrived at, an order of termination in such a case cannot be termed as one by way of punishment. A termination affected because the

master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant is a dismissal whereas if there is suspicion of mis-conduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping the official. The master may not like to investigate nor take the risk of continuing a dubious servant and may terminate the services in accordance with the terms of appointment without attaching any stigma. In such a case it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary out-back of his full terminal benefits is found. In this situation, mis-conduct is not the moving factor or the foundation of the discharge. Such an order is unassailable as it does not cast any stigma on the probationer and as such it cannot be sair to be by way of punishment.

(Paras 20, 30, 31 and 34)

Held, that the power of deciding whether the probationery Judicial Officer is to be confirmed or his services are to be dispensed with on account of unsatisfactory work and conduct vests in the High Court. When the decision is taken by the High Court to dispense with the service of such a probationer the formal order of termination of the service is passed by the Governor on the recommendation of the High Court as provided by Article 235 of the Constitution of India. As such Rule 10(3) of the Punjab Superior Judicial Service Rules, 1963, as applicable to the State of Haryana is not *ultra-vires* Article 235 of the Constitution of India.

(Para 21-A)

Held, that the mere fact that the Court work of the probationary Judicial Officer was satisfactory is by itself not the criteria for adjudging his suitability for holding the said post. Suitability does not depend merely on the excellence and proficiency in work. There are many factors which are taken into consideration for confirming a person who is on probation. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability or fitness for confirmation. It may be that a lawyer who joins service as a probationery judicial officer might have been intelligent and hard working yet he may fail to exude confidence about his impartiality. He might be erudite yet he may be lacking in patience, sobriety and courtesy-some of the attributes which are essential in the making of a good Judge. He may be honest yet his utterances and demeanour in the Court may give the impression to the litigants and the lawyers that they are being denied justice. All these aspects have to be kept in view while deciding whether or not a person is suitable for continuance in service as a probationary judicial officer and whether he should be confirmed or his services should be dispensed with. As such the report of the Inspecting Judge as a result

of inspection of the Court of the probationary judicial officer cannot be the sole factor for determining whether the work and conduct of the probationer was satisfactory and entitling him to confirmation. (Paras 37 and 38)

Held, that a reading of Rule 10(3) makes it clear that the Governor is to pass the order in consultation with the High Court and as such the High Court is a consultee and it is only the one who consults who must place before the consultee all the material in his possession. If the Governor feels, for certain reasons, that he is unable to accept the High Court's recommendation the reasons will be communicated to the High Court to enable it to reconsider the matter. As such it is not necessary for the High Court to record the reasons for its decision to recommend to the Governor to dispense with the services of the probationary Judicial Officer.

(Para 47)

Petition under Article 226 of the Constitution of India praying that in the facts and circumstances of the case and in the interest of equity, justice and fair play, this Hon'ble Court may be pleased to direct respondent Nos. 1 and 2 to produce the entire record of correspondence between respondent No. 1 and respondent No. 2 consequent to the letter dated 28th March, 1985 (Annexure P. 26) and the agenda and the minutes of the meetings of the High Court held on 21st March, 1985, 27th July, 1985 and the meeting in which the representation dated 28th March, 1985 and 16th August, 1985 (Annexures P. 28 and P. 29) submitted by the petitioner were rejected by respondent No. 1 as also the suggestion by the State Government to respondent for extending the period of proation of the petitioner was rejected; and after persuing the same, this Hon'ble Court may be pleased: to issue Writ of Certiorari :—

(a) *to quash the decisions taken by respondent No. 1 in its meeting held on 21st March, 1985 for recommending to the State Government to terminate/dispense with the services of the petitioner.*

(b) *to quash the decision taken by respondent No. 1 in its meeting held on 27th July, 1985 reducing the 'B+' report given by the Hon'ble Inspecting Judge about the work and conduct of the petitioner during the second year of probation to 'C' report.*

(c) *to quash the decision taken by respondent No. 1 for rejecting the representations of the petitioners dated 28th March, 1985 and 16th August, 1985 (Annexures P. 28 and P. 29).*

(d) *to quash the decision taken by respondent No. 1 for rejecting the proposal made by State Government for extending the period of probation of the petitioner.*

(e) *to issue a Writ of Mandamus directing respondent No. 2 to forbear from terminating the services of the petitioner in pursuance of the recommendation made by respondent No. 1,—vide its letter dated 28th March, 1985 (Annexure P. 26) and to declare that the petitioner has successfully completed the period of probation.*

(f) *to issue any other appropriate Writ, order or direction, which the petitioner is found entitled in the facts and circumstances of case.*

(g) *to dispense with the requirement of filing of certified copies attached as annexures with the writ petition.*

(h) *to allow the costs of this writ petition to the petitioner against the respondents.*

It is further prayed that an ad-interim *order maintaining status quo as it prevailed on 10th September, 1985 with regard to the continuance of the petitioner in service, with all benefits as were available to the petitioner on that day, may kindly be granted during the pendency of this writ petition, in furtherance to the order dated 14th April, 1986 (Annexure P. 1) passed by the Hon'ble Supreme Court of India.*

CIVIL MISC. No. 1519 *of* 1986.

Application under Section 151 *of the Code of Civil Procedure praying that respondent No.* 1 *may kindly be ordered to produce the following documents/record for the consideration of this Hon'ble Court:—*

1. *Agenda and minutes of the meeting of the High Court held on* 21*st August,* 1985 *in which the decision to terminate/dispense with the services of the petitioner is said to have been taken by the High Court.*

2. *The order of the High Court or the agenda and minutes of the meeting of the High Court whereby representation of the petitioner dated* 28*th March,* 1985 *was rejected.*

3. *The order or the agenda and minutes of the meeting of the High Court held on* 27*th August,* 1985 *whereby the representation of the petitioner dated* 16*th August,* 1985 *was rejected by the High Court;*

4. *Agenda and minutes of the meeting of the High Court held on 27th July, 1985 whereby the report about the work and conduct of the petitioner made by the Hon'ble Inspecting Judge was reduced from 'B+' to 'C'* ;

5. *Agenda and minutes of the meeting of the High Court whereby the High Court rejected the proposal of the Haryana Government to extend the period of probation of the petitioner.*

6. *Correspondence between the High Court and the Haryana Government in furtherance of the letter dated 28th March, 1985 where by the High Court had recommended to the State Government to dispense with the services of the petitioner in pursuance of the decision taken in the meeting of the High Court held on 21st March,* 1985;

7. *A.C.Rs. of the petitioner for the years* 1983-84 *and* 1984-85 *recorded by the Hon'ble Inspecting Judge.*

8. *A.C.Rs. for the years* 1970-71, 1971-72 *and* 1972-73 *of Shri K. K. Doda;*

9. *A.C.Rs. for the years* 1977-78, 1978-79 *and* 1979-80 *of Shri M. P. Mehndi Ratta.*

10. *Agenda and minutes of the meeting of the High Court in which the decision for terminating/dispensing with the services of Sarvshri K. K. Doda and M. P. Mehndiratta was taken by the High Court;*

11. *Correspondence between the High Court and the Haryana Government with regard to Sarvshri K. K. Doda and M. P. Mehndiratta for terminating/dispensing with their services.*

12. *Agenda and minutes of the meeting of the High Court whereby the decision to terminate/dispense with services of Sarvshri K. K. Doda and M. P. Mehndiratta was withdrawn by the High Court.*

13. *The order of the High Court whereby the period of probation of Sarvshri K. K. Doda and M. P. Mehndiratta were extended and the orders of the High Court whereby Sarvshri K. K. Doda and M. P. Mehndiratta were later confirmed into H.C.S. (Judicial);*

14. *A.C.Rs. of Shri H. S. Gill for the years* 1981-82, 1982-83, 1983-84 *and* 1984-85;

15. *The order passed by the High Court for retention of Shri H. S. Gill in H.C.S. (Judicial) after the expiry of the initial period of probation of two years and after the expiry of the maximum period of probation of three years;*

16. *The order of the High Court for directing an enquiry against Shri H. S. Gill together with the charges or the statement of allegations on which the enquiry has been ordered against Shri H. S. Gill.*

M. S. Jain, Sr. Advocate with Adish Gupta, Advocate and S. K. Mittal, Advocate, *for the petitioner.*

Kuldip Singh, Sr. Advocate with R .S. Mongia, Advocate, *for respondent No.* 1.

H. S. Hooda, Additional A.G. (H), *for respondent No.* 2.

JUDGMENT

D. V. Sehgal, J.

(1 The petitioner was appointed to the Haryana Superior Judical Service (hereinafter called 'the Service') on probation for a period of two years with effect from 2nd May, 1983. However, this Court in a meeting of the Hon'ble Judges held on 21st March, 1985 decided that during the period of probation his work and conduct was not satisfactory and that his services deserved to be dispensed with forthwith. Consequently, vide letter dated 28th March, 1985 Annexure P.26, a recommendation was made to the Government of the State of Haryana for issuing necessary orders to this effect. The petitioner challenged the decision/recommendation communicated to the Government vide letter Annexure P.26 by filling Writ Petition No. 11999 of 1985 in the Supreme Court of India

(2) Mr. Ram Nath Mahlawat Advocate, Rewari, district Mohindergarh (Haryana) filled C.W.P. No. 3542 of 1985, in this Court praying for the issuance of a writ of mandamus or quo warranto directing the State of Haryana and this Court to remove the petitioner from the post of Additional District and Sessions Judge, Narnaul. The petitioner, who was impleaded as respondent No. 3 to the said petition, filed a transfer application No. 268 of 1985 in the

Supreme Court praying for transfer of the same to its own file. Order Annexure P.1 was passed in both the cases by the Supreme Court on 14th April, 1986, the text of which is reproduced here below:—

> "Writ petition is allowed to be withdrawn in order that it may be filed in the High Court. Merely because the Full Court has decided to recommend the termination of service of the "petitioner, it does not mean that the High Court will not examine the matter on merits on the judicial side. We hope and trust that the High Court and the State Government will not precipitate action against the petitioner and the writ petition, if filed within 15 days from today, will be heard on merits on the judicial side alongwith writ petition pending before the High Court. It is for the High Court whether to give judicial work to the petitioner or not during the pendency of his case.
>
> Transfer petition is rejected in view of the above. Signed order is placed on the file."

In pursuance of the above order, the present writ petition has been filed by the petitioner in this Court. Besides this writ petition, we propose to dispose of C.W.P. No. 3542 of 1985 by this judgment as both these petitions were heard by us together.

(3) The petitioner had been practising as an Advocate since 1968 when he was selected by this Court in a meeting held on 6th November, 1982 for appointment on probation to the Service as District/Additional District and Sessions Judge by way of direct recruitment from the Bar against one of the permanent posts allocated to the quota of direct recruits. On the recommendation made by this Court, he was appointed to the Service by the Government of the State of Haryana vide office order dated 14th April, 1983 Annexure P. 2 and was posted as Additional District and Sessions Judge, Hissar, on 27th April, 1983. (vide order of this Court Annexure P. 3. He assumed the charge of this post on 2nd May, 1983. He worked on the said post for about a year. Towards the end of April, 1984, he was transferred by this Court from

Hissar to Narnaul as Additional District and Sessions Judge. He relinquished the charge of Hissar on 5th may, 1984 and assumed charge at Narnaul on 7th May, 1984. He continued working as such till 25th March, 1985, on which date judicial work was withdrawn from him in pursuance of the decision taken by this Court in its meeting held on 21st March, 1985, which was communicated to the District and Sessions Judge, Narnaul, vide order dated 22nd March, 1985.

(4) During the period the petitioner worked as Additional District and Sessions Judge at Hissar and then at Narnaul, the following incidents took place to which specific reference has been made in the writ petionen :

(1) While posted at Hissar, on 26th September, 1983 when the petitioner was recording evidence in a Sessions case, Shri Nar Singh Bishnoi, an Advocate of Hissar, came to his Court, interrupted the Court proceedings and submitted an unstamped application to the effect that Shri Thakar Dass, an Assistant Sub Inspector of the Haryana Police, whose statement was being recorded as a witness in the said Sessions case, should be directed to appear in a complaint case against the said officer in the Court of the Chief Judicial Magistrate, Hissar. He told the said Advocate that either the request for directing the Assistant Sub Inspector of Police to appear in the Court of the Chief Judicial Magistrate should come from the said Court or the Advocate should bring summonses and get the Police Officer served when the latter leaves his Court after making the statement. According to the petitioner, the Advocate did not return with the summonses for more than half an hour. He, therefore, discharged the said police officer after his testimony has been recorded. The Advocate came to his Court after the said police officer had left, and expressed his anger towards him and then went away saying that he would see that in future no judicial officer dare to act in such a manner. Shri Bishnoi Advocate moved a requisition Annexure P. 3/A for convening an urgent meeting of the Bar Association and a resolution Annexure P. 4 about the working of the petitioner was passed by a few members of the Bar Association, Hissar, on 27th September, 1983. He himself reported this incident to this Court,—*vide* his letter dated 8th October,

1983 Annexure P. 5 giving an account of the incident enclosing therewith copies of the Annexures P. 3/3 and P. 4. He sought advice of the High Court as to whether in the circumstances the police officer who was appearing as a witness in his court could be directed by him to appear in another Court without there being a request or summonses from the Court concerned, and whether the witness could be detained on the request of the counsel for a party till he brought the summonses for appearance of the witness before the said Court. He also sought advice whether it was his duty as Additional District and Sessions Judge to get service of summonses effected on a person. The President of the Bar Association sent a copy of the resolution Annexure P. 4 to this Court as also to the District and Sessions Judge, Hissar. The petitioner states that he did not receive any reply to his letter Annexure P. 5 and the complaint made against him had been filed by this Court as he was not found at fault.

(2) While posted at Hissar as Additional District and Sessions Judge on 10th September, 1983, he had decided Sessions case '*State* v. *Ram Niwas*' in which the accused was charged for offences under sections 363 and 366, Indian Penal Code. He acquitted the accused person of the offence under section 366, I.P.C. and released him on probation for a period of one year,—*vide* his judgment dated 10th September, 1983 Annexure P. 6. Ram Niwas accused, who had been convicted, filed Criminal Appeal No. 521-SB of 1983 in this Court which was decided by A. S. Bains, J. on 5th April, 1984. The appeal was accepted and the accused person was acquitted on the learned Judge reaching at the conclusion that the prosecution had failed to prove the case against him beyond reasonable doubt. A. S. Bains, J., however, made the following adverse remarks against the petitioner in the last paragraph of his judgment (Annexure P. 7) in the said appeal :—

"I am constrained to remark that the judgment rendered by the trial Court is extremely poor and is not based on the evidence on the record. The trial Court seems to have wrongly convicted the appellant."

The State of Haryana has filed Special Leave Petition (Criminal) No. 2072 of 1974 in the Supreme Court of India against the judgment Annexure P. 7, which is still pending. The aforesaid remarks adverse to the petitioner were conveyed to him by this Court,—*vide* letter dated 25th April, 1984 which was received by him on 27th April, 1984. He requested this Court for supply of a copy of the aforesaid judgment to enable him to make a representation against the adverse remarks. Certified copy thereof was supplied to him in July, 1984 and he submitted his representation Annexure P. 8 to this Court on 30th August, 1984 for expunction of the aforesaid adverse remarks. He did not receive any communication from the High Court about the fate of his representation. He however, learnt from the reply filed by the High Court to his petition in the Supreme Court that no action on his aforesaid representation could be taken on the administration side. He submitted another representation dated January 21, 1986 Annexure P. 8/A for placing the matter on the judicial side before an appropriate Bench, but this was not done. He then filed a petition in this Court under section 482, Criminal Procedure Code, for expuiction of the aforesaid adverse remarks.

(3) While posted at Narnaul, the petitioner dealt with a Sessions case *"State"* v. *Devla and others'* in July 1984, which had been registered on a complaint made by Mr. Ram Nath Mehlawat, an Advocate of Rewari, under sections 332, 333, 353, 186 and 323, Indian Penal Code. According to the petitioner, Mr. Mehlawat publishes a Weekly Newspaper named 'Jan Hirday' and has also formed a social organiisation called 'Janta Kalyan Samiti'. He claims himself to be a public servant being Project Officer of the said Janta Kalyan Samiti. After recording evidence in the said Sessions case, arguments were heard by him on 20th July, 1984 and the case was fixed for announcement of the orders for 25th July, 1984. He pronounced the order Annexure P. 12 of conviction of all the accused persons except one Ranjit Singh accused under sections 325/324/34, Indian Penal Code. He held that Mr. Mehlawat was not a public servant and the injuries caused to him were not to restrain him from performing public duty, even if he

was a public servant. He, thus, concluded that offences under sections 232/353, I.P.C. were not made out. He directed prosecution of Ranjit accused and one prosecution witness for fabricating false evidence. As he was proceeding on station leave, he adjourned the case to 30th July, 1984 for evidence and arguments on the question of sentence. On 30th July, 1984, on the request of the learned counsel for the accused, the case was adjourned to 10th August, 1984 as no earlier date was suitable to the counsel for the parties in spite of the fact that he wanted to adjourn the case to 4th August, 1984 or 9th August, 1984. He heard the arguments on the question of sentence on 10th August, 1984, and pronounced the judgment on 13th August, 1984, Annexure P. 12/A, as August 11 and 12, 1984, were holidays. All the accused were first offenders and one of them was 60 years of age and one grievous injury by a fist blow had been inflicted by them on Mr. Mehlawat, the complainant, resulting in fracture of his nasal bone. The petitioner ordered release of all the accused persons on probation for good conduct for a period of one and a half years. Out of this period, they were to remain under the supervision of the Probation officer for one year. The petitioner alleges that Mr. Mehlawat got annoyed with him over the finding recorded by him in his aforesaid judgment and engaged himself in making flase complaints against him. A complaint dated 11th September, 1984 Annexure P.13 was sent by Mr. Mahlawat to the chief justice of India with a copy thereof endorsed to chief Justice of this Court and other Judges, as also the Registrar, in which he made an allegation that the petitioner had received Rs. 25000/- from the accused persons for taking a lenient view against them and had adjourned the case after 25th July, 1984 to various dates and the said amount had been paid to him in instalments. He further alleged in the complaint that he had not got the certified copy of the judgment of the petitioner till the date of the complaint, though he had applied for the same on 14th Aughst, 1984. Mr. Mehlawat made another complaint dated 1st October, 1984 against the petitioner to this Court pertaining to the aforesaid case.

(4) Annonymous complaint dated 1st October, Annexure P.17 was received in this Court pertaining to Civil Appeal

(Sher Singh and others v. Mohinder Singh) pending with the petitioner as Additional District and Sessions Judge, Narnaul. This complaint contained, inter-alia, an allegation to the effect that the said appeal had been filed by Shri S. K. Sanghi Advocate but he was replaced with the connivance of the petitioner, and at his behest, Shri Mahabir Parshad Jain, Advocate of Rohtak, who, according to the complainant, is known as mediator for passing extra consideration to some judicial officers was engaged. According to him, this complaint was apparently engineered by Hr. Mehlawat Advocate in collusion with Mr. M. B. Sanghi, an Advocate of Narnaul, who was representing the appellants in that civil appeal. The petitioner alleges that Mr. M. B. Sanghi Advocate is in the habit of overawing the Presiding Officers by creating scenes in the Courts and by sending frivolous complaints against them. He goes to any extent in his attempt to get his cases decided in his favour. The said civil appeal has been pending in the Court of Additional District and Sessions Judge, Narnaul, since 1977 and Mr. Mahabir Parshad Jain Advocate of Rohtak had been engaged by the appellants as their counsel. Adjournments were being sought in the appeal by Shri S. K. Sanghi Advocate, the local counsel for the appellants, from the predecessor of the petitioner, on the ground that Mr. Mahabir Parshad Jain, Advocate of Rohtak, had to argue the appeal. A synopsis of the proceedings in the said appeal, so as to bring out this fact, has been appended with the petition as Annexure P.18. He had taken over at Narnaul on 7th May, 1984 and had dealt with the aforesaid Civil Appeal only from 24th May, 1984 to 11th October, 1984. He heard arguments in the appeal on 7th May, 1984 and 8th September, 1984 and had adjourned the case to 15th September, 1984 as it was reported to him that there was a move for compromise between the parties. Since, however, no compromise was reported on 15th September, 1984 he fixed the case for re-hearing of arguments for 28th September, 1984. On that date of request was made on behalf of the counsel for the appellants on the basis of which the case was adjourned to 16th October, 1984. The petitioner contends that the allegation in the annonymous complaint

that Shri Mahabir Parshad Jain Advocate replaced the the local counsel for the appellants in connivance with him is belied by the synopsis of the proceedings Annexure P.18.

(5) Another complaint dated 11th October, 1984 Annexure P.19 from Shri M. B. Sanghi Advocate, Narnaul, was received by this Court which pertains to a Civil Appeal entitled H. U. F. Mohan Lal v. Honda Ram. Arguments in this appeal, according to the petitioner, were heard on 20th September, 1984. This was an appeal arising form a decree of the trial Court wherein as against the plaintiff's claim of Rs. 2500/- a decree for about Rs. 300/- had been passed. An appeal was filed by the plaintiff as he was dissatisfied with the decree. After hearing the arguments, he adjourned the appeal to 22nd September, 1984 for pronouncement of the judgment. On that date, however, the parties expressed their desire to reach at a compromise. As such the pronouncement of the judgment was postponed for about a fortnight. However, neither party reported about the compromise and he pronounced the judgment on 10th October, 1984 partly allowing the appeal and a decree in favour of the plaintiff-appellant was passed for Rs. 1768.18 paise with future interest at the agreed rate. The only grievance made in the complaint by Shri Sanghi was that the petitioner had not announced the judgment on 22nd September, 1984 and that it had been announced later on. The appeal had been allowed with costs and further interest at the rate of 18 per cent per annum which, according to the complainant, was an examplary rate of interest. This Court called for comments of the petitioner on this complaint vide letter dated 14th December, 1984 Annexure P.20 addressed by the Registrar of this Court to the District and Sessions Judge, Narnaul. He was required to State the law or the rule under which he reserved the judgment in the aforesaid appeal on the ground that the parties had shown their willingness for a compromise. This Court also sent for the file of this appeal before calling for the comments of the petitioner on the complaint. He submitted his comments vide letter dated

2nd February, 1985 Annexure P.20/A, wherein he explained that he had bona fide belief that the provisions of Order 20, Code of Civil Procedure, enabled a Court to reserve judgment in an appropriate case and he accordingly reserved the judgment in the aforesaid appeal as the parties had expressed their desire on 22nd September, 1984 to reach at a compromise and had sought two weeks' time to inform the petitioner about the compromise. Since they failed to do so, he pronounced the judgment on October 10, 1984.

(6) Yet another complaint dated 14th January, 1985 Annexure P.21 was made by one Khem Chand against the petitioner with regard to a rent appeal entitled Khem Chand v. Murti Mandir Jagan Nath. The Rent Controller had ordered ejectment of Khem Chand as tenant on an application for the purpose filed by the Murti, Mandir Jagan Nath. The appeal filed by Khem Chand against his eviction order was dismissed by the petitioner,—vide order dated 24th November, 1984 and he gave three months' time to the appellant to vacate the premises. According to him, the complainant wrongly stated in his complaint that he had been granted two months' time to vacate the premises, that limitation to file revision petition in this Court from his order was going to expire and that he had not been supplied copy of the order whereby the petitioner dismissed the appeal. The petitioner explained that the copying Agency is under the control of the District and Sessions Judge and that Shri Khem Chand had not made any complaint to the District and Sessions Judge for the delay in the supply of certified copy of the order. The complainant is a resident of Rewari. This complaint, according to the petitioner, also appeared to have been engineered by Mr. Ram Nath Mehlawat Advocate who also resides at Rewari and was interested in multiplying the complaints against the petitioner to prejudice the mind of the High Court against him.

(5) As regard the complaints of Mr. R. N. Mehlawat mentioned at Sr. No. 3, according to the petitioner, the matter was entrusted for a fact finding enquiry to Surinder Singh. He states that

normally this court does not entertain complaints which are not accompanied by an affidavit. However, the complaints of Shri Mehlawat were entertained. A High Court official went to Narnaul in the morning of 18th September 1984 to get the file of the Sessions case **(State v. Devla and others)** and brought the same to Chandigarh. The Peshi register and other registers pertaining to criminal cases maintained in his Court were also summoned by this Court through another special messenger who went to Narnaul on 25th September, 1984 and brought the same to Chandigarh on that date, Surinder Singh, J. sent for the petitioiner from Narnaul and certain questions were put to him by the learned Judge on 30th September, 1984 with regard to the number of dates fixed by him in the said case after the order of conviction of the accused was recorded on 25th July, 1984. He gave replies to all the questions put to him which are recorded in the form of a statement Annexure P. 14. He was not examined by Surinder Singh, J., after 30th September, 1984 with regard to any other complaint received in this Court against him nor was he associated with any enquiry which Surinder Singh, J. might have held after September 30, 1984. As is evident from Annexure P. 14, no question had been put to him with regard to the allegation of Mr. Mehlawat, complainant regarding his having received illegal gratification of Rs. 25,000 during the period from 25th July, 1984 to 13th August, 1984 from the accused persons for taking lenient view while awarding sentence to them. Surinder Singh, J. had also got the statement of Shri Parshotam Dass Gupta, Assistant District Attorney and public Prosecutor, Narnaul, who conducted the Sessions case (State v. Devla and others) in his Court, through the District and Sessions Judge, Narnaul, which is Annexure P. 15. This statement makes it clear that he had adjourned the case on 30th July, 1984 to 10th August, 1984 though he had proposed to fix the case firstly for 4th August, 1984 and then for 9th August, 1984 but none of these two dates was suitable to the counsel, for the parties. Surinder Singh, J. made a report dated 19th/21st February, 1985 Annexure P. 16 wherein reference was made to four cases dealt with and decided by the petitioner during his posting at Narnaul and to which mention is made at S. Nos. (3), (4), (5) and (6). He states that as is apparent from Annexure P. 16 Surinder Singh, J. had held only a preliminary enquiry into the complaints made against him. This report is to the effect that the complaint against the petitioner required further investigation. The penultimate paragraph of

the report Annexure P. 16 is to the following effect :—

> "In the state of affairs as noticed above, the matter may be placed in the meeting of Judges in order to decide as to what action should be taken in this behalf, especially when the Judicial Officer, i.e. Shri I. C. Jain, has not yet completed the period of probation."

The above report was considered in a meeting of the Judges held on 21st March, 1985. Notice of the confidential agenda contains item No. 4—

> "Re : Shri I. C. Jain, Additional District and Sessions Judge, Narnaul—
>
> Consideration of report dated 21st February, 1985 of Hon'ble Mr. Justice Surinder Singh."

The meeting note prepared by the Registrar in respect of this item of the agenda, while placing the report Annexure P. 16 of Surinder Singh, Judge in the meeting, contains *inter-alia* the following passage: —

> "In respect of aforesaid four complaints Hon'ble Mr. Justice Surinder Singh has made a detailed report dated 21st February, 1985 (Annexure 'Z') His Lordship has concluded the report with the suggestion that the matter may be placed in the meeting of the Hon'ble Judges in order to decide as to what action should be taken in this regard especially when the Judicial Officer, i.e., Shri I. C. Jain, has not yet completed the period of probation. This matter is now placed for consideration at a meeting of the Hon'ble Judges in accordance with the orders of Hon'ble the Acting Chief Justice."

The relevant extract from the confidential proceedings of the Judges meeting held on 21st March, 1985 is to the follwoing effect: —

> "— — — — — —
>
> (4) The matter regarding Shri I. C. Jain, Additional District and Sessions Judge, was considered. In view of the fact that his period of probation of two years is going to

expire on 2nd May, 1985, his performance as Additional District and Sessions Judge was reviewed. It was decided on further consideration that during this period, his work and conduct was not satisfactory and his services deserved to be dispensed with forthwith. Consequently, a recommendation be made to the State Government for issuing necessary orders in this respect. It is further decided that the judicial work from the court of Shri I. C. Jain be withdrawn immediately."

It may be noted here that the above three documents, i.e., the notice of the confidential agenda, the meeting note prepared by the Registrar as also the extract from the confidential proceedings, were produced before us by respondent No. 1 at our direction in C.M. No. 1519 of 1986 filed by the petitioner, which shall be dealt with in some more details in the latter part of this judgment but reference to the above documents has been made at this place so as to complete the sequence of events.

(6) As a result of the decision taken in the Judges meeting held on 21st March, 1985, a letter dated 28th March, 1985 Annexure P.26 was addressed by respondent No. 1 to the State Government to the effect that the work and conduct of the petitioner were not satisfactory during the period of probation and that his services deserved to be dispensed with forthwith and the State Government was requested that necessary steps under rule 10(3) of the Punjab Superior Judicial Service Rules, 1963 as applicable to the State of Haryana, may be taken immediately in this behalf. His confidential personal file was sent with the said letter. A letter dated 22nd March, 1985 was also addressed by respondent No. 1 to the District and Sessions Judge, Narnaul, to the effect that the judicial work from the Court of the Petitioner should be immediately withdrawn. This direction was complied with and he did not deal with the judicial work with effect from 25th March, 1985.

(7) In the meantime, besides the six incidents referred to above, another incident took place which has been narrated in para 29 of the petition and can be summarised thus :

There were three compensation cases filed in the year 1981 under the Motor Vehicles Act arising out of an accident

pending in the Court of the Petitioner. Shri M. B. Sanghi Advocate was a counsel for one of the respondents. These cases were consolidated by the petitioner,—*vide* order dated 15th February, 1985 and the same day issues were framed in the presence of Shri S. K. Sanghi Advocate, brother of Mr. M. B. Sanghi. These cases were then fixed for recording the evidence of the claimants on 15th and 16th of March, 1985, and for the evidence of the respondents on 22nd March, 1985. The claimants had summoned for 15th March, 1985 Dr. R. S. Chohan who had conducted the post-mortem examination on the deceased, who was a victim of the accident, and had prepared the medico-legal report of the injured and was a formal witness. Dr. R. S. Chohan appeared in the petitioner's Court on 15th March, 1985 for his evidence. He come from outstation. When the cases were taken up for evidence on 15th March, 1985, Shri M. B. Sanghi Advocate stated before the petitioner that he was unable to cross-examine the witness as he was not having the brief of the case because it was not noted in his diary for that date. The case was adjourned by the petitioner for two hours to enable Mr. Sanghi to get his brief so that the evidence of Dr. R. S. Chohan could be recorded. He directed the cases to be taken up at 2 PM for further examination of Dr. R. S. Chohan. When the hearing was resumed after lunch break, all the other counsel for the respondents except Mr. Sanghi had no objection to the examination of this witness. Mr. Sanghi did not, however, cross-examine him on the ground that the case was not fixed for hearing on that date. After recording his statement including the cross-examination by the other counsel, the petitioner discharged the witness. Shri M. B. Sanghi Advocate felt agitated. He made a requisition Annexure P. 24 for calling an immediate meeting of the Bar Association, Narnaul. He also made a complaint Annexure P. 24/A to the District Judge, Narnaul. A meeting of the Bar Association was held at 3.00 PM on 18th March, 1985. According to the petitioner, a few friends of Mr. Sanghi assembled at 3PM and dispersed before 3.30 P.M. No meeting took place at 3.30 PM and later a resolution Annexure P. 25 was shown to have been passed by the Bar Association, Narnaul. The

Secretary to the Bar Association sent a copy of this resolution to the High Court which was received by it on 22nd March, 1985. This resolution, however, was not considered in the Judges meeting held on 21st March, 1985 as it was received a day later.

(8) The judicial courts in the districts subordinate to respondent No. 1 are inspected by a Vigilance/Inspecting Judge once a year. Such inspections are generally carried out in the months of February/March every year. The judicial courts at Narnaul were scheduled to be inspected by S. P. Goyal, J. from 18th March, 1985 onwards. However, this scheduled inspection was cancelled and was later on conducted by S. P. Goyal, J. from 15th April, 1985 to 19th April, 1985. The Court of the petitioner was also inspected by the Inspecting Judge. The petitioner alleges that an enquiry about the complaint of Shri Mehlawat was also made by the Inspecting Judge. The Hon'ble Judge gave 'B Plus', i.e. 'Good' report about the work and conduct of the petitioner. He states that the only thing adverse mentioned in the report of the Inspecting Judge, which was communicated to him by respondent No. 1 vide letter dated 24th July, 1985 Annexure P. 28/A, is to the following effect:—

8.	Behaviour towards the members of the Bar and the public.	Some members of the Bar were complaining about his unaccommodating nature."

(9) The petitioner states that a news item Annexure P. 23 appeared in the Tribune dated 25th March, 1985 from which he learnt about the decision taken in the Judges meeting. He made a representation Annexure P. 28 on 28th March, 1985 to respondent No. 1.

(10) He further contends that in order to justify the decision taken in the Judges meeting on 21st March, 1985 recommending to the State Government for dispensing with his services, the report of the Inspecting Judge giving 'B Plus/Good' gradation to him about his work and conduct was watered down to 'C/Unsatisfactory' in the meeting held on 27th July, 1985 without giving any reasons or affording an opportunity of being heard, which action, he alleges is illegal, arbitrary and discriminatory. He submitted another

representation Annexure P. 29 to the Registrar of respondent No. 1 on 16th August, 1985 for recalling the decision and order dated 21st March, 1985. He, however, received no reply to the representations Annexures P. 28 and P. 29. It was during the pendency of his writ petition in the Supreme Court that he came to know from an affidavit filed on behalf of respondent No. 1 that both the aforesaid representations had been rejected by it. He also came to know during the course of hearing of his writ petition in the Supreme Court that the State Government with reference to the letter Annexure P. 26 from respondent No. 1 had requested it to extend the petitioner's period of probation. This suggestion of the State Government was, however, rejected by respondent No. 1 and its earlier decision to terminate the petitioner's services was reiterated. He contends that the persons appointed to the Haryana Civil Service (Judicial Branch) have to remain on probation for a period of two years, which can be extended by another year. Shri K. K. Doda and Shri M. P. Mehndiratta were initially appointed to the said service on probation. Respondent No. 1 recommended to the State Government for termination of their services on account of unsatisfactory work and conduct. However, their period of probation was extended by one year on the suggestion of respondent No. 2 and they were later on confirmed as members of the said service. He complaints that similar treatment was not meted out to him and by persisting in its recommendation for dispensing with his services before the expiry of his two years' period of probation, he has been discriminated against.

(11) In the conspectus of the above grounds, a prayer is made for the issuance of a writ of certiorari to quash the decision taken by respondent No. 1 in the Judges meeting held on 21st March, 1985 for recommending to respondent No. 2 to terminate /dispense with his services; to quash the decision taken in the Judges meeting held on 27th July, 1985 reducing 'B-Plus' report given by the Inspecting Judge about the petitioner's work and conduct for the second year of probation to 'C' report; to quash the decision taken by respondent No. 1 for rejecting the representations dated 28th March, 1985 and 16th August, 1985 Annexures P. 28 and P. 29 respectively made by him; to quash the decision taken by respondent No. 1 rejecting the proposal made by the State Government for extending the period of his probation and to issue a writ of *mandamus* directing respondent No. 2 not to terminate his services in pursuance of the recommendation made by respondent No. 1,—*vide* letter, dated 28th

March, 1985 Annexure P. 26. It has been further prayed that pending the final decision of the writ petition, the respondents should be directed to maintain the status quo as it prevailed on 10th September, 1985 with regard to his continuance in service.

(12) When the petition came up for motion hearing before the Division Bench on 2nd May, 1986, the learned counsel, who put in appearance on behalf of respondent No. 2, accepted notice of motion issued by the Bench and further made a statement at the Bar that the order passed by respondent No. 2 on the recommendation of respondent No. 1 shall not be given effect to till the decision of the writ petition. Respondent No. 1 in the written statement, which has been filed by the Registrar on its behalf, has not raised much dispute on the facts mentioned in the petition. It has been contended that the recommendation made by it,—*vide* letter Annexure P. 26 is in accord with rule 10(3) of the Rules. The provisions of Article 311(2) of the Constitution are not attracted as the order that would be passed in pursuance of rule 10(3) *ibid* is not that of dismissal, removal or reduction in rank. The petitioner's probation period of two years was going to expire on 2nd May, 1985. His performance as Additional District and Sessions Judge was reviewed and on consideration, his work and conduct during this period was found not satisfactory and it was therefore decided to dispense with his services forthwith and a recommendation to this effect was made to respondent No. 2,—*vide* letter, Annexure P. 26. It is contended that the petitioner is not entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution because no right of the petitioner has been violated. It is further averred that during his posting at Hissar many complaints were received against the petitioner. Again, during his posting at Narnaul a number of complaints, to which a mention has been made in extenso in the petition itself, were received. Complaint dated 11th September, 1984 Annexure P. 13 was looked into by Surinder Singh J., who was the Vigilance Judge of the Narnaul Sessions Division. After examining the record, the statement of the petitioner and that of Shri Parshotam Dass Gupta, Assistant District Attorney and Assistant Public Prosecutor (Annexures P. 14 and P. 15 respectively), the learned Judge concluded:—

> "In this state of affairs, it cannot be said that the allegations contained in the complaint filed by Shri R. N. Mehlawat

are without basis. In my view the complaint requires further investigation."

In connection with another anonymous complaint Annexure P. 17, the learned Judge observed :—

"Obviously, all the above adjournments have been made unnecessarily in the very old cases bearing the red label on the file, the complaint though anonymous requires to be looked into."

Another complaint of Shri M. B. Sanghi, Advocate Annexure P. 19, which was also looked into by Surinder Singh, J. was commented upon by the learned Judge thus:—

"This is a glaring example of the manner of working of Shri I. C. Jain in judicial cases."

Another complaint Annexure P. 21 was also looked into by Surinder Singh J. and his report Annexure P. 16 contains the penultimate paragraph, which has already been reproduced above. The work and conduct of the petitioner during the period of probation was considered in a full Court meeting held on 21st March, 1985 by the learned Judges and it was decided that a recommendation for dispensing with the services of the petitioner be made to the State of Haryana. Accordingly, the recommendation was made *vide* Annexure P. 26.

(13) Dealing with the other averments made in the petition, it has been stated on behalf of respondent No. 1 that the Bar Association, Hissar, in its meeting held on 27th September, 1983 passed the resolution Annexure P. 4, wherein it was resolved that the attitude and the behaviour of the petitioner towards the members of the Bar was most deplorable, condemnable for being rude, uncooperative and insulting. It is admitted that the vigilance Judge of Hissar Sessions Division, G. C. Mital J. gave 'B/Satisfactory' remarks to the petitioner for the year 1983-84, which were endorsed and the same were recorded by the Full Court also. Mention is, however, made to the remarks recorded in his judgment Annexure P. 7 by A. S. Bains J. (since retired) to the effect that the judgment delivered by the petitioner was extremely poor and was not based on evidence on the record. Receipt of representation Annexure

P. 8. from the petitioner is admitted. It is, however, averred that the Administrative Committee of respondent No. 1 decided that no action could be taken in the matter of the administrative side and the petitioner was informed accordingly,—*vide* letter, dated 29th November, 1984 Annexure R. 1 through the District and Sessions Judge, Narnaul. It is further stated that in view of spate of complaints against him, the petitioner was transferred to Narnaul from Hissar. It is admitted that the petitioner reported the incident dated 26th September, 1983 through the District and Sessions Judge, Hissar, along with a copy of the report of Shri Nar Singh Bishnoi, Advocate, addressed to the President, Bar Association, Hissar, dated 10th October, 1983 and the same was filed. No advice was conveyed to the petitioner as sought for by him. The matter being judicial, he was not supposed to be advised. It is averred that silence on the part of High Court neither amounts to approval nor condemnation of the petitioner's action. It is asserted that the work of the petitioner at Hissar was not satisfactory. The norms for the disposal of the work done by the Additional District Judge every month is assessed by the units and not by the disposal of number of cases. During his stay at Hissar from May, 1983 to April, 1984, the disposal in terms of units for most of the months was not 75 units as prescribed. This position is exhibited in Annexure R. 3. It is further stated that the remarks 'B/Satisfactory' given by G. C. Mital J., are inspection remarks while the remarks recorded by A. S. Bains, J., in the judgment Annexure P. 7 are on the judicial side. It is further stated that even during his stay at Narnaul, the petitioner did not give the prescribed norm of 75 units per month for most of the months, as is revealed in the statement Annexure R. 4.

(14) As regard the complaint of Shri R. N. Mehlawat Advocate, it is admitted that it was not accompanied by an affidavit but it is averred that it is not the requirement that every complaint should be accompanied by an affidavit before it can be enquired into. The complaint was signed and contained verifiable facts and as such it was required to be looked into by the learned Judge. The record of the case and the Peshi Register were summoned through special messengers. No doubt the statement of the petitioner was recorded by Surinder Singh, J. on 30th September, 1984. However, being a preliminary fact-finding enquiry, the petitioner was not required to be examined and associated by the learned Judge in respect of other complaints against him. It is admitted that no question

was put to the petitioner by the learned Judge with regard to the allegation of Mr. Mehlawat for his having received Rs. 25,000 as illegal gratification but it is explained that in such matters it is for the Vigilance Judge to ask whatever question he deemed necessary. Close friendship of Mr. M. B. Sanghi Advocate and Mr. R. N. Mehlawat, Advocate and the other averment pertaining to the registration of FIR No. 62, dated 27th March, 1985 are denied for want of knowledge. It is not disputed that the comments of the petitioner were called for on the complaint dated 11th October, 1984 of Mr. M. B. Sanghi Advocate through the District and Sessions Judge, Narnaul, asking him under what law or rule he reserved judgment in the case HUF *Mohan Lal* v. *Honda Ram* decided by him on 10th October, 1984, for an indefinite date on the ground that the 'parties have shown their willingness for compromise, 'as mentioned in his order dated 22nd September, 1984. It is stated that during the preliminary fact-finding enquiry it is not essential to associate the delinquent officer. It was for the learned Judge to solicit the information which he deemed appropriate. It has been denied that only the complaint of Shri Mehlawat was entrusted to the learned Judge. He being the Vigilance Judge of Narnaul Sessions Division was empowered to deal with all the complaints against the petitioner.

(15) It has been asserted that when the recommendation to dispense with the services of the petitioner was made to the State Government on 21st March, 1985, the entire service record of the petitioner was taken into considedation. It is further stated that the representation of the petitioner dated 21st January, 1986 was considered at the Judges meeting held on 21st February, 1986 and the same was rejected. It is denied that there was no formal agenda for considering the suitability of the petitioner before the matter was taken up at the Judges meeting held on 21st March, 1985. The agenda included the item for consideration of the report of Surinder Singh, Judge wherein it was especially mentioned that:—

> "The matter be placed in the meeting of Hon'ble Judges in order to decide as to what action should be taken in this behalf especially when the judicial officer, i.e. Shri I. C. Jain, has not yet completed the period of probation."

(16) It is admitted that the inspection of the subordinate Courts at Narnaul was carried out by S. P. Goyal, Judge from 15th April,

1986 onwards. It is, however, asserted that it was not necessary for respondent No. 1 to wait for the formal inspection of the Court of the petitioner by the Vigilance Judge as before making recommendation to dispense with his services his entire record uptil 21st March, 1985 was considered. The decision to dispense with his services is not only based on the report of Surinder Singh, J. but also on his work and conduct in its totality, which was found to be unsatisfactory. The recommendation made by respondent No. 1 was in terms of rule 10(3) of the Rules to dispense with his services as a probationer and it does not amount to removal from service. It is further stated that the question of granting any opportunity to the petitioner of being heard did not arise nor is it envisaged under the Rules applicable to him. The action of respondent No. 1 is not violative of the principles of natural justice. The news item in the Tribune dated 25th March, 1985 Annexure P.23 is stated to be incorrect having no bearing whatsoever on the Full Court meeting decision and the recommendation made by it to the State Government. It is maintained that respondent No. 1 neither gives briefings nor does it deem it necessary to contradict any news item. It is admitted that a copy of the resolution of the Bar Association, Narnaul, passed in its meeting held on 16th March, 1985 was received on 22nd March, 1985 complaining about the general behaviour, attitude and doubtful integrity of the petitioner. However, action on the same was not necessary as before that date the Full Court in its meeting held on 21st March, 1985 had decided to make a recommendation to the State Government to dispense with the petitioner's services. The averments made in the petition as to what transpired prior to the passing of the aforesaid resolution of the Bar Association are denied for want of knowledge. It is admitted that S. P. Goyal, Judge, after inspection of the Court of the petitioner in the month of April, 1985 had given 'B—Plus/Good' report to the petitioner. Only the adverse remarks contained therein to the effect that some members of the Bar complained about his unaccommodating nature were conveyed to the petitioner. With regard to the enquiry of the complaint made by Mr. Mehlawat by S. P. Goyal, J. it has been stated that there is nothing on the record of the High Court to support this contention. The remarks of S. P. Goyal, J. were considered by the learned Judges in a Full Court meeting held on 27th July, 1985 and the petitioner was awarded 'C/Below Average' confidential remarks for the year 1984-85 after considering relevant facts, material and service record of the petitioner. It is further stated

that the remarks given by the Inspecting Judge are merely recommendatory in nature till they are approved by the Judges in a Full Court meeting and its grading by the Full Court in the annual confidential remarks, is final. No opportunity of being heard was required to be given to the petitioner and action of the Court is not illegal, arbitrary or discriminatory. It is stated that the representation dated 16th August, 1985 of the petitioner was considered in a Full Court meeting held on 27th August, 1985 and it was rejected. No reply was sent to the petitioner regarding this representation. It is admitted that the Chief Secretary to Government Haryana, through a letter had requested respondent No. 1 that the matter in regard to extension in probation period of the petitioner may be considered and a decision taken in that regard may be communicated to the Government. This matter was considered in a meeting of the Judges and it was decided that this Court was not in favour of extending the period of probation of the petitioner. The State Government was informed accordingly,—*vide* letter dated 5th September, 1985. With regard to the case of Shri K. K. Doda, it is stated that during the period of probation, i.e., 1970-71 to 1972-73, he earned 'B/Average/Satisfactory' annual reports and Shri M. P. Mehndiratta earned annual confidential remarks as 'B/Average/Satisfactory' for the year 1977-78, and 'C/Below Average' for the years 1978-79 and 1979-80, Shri Mehndiratta is a member of the Haryana Civil (Judicial Branch) as was Shri K. K. Doda prior to his promotion as a member of the Haryana Superior Judicial Service. They stood confirmed in the Civil Service (Judicial Branch). They were initially appointed as officers of Haryana Civil Service (Judicial Branch) whereas the petitioner has been appointed directly as a member of the Service and thus they belong to different classes of service governed by different set of service rules. Their cases have no nexus whatsoever *qua* the petitioner. It is maintained that the writ petition is misconceived and deserves to be dismissed.

(17) In the written statement filed on behalf of respondent No. 2, the legal position as regards the petitioner's service as a probationer explained in detail by respondent No. 1 has been adopted. It is maintained that the service of the petitioner, who is a probationer direct recruit, could be dispensed with by the Governor in consultation with the High Court without assigning any reason if his work and conduct were found to be unsatisfactory. It is denied that the petitioner was entitled to an opportunity of hearing before an order dispensing with his probationary service could be passed. It is explained that on the recommendation of respondent. No. 1, it was

decided by the State Government to dispense with the services of the petitioner but on account of the stay order granted by the Supreme Court and later by this Court, further action has been deferred. The fact that the period of probation of certain officers is extended does not mean that all probationers are entitled to extension of the probation period. The competent authority, which is respondent No. 1 in the present case, has to consider each case on its merits.

(18) Replication has been filed by the petitioner to the written statement of respondent No. 1, wherein whatever has already been stated in the petition has been re-asserted and the averments made in the written statement have been disputed.

(19) We have heard the learned counsel for the parties at great length. Before we launch on a discussion of the rival contentions of the learned counsel, we find it necessary to reproduce here the provisions of rule 10 of the Rules:—

> "10. *Probation.*—(1) Direct recruits to the Services shall remain on probation for a period of two years, which may be so extended by the Governor in consultation with the High Court, as not to exceed a total period of three years:
>
> Provided that the Governor may, in exceptional circumstances of any case, after consulting the High Court, reduce the period of probation.
>
> (2) * * * * *
>
> (3) If the work or conduct of a direct recruit has, in the opinion of the Governor, not been satisfactory he may, at any time, during the period of probation or the extended period of probation, if any, in consultation with the High Court, and without assigning any reason, dispense with the services of such direct recruit."

It may be noted here that uptil the year 1975 rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952, as applicable to the State of Haryana, provided as under:—

> "Where it is proposed to terminate the employment of a probationer whether during or at the end of the period

of probation, for any specific fault or on account of the unsatisfactory record or unfavourable reports implying the unsuitability of the service the probationer shall be apprised of the grounds of such proposal and given an opportunity to show-cause against it, before orders are passed by the authority competent to terminate the appointment."

It is admitted on both sides that the above rule was deleted in the year 1975 and is no longer in force.

(20) We, first of all, take up the two extreme postures adopted by the learned counsel for rival parties. The submission of Mr. Jain that the petitioner, having been appointed to the Service on probation against a permanent post of quota of direct recruits, had a right to the post to which he had been appointed and his services could not be dispensed with without affording him reasonable opportunity is to be simply mentioned and rejected in view of the age-old settled law in *Parshotam Lal Dhingra* v. *Union of India* (1). The position of a probationer was considered by the final Court and it was held that where a person is appointed to a permanent post in Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment because the Government servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to do so. Such a termination does not operate as a forfeiture of any right of a servant to hold the post, for he has no such right. Obviously, such a termination cannot be a dismissal, removal or reduction in rank by way of punishment.

(21) Next comes the contention of Mr. Kuldip Singh that rule 10(3) of the Rules is *ultra vires* Article 235 of the Constitution. He placed reliance for his proposition on *State of Haryana* v. *Inder Parkash Anand and others* (2), and contended that the control which is vested in the High Court is complete control subject only to the power of the Governor in the matters of appointments, including dismissal, removal and reduction in rank, of the District Judges. In such cases, it is the contemplation in the Constitution

(1) AIR 1958 S.C. 36.

(2) A.I.R. 1976 S.C. 1841.

that the Governor as the head of the State will act in harmony with the recommendation of the High Court. The vesting of complete control over the subsordinate judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. It has been held in *Inder Parkash Anand's* case (supra) that it is for the High Court to decide whether a judicial officer should be retained in service after attaining the age of 55 years up to the age of 58 years and the Governor or the State Government have power to take a decision in this regard. On the same analogy, the counsel maintained that the question whether a probationer judicial officer should be retained in service or his services should be dispensed with also falls within the ambit of control of the High Court as such a decision does not come within the four-corners of Article 311 of the Constitution. Relying on the *High Court of Punjab and Haryana, etc.* v. *State of Haryana* (3), (N. S. Rao's case), he contended that since confirmation of persons appointed to be or promoted to be District Judges is within the control of the High Court and for that matter rule 10(2) of the Rules has been held *ultra vires* Article 235 of the Constitution, the decision of the High Court not to confirm a probationer and to dispense with his services is also within the control of the High Court and for that reason the provision in rule 10(3) of the Rules that the Governor shall pass orders in this regard also runs contrary to Article 235 of the Constitution. We however, find that this submission does not hold water in view of the observations of the Supreme Court in *Chief Justice of Andhra Pradesh and another, etc.* v. *L. V. A. Dikshitulu and others, etc.* (4). This was also a case of compulsory retirement of a judicial officer and reliance was placed on *Inder Prakash Anand's* case (supra). It was observed—

> "Holding that the order of compulsory retirement was invalid this Court stressed that the power of deciding whether a judicial officer should be retained in service after attaining the age of 55 years up to the age of 58 years, vests in the High Court, and to hold otherwise 'will seriously affect the independence of the judiciary and take away the control vested in the High Court.' The formal order of retirement, however, is passed by the

(3) A.I.R. 1975 S.C. 613.

(4) A.I.R. 1979 S.C. 193,

Governor acting on the recommendation of the High Court, that being the broad basis of Article 235."

(21-A) Thus, there is no doubt that the power of deciding whether a probationer judicial officer is to be confirmed or his services are to be dispensed with on account of unsatisfactory work and conduct vests in the High Court, but when a decision is taken by the High Court to dispense with the services of such a probationer the formal order of termination of his services is passed by the Governor on the recommendation of the High Court. We, therefore, do not agree with Mr. Kuldip Singh that rule 10(3) of the Rules is *ultra vires* Article 235 of the Constitution.

(22) The learned counsel on both the sides relied on a catena of case law to support their respective contentions whether the decision taken by the Full Court in its meeting held on 21st March, 1985 to dispense with the services of the petitioner and letter Annexure P. 26 following the same is by way of punishment or is simply an order of termination in accord with rule 10(3) of the Rules, We, therefore, find it necessary to examine the position of law in the order it has developed to the present day. Wherever we have found that any observation of the final Court has a direct bearing on the case in hand, we have supplied emphasis to the same. The first case in point of time is *Parshotam Lal Dhingra* v. *Union of India* (5). It was observed therein—

> *"Where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant, so appointed, has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment.....*
>
> It does not, however, follow that, except in the three cases mentioned above, in all other cases, termination of service of a Government servant who has no right to his post,

(5) 1958 S.C. 36.

e.g., where he was appointed to a post, temporary or permanent, either or probation or on an officiating basis and had not acquired *quasi*-permanent status, the termination cannot, in any circumstances, be a dismissal or removal from service by way of punishment.....

In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima, facie, *the termination is not a punishment and carries with it no evil consequences and so Article* 311 *is not attracted.* But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with."

In *Champaklal Chimanlal Shah* v. *The Union of India,* (6), it was observed—

"Temporary servants are also entitled to the protection of Article 311(2) in the same manner as permanent government servants, if the government takes action against them by meting out one of the three punishments, i.e., dismissal, removal or reduction in rank. But this protection is only available where discharge, removal or reduction in rank is sought to be indicated by way of punishment and not otherwise. The mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such innocuous expressions the court has to apply the two tests mentioned namely — (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences : and if either of the tests is satisfied, it must be held that the servant had been punished. *Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if*

(6) AIR 1964 S.C. 1854.

right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant.

A preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. *Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post for government does not usually take action of this kind without any reason.* Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. *Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Art.* 311(8) *for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. Such a preliminary enquiry may even be held* ex parte, *though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry.* It is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the Government servant gets the protection of Article 311 and all the rights that that protection implied as already indicated above. That is why the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule is irrelevant.

The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service rule (e.g. R. 5 in this case) would not mean that the termination of service amounted to infliction of punishment of dismissal or removal within the meaning of Article 311(2). Whether such termination would amount to dismissal or removal within the meaning of Article 311(2) would depend upon facts of each case and the action taken by government which finally leads to the termination of service."

(23) The legal significance and import of a fact finding preliminary enquiry came in for decision before the Supreme Court in *Shri A. G. Benjamin* v. *Union of India,* (7), and it was observed :—

"*But even where the government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of the temporary employee. When a preliminary enquiry of this nature is held in the case of a temporary government servant it must not be mistaken for the regular departmental enquiry made by the government in order to inflict one of the three major punishments already indicated. So far as the preliminary enquiry is concerned there is no question of its being governed by Art.* 311(2) *for the preliminary enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of the temporary government servant concerned. There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary government servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary government servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by*

(7) 1967 S.L.R. 185.

the contract or the relevant statutory rule. In such case, it would not be open to the temporary government servant to invoke the protection of Article 311 *for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant statutory rule should be exercised and whether the temporary government servant should be discharged.*

Even in a case where a formal departmental enquiry is initiated against a temporary government servant it is, we think, open to the authority to drop further proceedings in the departmental enquiry and to make an order of discharge simpliciter against the temporary government servant. We do not accept the contention of counsel for the appellant that once the formal departmental proceedings have been initiated it is not open to the authority concerned to drop them and to take the alternative course of discharging the temporary government servant in terms of the contract of service or the relevant statutory rule. It is possible that the authority takes the view that the stigma of the order of dismissal should be avoided in the individual case. As we have already said, *the appropriate authority possesses two powers to terminate the services of a temporary government servant. It can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, the provisions of Article* 311 *will not be applicable. Alternatively, the authority can also act under its power to dismiss a temporary servant and make an order of dismissal in which case the provisions of Article* 311 *will be applicable. If* therefore, the authority decides, for some reason, to drop the formal departmental enquiry even though it has been initiated against the temporary government servant, it is still open to the authority to make an order of discharge simpliciter in terms of the contract of service or the relevant statutory rule. In such cases the order of termination of services of the temporary government servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal because the appointing authority was actuated by the

motive that the said servant did not deserve to be continued in service for some alleged inefficiency or misconduct."

(24) Again, in *I. N. Saksena* v. *The State of Madhya Pradesh*, (18), the Supreme Court examined the question whether the Court is required to delve into the files to find out stigma cast on the government servant whose services are terminated and it was observed :—

"We are not prepared to extend the decisions of this Court on this aspect of the matter in the manner contended for by the appellant. Where an order requiring a government servant to retire compulsorily contains express words from which a stigma can be inferred, that order will amount to removal within the meaning of Article 311. *But where there are no express words in the order itself which would throw any stigma on the government servant, we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research.*"

(25) In *The State of Punjab and another* v. *Sukh Raj Bahadur*, (9), the following guidelines, which have a bearing on the present case were laid down :—

"(1) The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

(2) The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

(3) If the order visits the public servant with any evil consequences of casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

(8) 1967 S.L.R. 204.

(9) AIR 1968 S.C. 1089.

(4) *An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Articles 311 of the Constitution.*

(5) If there be a full-scale departmental enquiry envisaged by Articles 311, i.e. an Enquiry Officer is appointed, a chargesheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

(26) The final Court while examining the position of a probationer in *Dr. T.C.M. Pillai* v. *The Indian Institute of Technology, Guindy, Madras,* (10) observed—

"It is well settled that a probationer or a temporary servant can be discharged if it is found that he is not suitable for the post which he is holding. This can be done without complying with the provisions of Article 311(2) unless the services are terminated by way of punishment. *Suitability does not depend merely on the excellence or proficiency in work. There are many factors which enter into consideration for confirming a person who is on probation. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability or fitness for confirmation.*

In the present case the Board of Governors consisted of a number of distinguished and well known academicians and teachers. Although there is a mention in the resolution about the confidential reports by the head of the department and the Director but they have not been placed on the record. *Even assuming that those reports were favourable so far as the academic work of the appellant was concerned the Board was entitled to take into consideration the other matters which have already been mentioned for the purpose of deciding whether he should be confirmed or whether he should be given a notice of one month as per the terms of the*

(10) 1971 S.L.R. 679.

letter of appointment. The Board decided to adopt the latter course. By no stretch of reasoning can it be said that the appellant had been punished and that his services had been dispensed with as a penal measure."

(27) In *Samsher Singh* v. *State of Punjab and another* (11) the principles laid down in the leading judgment were summed up by V. R. Krishna Iyer, J., thus—

"1. Appointment to a post on probation gives the person so appointed no right to the post and his services may be terminated, without taking re-course to the proceedings laid down in the relevant rules for dismissing a public servant, or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But if instead of terminating such a person without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311 (2) of the Constitution.

4. — — — —

5. *But if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause."*

(11) ALR 1974, SC 2192.

(28) While considering the case of a probationary judicial officer, a Division Bench of this Court in *Bishan Lal Gupta v. The State of Haryana and others* (12) observed thus:—

> *"It stands established by a long line of binding precedents that when an informal enquiry so conducted against a probationer under the relevant service rules merely for determining whether he should be continued in service or not, and innocuous order of discharge passed against him does not visit him with evil consequences he cannot claim a fullfledged enquiry envisaged by Article 311 (2) of the Constitution.*
>
> The member of the State Judicial service sometime incur the displeasure of the litigants who in many cases send a large number of complaints against them to High Court. If the High Court were to act indiscriminately on such complaints without getting them verified by the District and Sessions Judges, the members of the judicial service would be left with little or no security of tenure. It is precisely for this reason that the High Court usually has an enquiry held into the matter before getting the explanation of the judicial officer concerned. Sometimes allegations of corruption are also levelled against judicial officers. Preliminary enquiries are also held to verify such allegations before deciding whether a fullfledged enquiry should be held against the judicial officer who is a probationer for awarding him a punishment or his explanation should be obtained for deciding whether he should be continued in service or not. In the latter class of cases the notices issued usually mention that explanation was being called for taking action under Rule 7(2) appearing in Part D of the Haryana Civil Service (Judicial Branch) Rules, 1951, read with rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Such a mention of the rules gives a clear indication to the judicial officer concerned that no action to impose a punishment on him was envisaged."

The view taken by this Court in *Bishan Lal Gupta's* case (supra) was affirmed by the Supreme Court in *Bishan Lal Gupta* v. *The State of Haryana and others,* (13). Therein the principles laid

(12) AIR 1977 Pb. and Hry. 7.

(13) 1978 (1) S.L.R. 404.

down in Samsher Cingh's case (supra) were explained thus—

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

(29) In *The Manager, Government Branch Press and another* v. *D. B. Belliappa,* (14), the services of a temporary Government servant were terminated without giving any reason, while some other employees junior to him were retained in service. The employee was earlier served with a show-cause notice questioning his integrity and fidelity but the Government ultimately adhered to the stand that there was no nexus between the show-cause notice and termination of service. It was held that the termination of service was made arbitrarily and not on the ground of unsuitability or other reason. It was further observed that it was perhaps open to the Government to say in view of the complaint alluded to in the show-cause notice against the integrity and fidelity of the employee, that the former had lost confidence in the latter and

(14) A.I.R. 1979 S.C. 429.

considered him unsuitable to be continued in the post which was one of trust and confidence. But when the Government instead of taking any such plea has, with obdurate persistency, stuck to the position that the employee's service has been terminated without any reason, it amounted to nearly admitting that the power reserved to the employer under the conditions of the employment, has been exercised arbitrarily. After referring to *Champaklal Chimanlal Shah's* case (supra), it was observed—

> "*The principle that can be deduced from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article* 16. Conversely, if the services of a temporary Government servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in, the same service a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Article 311(2), Proviso (c), the authority cannot withhold such information from the Court on the lame excuse, that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in *Breen* v. *Amalgamated Engineering Union,* (15), "is one of the fundamentals of good administration" and, to recall the words of this Court in *Khudi Ram* v. *State of*

(15) (1971) 1 All. E.R. 1148.

West Bengal (16), in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability". The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1)."

(30) In *Gujarat Steels Tubes Ltd., etc.* v. *Gujarat Steel Tubes Mazdoor Sabha and others,* (17), the final Court once again examined the question and observed—

"*If the severance of service is effected, the first condition is fulfilled and if the foundation or causa causans of such severance is the servant's misconduct the second is fulfilled. If the basis of foundation for the order of termination is clearly not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and* vice versa. *These canons run right through the disciplinary branch of master and servant jurisprudence, both under Article* 311 *and in other cases including workmen under managements.* The law cannot be stultified by verbal haberdashery because the court will lift the mask and discover the true face. It is true that decisions of this Court and of the High Courts since Dhingra's case (AIR 1958 S.C. 36) have been at times obscure, if cited dehors the full facts. In Shamsher Singh's case (AIR 1974 S.C. 2192) the unsatisfactory state of the law was commented upon by one of us, per Krishna Iyer, J., quoting Dr. Tripathi for support:

"'In some cases, the rule of guidance has been stated to be 'the substance of the matter' and the 'foundation' of the order. When does 'motive trespass into 'foundation'. When do we lift the evil of form to touch the 'substance'? When the Court says so. These 'Freudian' frontiers obviously fail in the work-a-day world and Dr. Tripathi's

(16) (1975)2 S.C.R. 832 at page 845=(A.I.R. 1975, S.C. 550, at page 558).

(17) A.I.R. 1980, S.C. 1896.

observations in this context are not without force. He says :

'As already explained, in a situation where the order of termination purports to be mere order of discharge without stating the stigmatizing results of the departmental enquiry a search for the 'substance of the matter' will be indistinguishable from a search for the motive (real unrevealed object) of the order. Failure to appreciate this relationship between motive (the real, but unrevealed object) and form (the apparent; or officially revealed object) in the present context has led to an un-real interplay of words and phrases wherein symbols like 'motive', 'substance' 'form' or 'direct' parade in different combinations without communicating precise situations or entities in the world of facts'.

The need, in this branch of jurisprudence, is not so much to reach perfect justice but to lay down a plain test which the administrator and civil servant can understand without subtlety and apply without difficulty. After all, between 'unsuitability' and 'misconduct' thin partitions do their bounds divide'. And over the years, in the rulings of this Court the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling. The learned Chief Justice has in his judgement, tackled this problem and explained the rule which must govern the determination of the question as to when termination of service of a probationer can be said to amount to discharge simpliciter and when it can be said to amount to punishment so as to attract the inhibition of Article 311."

Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus, scrutinised, the order has a

punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceedings from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as, on simle termination, are given and non-injurious terminology is used.

On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found, For, infact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

(31) In *Anoop Jaiswal* v. *Government of India and another,* (18), it was observed thus:

"It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

(18) A.I.R. 1984 S.C. 636.

(32) *Indra Pal Gupta* vs. *The Managing Committee Model Inter College, Thora,* (19), was a glaring case where a report on the allegation of misconduct termed as serious was the foundation of the order of termination of the services of the employee. While examining the facts of that case, it was observed thus:—

> "It is seen from the letter dated June 30, 1969 by which the services of the appellant were terminated that the resolution of the Managing Committee dated April 27, 1969 is made a part of it by treating it as an enclosure to that letter. The resolution actually begins with a reference to the report of the Manager, and states that the facts contained in the report were 'serious and not' in the interests of the institution'. It further refers to the fact that appellant was asked to give his explanation to the allegations made in the said report. That report stated:—
>
> 'It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take that botheration;
>
> The above report was the real foundation on which the decision of the Managing Committee was based. This is a case where the order of termination issued is merely a camouflage for an order imposing the penalty of termination of service on the ground of misconduct."

(33) In a recent judgment in *Jarnail Singh and others* v. *State of Punjab and others,* (20) the law on the point has once again been summed up as under:—

> "The position is now well-settled on a conspectus of the decision referred to hereinbefore that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an *ad hoc* appointee is a termination simpliciter in accordance with the terms of

(19) AIR 1984 SC 1110
(20) AIR 1986 SC 1626

the appointment without attaching any stigma to the employee concerned. It is the substance of the order, i.e., the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and well see whether the order was made on the ground of misconduct, inefficiency or not.

In the instant case, we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records of these petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1980. Thus, the impugned order terminating the services of the appellants on the ground that "the posts are no longer required" are made by way of punishment."

(34) The position of law is thus clearly set out. The form of the order is not decisive. Whether an order is by way of punishment or is a simple order of termination is dependent on the facts and circumstances of each case. Where allegations of serious and grave misconduct are the foundation of an order, though innocuously worded as a simple order of termination, such an order is by way of punishment and, if passed without affording reasonable opportunity to the Government servant, is violative of Article 311(2) of the Constitution. However, the mere fact that before arriving at a decision whether or not the Government servant is suitable to be retained in service or his services should be dispensed with in accordance with the terms and conditions of his employment some

preliminary fact-finding enquiry is held but no definite finding of misconduct is arrived at, an order of termination in such a case cannot be termed as the one by way of punishment. Suspicion in the mind of the employer that the employee was not suitable to be retained in service may be a motive behind such an order of termination but it cannot be termed as a foundation for the same. Such an order is unassailable as it does not cast any stigma on the employee whose services are terminated.

(35) Let us now examine the facts of the present case and find out whether the decision taken in the meeting of the Full Court on 21st March, 1985 and the letter Annexure P. 26 are by way of punishment and attract the provisions of Article 311(2) of the Constitution. In respect of the period of his stay at Hissar from 2nd May, 1983 to 5th May, 1984 as Additional District and Sessions Judge, the work and conduct of the petitioner were no doubt considered satisfactory by the Inspecting Judge as also by the Full Court. No doubt, a resolution Annexure P. 4 commenting adversely on his conduct in the Court was passed against him by the District Bar Association, Hissar, on which no action was taken by this Court. It was again during this period that he delivered judgment in Sessions case *State* v. *Ram Niwas,* on 10th September, 1983, which was adversely commented upon by A. S. Bains, J.,— *vide* judgment dated 5th April, 1984 Annexure P. 7 in Criminal Appeal No. 521-SB of 1983. The tenure of the petitioner as Additional District and Sessions Judge at Narnaul from 7th May, 1984 till the impugned decision was taken by the Full Court brought forth a spate of complaints against him to which elaborate reference has been made earlier. Some of these were examined by Surinder Singh, J. who was at the relevant time the Inspecting Judge of Narnaul Sessions Division. He held a preliminary enquiry to find out whether the complaints required further investigation. As already mentioned above, he concluded that the allegations in the complaints were not without substance and required further investigation. It was at this stage that the Full Court had to examine the report Ex. P. 16 alongwith the other service record of the petitioner and to decide whether disciplinary proceedings should be initiated against him as envisaged by Article 311 of the Constitution or his services as a probationer should be dispensed with under rule 10(3) of the Rules. The learned counsel for the petitioner has contended that had a departmental enquiry been held into the allegations against the petitioner as contemplated by

Article 311(2) of the Constitution, he would have proved that the complaints against him were false, frivolous and motivated. This submission loses sight of the proven fact that respondent No. 1 did not decide to go into the truth of the complaints received against the petitioner. In the Judges' meeting held on March 21, 1985 no decision was taken to investigate into the same. Instead, the petitioner's performance as probationer was reviewed and ultimate decision to dispense with his services was taken. We do not rule out the possibility that had a detailed enquiry been held against the petitioner, he might have been successful in dislodging the complaints made against him and come out unscathed. There is, however, an equal possibility that he might have been indicted on a charge based on one or more of the allegations against him. The result might have been his removal from service with a stigma. The Full Court, therefore, was to choose between the two courses. It is not disputed even by his learned counsel that the decision dated 21st March, 1985 is not based on any finding of misconduct against him.

His assertion, however, is that the complaints and the report Annexure P. 16 are the basis for the said decision. To canvass this view, he has referred to the penultimate paragraph of the report Annexure P. 16 wherein Surinder Singh, J. suggested that the matter may be placed in the meeting of Judges in order to decide as to what action should be taken in the matter especially when the petitioner had not yet completed the period of probation. He further referred to the notice of confidential agenda wherein item No. 4 is—

> "Re: Shri I. C. Jain, Additional District and Sessions Judge, Narnaul—
>
> Consideration of report, dated 21st February, 1985 of Hon'ble Mr. Justice Surinder Singh."

and the meeting note prepared by the Registrar which refers to the penultimate paragraph of the report Annexure P. 16 and places the matter for consideration in the Judges meeting.

(36) In our view, however, reference to these documents does not lead to the conclusion that the sole matter which was considered in the Judges meeting held on 21st March, 1985 while deliberating on item No. 4 was the report Annexure P. 16 along with the

complaints mentioned above. The decision taken at the meeting in fact is categoric that in view of the fact that the petitioner's period of probation of two years was going to expire on 2nd May, 1985, his performance as Additional District and Sessions Judge was reviewed and it was decided on further consideration that during this period his work and conduct were not satisfactory and his services deserved to be dispensed with forthwith. Consequently, a decision was taken to make a recommendation to the State Government for issuing necessary orders in this respect. Judicial work from the Court of the petitioner was also ordered to be withdrawn immediately. This makes it clear that besides the complaints and the report Annexure P. 16, other relevant record of the petitioner was also taken into consideration and the matter was finally decided.

(37) The other contention of the learned counsel for the petitioner is that since the work and conduct were found to be satisfactory by G. C. Mital J. as Inspecting Judge for the period the petitioner was posted at Hissar and he was given 'B Plus/Good' grading by S. P. Goyal, J. as Inspecting Judge of Narnaul Sessions Division for the period he worked at Narnaul, the Judges in the meeting held on 21st March, 1985 could not arrive at a conclusion that his work and conduct were not satisfactory during the period of probation and thus decide to dispense with his services under rule 10(3) of the Rules. It must be noted that the mere fact that the Court work of the petitioner was satisfactory is by itself not the criteria for adjudging his suitability for the post of Additional District and Sessions Judge. As observed in *Dr. T. C. M. Pillai's* case (supra), suitability does not depend merely on the excellence and proficiency in work. There are many factors which are taken into consideration for confirming a person who is on probation. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability for fitness for confirmation. The Bar Associations of Hissar and Narnaul—the two places where the petitioner remained posted as Additional District and Sessions Judge on probation—passed resolutions adversely commenting on his conduct and behaviour in Court. He invited a spate of complaints against him during the probationary period. On preliminary enquiry these complaints were found not to be without substance and further investigation was proposed.

(38) Without commenting in particular on the qualities and drawbacks of the petitioner, it may be pointed out that a lawyer

who joins service as a probationary judicial officer might have been intelligent and hard working yet he may fail to exude confidence about his impartiality. He might be erudite yet he may be lacking in patience, sobriety and courtesy—some of the attributes which are essential in the making of a good Judge. He might be honest yet his utterances and demeanour in the Court may give the impression to the litigants and the lawyers that they are not getting justice. He might be more confident in his own approach to the matter in dispute before him and not receptive to the arguments of the counsel. This may again be not exhibiting the signs of making a good Judge. He may thus invite adverse comments and spread dissatisfaction amongst the litigants and the lawyers. All these aspects have to be kept in view while deciding whether or not a person is suitable for continuance in service as a probationary judicial officer and whether he should be confirmed or his services should be dispensed with. We, therefore, do not agree with the submission of the learned counsel that the reports of the Inspecting Judges as a result of inspection of the Court of the petitioner were the sole factor for determination whether his work and conduct were satisfactory during the probation period. For the same reason, we are of the view that the mere fact that subsequent to the decision dated 21st March, 1985 the Inspecting Judge on inspection of the Court of the petitioner gave him 'B Plus/Good' grading would not wipe out completely the otherwise unsatisfactory conduct which the Full Court considered. In fact, when the report of the Inspecting Judge in respect of the petitioner came up subsequently before the Full Court it was duly considered and he was given 'C/Below Average' grading. The contention of the learned counsel that this subsequent grading given by the Full Court was because of the earlier decision taken by it in the meeting held on 21st March, 1985, in our view, does not hold water. It was the unanimous decision of the Judges and the petitioner does not allege that they had any animus against him. The imperative conclusion, therefore, is that 'C/Below Average' grading was given to him by the Full Court on merits.

(39) The learned counsel for the petitioner heavily relied on *Samsher Singh's case* (supra). He contends that the material constituting the complaints and the report Annexure P. 16 actuated the Full Court to take the decision to dispense with the services of the petitioner under rule 10(3) *ibid.* While doing so, so proceeds

his argument, the petitioner should have been afforded reasonable opportunity and since it has not been so done the impugned action is ultravires Article 311(2) of the Constitution. As we have observed above, it has to be decided on the facts and circumstances of each case whether the order of termination is by way of punishment or is simply in accord with the terms and conditions of the Service. In *Samsher Singh's* case (supra), the services of two probationary judicial officers, namely, Ishwar Chand Aggarwal and Shamsher Singh, were dispensed with. The facts and circumstances leading to the termination of their services can best be narrated in the language of the Supreme Court. In the case of Ishwar Chand Aggarwal, it was held:—

> "The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the Subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self-abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court that is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance.
>
> The Enquiry Officer nominated by the Director of Vigilance recorded the statements of the witnesses behind the back of the appellant. The enquiry was to ascertain the truth of allegations of misconduct. Neither the report nor the statements recorded by the Enquiry Officer reached the appellant. The Enquiry Officer gave his

findings on allegations of misconduct. The High Court accepted the report of the Enquiry Officer and wrote to the Government on 25th June, 1969, that in the light of the report the appellant was not a suitable person to be retained in service. The order of termination was because of the recommendations in the report.

The order of termination of the service of Ishwar Chand Aggarwal is clearly by way of punishment in the facts and circumstances of the case. The High Court not only denied itself the dignified control over the subordinate judiciary. The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provisions of Article 311. In such a case the simplicity of the form of the order will not be of any sanctity. That is exactly what has happened in the case of Ishwar Chand Aggarwal. The order of termination is illegal and must be set aside."

(40) It is to be noted that rule 9 of Punishment and Appeal Rules was then in force which contemplated issuance of notice to the probationer apprising him of the grounds of his unsuitability for service. He was not apprised in the notice about the material collected in this enquiry. Another vital factor which was considered fatal to the order of termination was that the enquiry had been conducted against him by an authority other than the High Court. In *Samsher Singh's* case the order of termination was held to have been passed on the basis of trifling matters instead of taking into consideration his overall work and conduct. The Court held as under:—

"It appears that a mountain has been made out of a mole hill. The allegation against the appellant is that he helped the opponent of Prem Sagar. The case against Prem Sagar was heard on 17th April, 1965. Judgment was pronounced the same day. The application for execution of the decree was entertained on the same day by the appellant. In the warrant the appellant wrote

with his own hands the words 'Trees, well, crops and other rights attached to the land.' This correction was made by the appellant in order that the warrant might be in conformity with the plaint and the decree. There is nothing wrong in correcting the warrant to make it consistent with the decree. It appears that with regard to the complaint of leaving office early and the complaint of Om Parkash, Agricultural Inspector the appellant was in fact punished and a punishment of warning was inflicted on him."

The appellant claimed protection of Rule 9. Rule 9 makes it incumbent on the authority that the services of a probationer can be terminated on specific fault or on account of unsatisfactory record implying unsuitability.

In the facts and circumstances of this case it is clear that the order of termination of the appellant Shamsher Singh was one of punishment. The authorities were to find out the suitability of the appellant. They however concerned themselves with matters which were really trifles. The appellant rightly corrected the records in the case of Prem Sagar. The appellant did so with his own hand. The order of termination is in infraction of Rule 9. The order of termination is therefore set aside."

(41) We are quite clear in our minds that the case of the petitioner is distinguishable on facts from *Samsher Singh's* case (supra).

(42) Another case reliance on which has been placed by the learned counsel for the petitioner in respect of his contention is the Supreme Court decision in *Indira Pal Gupta's case* (supra). This case again, in our view, is clearly distinguishable. The report of the Manager on the basis of which the Managing Committee of the College where Indra Pal was the Principal passed a resolution was to the following effect:—

"It will be evident from the above that the Principal's stay will not be in the interest of the institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should

take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e. for termination of his period of probation, too, the approval of the D. I. O. S. will be necessary. Accordingly any delay in this matter may also be harmful to our interests.

Accordingly I suggest that instead of taking any serious action, the period of probation of Sri Indra Pal Gupta be terminated without waiting for the end of period."

(43) The Court found that the letter dated 30th June, 1969 by which the services of Indra Pal Gupta were terminated made the resolution of the Managing Committee dated 27th April, 1969 a part of it by treating it as an encloure to the said letter. Further the resolution began with a reference to the report of the Manager and stated that the facts contained in the report were "serious" and "not in the interests of the institution". It further referred to the fact that Indra Pal Gupta was asked to give explanation to the allegations made in the said report. The report stated, "It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take that botheration." The Court thus held that the above report was the real foundation on which the decision of the Managing Committee was based. Thus, the order of termination was a camouflage for an order imposing penalty of termination of service on the ground of misconduct. None of the elements to which an elaborate reference has been made in *Indra Pal Gupta's* case (supra) is present in the case in hand.

(44) The mere fact that complaints or a preliminary enquiry preceded the order of termination of the petitioner in terms of rule 10(3) of the Rules does not render it punitive. *Bishan Lal Gupta's* case (supra) was preceded by complaints and a preliminary enquiry into them. Likewise, in *Ram Gopal Chaturvedi* v. *State of Madhya Pradesh*, (21), there were complaints against the probationary judicial officer about his character and the Chief Justice on his visit to the place of his posting made an enquiry into them. No charge-sheet was served on the appellant nor any departmental

(21) AIR 1970 SC 158.

enquiry held against him. The High Court passed a resolution that the State Government should terminate his services. Having regard to this reference, the order impugned therein had been passed. On the face of it the order did not cast any stigma on the officer's character or integrity, nor did it visit him with any evil consequences. The final Court held that it was immaterial that the order was preceded by an informal enquiry into his conduct with a view to ascertain whether he should be retained in service. Relying on *Sukh Raj's* case (supra), it was held that the order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authority only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution. We, therefore, reject this contention.

(45) It was admitted by the learned counsel for the petitioner that there is now no statutory requirement as was earlier stipulated in rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1959 to provide an opportunity to a probationer to show cause against the proposed termination of his appointment by the competent authority. But he submitted at the same time that the petitioner was entitled to an opportunity of hearing before the decision dated 21st January, 1985 on the principle of *audi alteram partem,* which is one of the fundamental rules of natural justice. To canvass this proposition, he placed reliance on the following observations of B. R. Tuli, J. in his concurring judgment in *Narender Singh Rao* v. *The State of Haryana etc.* (22).

> "Even if rule 9 of the Punishment and Appeal Rules did not apply on the ground that the proceedings were administrative and not disciplinary in character, the well-known rule of natural justice *audi alteram partem* required that the petitioner must be given a notice to explain what had been found against him and which had made him unsuitable for being retained in the Superior Judicial Service of the State."

(46) The learned counsel for the respondents, on the other hand, contended that the above observations in *Narender Singh Rao's* case (supra) are obiter as it had been held in the earlier part of the judgment that the order dispensing with the services of the

(22) I.L.R. (1974) 1 Pb. and Hry. 121.

probationer judicial officer was bad for non-compliance with the provisions of rule 9 above mentioned. He further submits that while affirming the aforesaid Full Bench judgment, the Supreme Court had upheld the same for holding that the impugned order was unsustainable for non-compliance with rule 9 *ibid.* It is not necessary to deliberate in detail on this point because it is concluded by the judgment of the final Court in *Ram Gopal Chaturvedi's* case (supra). It was observed—

"It was next argued that the impugned order was in violation of the principles of natural justice and in this connection reliance was placed on the decision of this Court in *State of Orissa* v. *Dr. Miss Binapani Dei,* (23) and *Ridge* v. *Baldwin,* (24). In *Binapani's* case, the appellant was an assistant surgeon in the Orissa Medical Service. The State Government accepted the date of birth given by her on joining the service. Later the Government refixed the date of her birth on *ex parte* enquiry and passed an order compulsorily retiring her. The Court held that its order was invalid and was liable to be quashed. The appellant as the holder of an officer in the medical service had the right to continue in service. According to the rules made under Article 309, she could not be removed from the office before superannuation except for good and sufficient reasons. The *ex parte* order was in derogation of her vested rights and could not be passed without giving her an opportunity of being heard. *In the present case, the impugned order did not deprive the appellant of any vested right. The appellant was a temporary government servant and had no right to hold the office. The State Government had the right to terminate his services under Rule* 12 *without issuing any notice to the appellant to show cause against the proposed action. In* 1964 AC 40 (supra) the House of Lords by a majority held that the order of dismissal of a chief constable on the ground of neglect of duty without informing him of the charge made against him and giving him an opportunity of being heard was in contravention of the principles of natural justice and was liable to be quashed. Section

(23) AIR 1967 SC 1269

(24) 1964 AC 40

191 of the Municipal Corporation Act, 1882, provided that the watch committee might at any time suspend and dismiss any borough constable whom they thought negligent in the discharge of his duty or otherwise unfit for the same. The chief constable had the right to hold his office and before depriving him of this right the watch committee was required to conform to the principles of natural justice. The order of dismissal visited him with the loss of office and involved an element of punishment for the offences committed. *In the present case, the impugned order did not involve any element of punishment nor did it deprive the appellant of any vested right to any office.*" (Emphasis supplied) .

In view of the above dictum, there is hardly any force in this contention.

(47) The next contention of the learned counsel for the petitioner is that the impugned decision and the letter Annexure P. 26 as also the subsequent decision of the Full Court disagreeing with the suggestion of the Government to extend the petitioner's period of probation are bad as these are not speaking orders. No reasons have been recorded for reaching at these decisions. For this proposition, he placed reliance on *The Siemens Engineering and Manufacturing Co. of India Ltd.* v. *The Union of India and another,* (25), *Baldev Raj Guliani* v. *The Punjab and Haryana High Court and others* (26) and a Full Bench judgment of the Madhya Pradesh High Court in *Samaru Das Banjare* v. *State of Madhya Pradesh and others,* (27). We are unable to accept this contention, firstly, for the reason that rule 10(3) of the Rules categorically provides that if the work and conduct of a direct recruit have not been satisfactory in the opinion of the Governor, he may, in consultation with the High Court, during the period of probation or the extended period of probation, if any, and without assigning any reasons dispense with his services. Secondly, the authorities referred to by the learned counsel in his support are all clearly distinguishable on facts. In *The Siemens Engineering and Manufacturing Company's* case (supra) the proceedings before the Assistant Collector arising from the notices demanding differential duty

(25) AIR 1976 SC 1785
(26) AIR 1976 SC 2490
(27) 1985 (2) SLR 520.

were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. In this context it was held that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. The Collector had not dealt with in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It was observed that the order of the Collector should have been a little more explicit and articulate so as to extend assurance that the case of the appellants had been properly considered by him. *Baldev Raj Guliani's* case (supra) was also on a different footing. The High Court exercising disciplinary control found the officer guilty of gross misconduct and unworthy to be retained in judicial service and recommended to the Governor his removal. The final Court observed that the recommendation of the High Court in respect of judicial officers should always be accepted by the Governor. Whenever in an extraordinary case, rare in itself, the Governor feels, for certain reasons, that he is unable to accept the High Court's recommendations, these reasons will be communicated to the High Court to enable it to reconsider the matter. Again, in *Samaru Das Banjare's* case (supra) rule 3-A of the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960, which came up for consideration, reads—

> "Government servant in respect of whom a declaration under clause (ii) of rule 3 has not been issued but has been in temporary service continuously for five years in a service or post in respect of which such declaration could be made shall be deemed to be in quasi-permanent service *unless for reasons to be recorded in writing* the appointing authority otherwise orders."

In the context of this rule, it was held that the rule uses a significant phraseology when it speaks that in the absence of a declaration the Government servant shall be deemed to be in quasi-permanent service *unless for reasons to be recorded in writing the* appointing authority otherwise orders. The words "for reasons to be recorded in writing" and the words "otherwise orders" are very significant in this rule. Distinction between "reasons and

conclusions" was also brought out and in the facts of the case it was held that there was no escape from the conclusion that what was recorded in the resolution of the High Court was not the "reasons" within the meaning of rule 5-A above referred but is the 'conclusion' of the High Court. This contention of the learned counsel is, therefore, without merit and is rejected.

(48) The next submission of the learned counsel is that since the Governor was to pass the order in consultation with the High Court, it was incumbent on respondent No. 1 to have provided to the Governor all the material on record with reasons which motivated it to make the recommendation for terminating the petitioner's services. Reliance for this proposition is placed on *S. P. Gupta and others* v. *President of India and others*, (28). In our view, the law is contrary to what is contended by the learned counsel. In the context to rule 10(5) of the Rules, the Governor is to pass the order in consultation with the High Court. Thus, the High Court is the consultee. In *S. P. Gupta's* case (supra) it was held that all the material in possession of one who consults must be unreservedly placed before the consultee and further a reasonable opportunity for getting information, taking other steps and getting prepared for tendering affidavit and meaningful advice must be given to the consultee. It is in the context of this position of law that in *Baldev Raj Guliani's* case (supra), it was held that wherever in an extraordinary case, rare in itself, the Governor feels for certain reasons that he is unable to accept the High Court's recommendation the reasons will be communicated to the High Court to enable it to reconsider the matter. We are, therefore, of the firm view that it was not necessary for respondent No. 1 to record any reasons for its decision to recommend to the Governor dispensing with the services of the petitioner as a probationary judicial officer.

(49) The petitioner's learned counsel then cited instances of three judicial officers, namely, Sarvshri H. S. Gill, K. K. Doda and M. P. Mehdiratta and stated the work and conduct of these judicial officers were found unsatisfactory for the initial period of probation of two years. Their probation was extended by one year. He contends that the petitioner has been discriminated against as he has not been meted out with similar treatment. In his case, on

(28) AIR 1982 SC. 149.

the other hand, in spite of the suggestion from the State Government respondent No. 1 did not agree to extend the period of probation as provided by rule 10(1) of the Rules. As has been rightly pointed out by the learned counsel for respondent No. 1, Shri K. K. Doda was promoted from subordinate judicial service to the Superior Judicial Service on probation, while Shri H. S. Gill and Mr. M. P. Mehndiratta were appointed as probationary officers in subordinate judicial service. The case of each individual probationer depends on its own peculiar facts. Merely because the rule permits extension of probation period by one year or that in the case of some other probationary judicial officers the period of probation was so extended can by no process of reasoning be said to work discrimination against the petitioner in whose case the High Court did not deem it proper to extend the period of probation and in fact recommended dispensing with his services before the expiry of the initial period of two years' probation. No amount of comparison as regards the merits and demerits of the aforesaid judicial officers vis-a-vis the petitioner can make out a case of discriminatory treatment *qua* the petitioner.

(50) Before parting with this judgment, we may mention that before the learned counsel started addressing arguments in the case, Civil Miscellaneous Application No. 1519 of 1986 was moved by the petitioner praying for production of documents mentioned at Items Nos. 1 to 16 in para 3 of the application. As already noticed above, we allowed production of the documents mentioned at Item No. 1, i.e. agenda and the minutes of the meeting of the High Court held on 21st March, 1985 in which the decision to terminate/dispense with the services of the petitioner was taken. We have, however, not considered it necessary to order production of the remaining documents. The prayer was in fact opposed by the learned counsel for respondent No. 1 though he submitted that he would produce all the documents enumerated in the application for our perusal. To dispose of this application, it is necessary to make mention of the documents, prayer of production of which we have declined. The order of the High Court/the agenda and the minutes of the meeting whereby the representation dated 28th March, 1985 of the petitioner was rejected and the order/agenda and the minutes of the Judges meeting held on 27th August, 1985 whereby his representation dated 16th August, 1985 was rejected are not at all relevant for adjudication on the points involved in the present writ petition. All these documents are subsequent to

the decision taken in the Judges meeting held on 21st March, 1985. Likewise, the agenda and the minutes of the meeting held on 27th July, 1985 whereby the report about the work and conduct of the petitioner "B Plus/Good" made by the Inspecting Judge was considered and he was graded as "C/Below Average"; the agenda and the minutes of the meeting of the High Court whereby the suggestion/proposal of the State Government to extend the period of probation of the petitioner was not acceded to; the correspondence between respondent No. 1 and respondent No. 2 in furtherance to the letter Annexure P. 26 as also the annual confidential reports of the petitioner for the years 1983-84 and 1984-85 recorded by the Inspecting Judge were not considered by us necessary for the decision of this writ petition; the annual confidential reports for the period of probation of Shri K. K. Doda, Mr. M. P. Mehdiratta and Shri H. S. Gill; agenda and minutes of the meeting of the High Court in which decision terminating/dispensing with the services of Shri K. K. Doda and Mr. M. P. Mehndiratta was allegedly taken; correspondence between respondents Nos. 1 and 2 in this regard; agenda/minutes of the meeting of the High Court withdrawing the decision to terminate/dispense with their services; order of the High Court extending the period of probation of Shri K. K. Doda and Mr. M. P. Mehndiratta and subsequent order of their confirmation; order of the High Court for retention of Shri H. S. Gill in the Haryana Civil Service (Judicial) after the expiry of the initial period of probation and after the expiry of the maximum period of probation; and order of the High Court for directing an enquiry against Shri H. S. Gill together with charges and the statement of allegations on which the enquiry had been ordered against him have not even a remote connection with the case of the petitioner. The production of these documents was only aimed at a wild hunt and a fishing enquiry which cannot be allowed in the course of decision of a writ petition in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution. The prayer for production of these documents is, therefore, declined.

In the context of the above discussion, we are of the firm view that there is no merit in this petition which is consequently dismissed with no order as to costs.

(51) As stated by the learned counsel for respondent No. 2 at the Bar, the Governor has already accepted the recommendation of the High Court dispensing with the services of the petitioner in

terms of rule 10(3) of the Rules. Formal orders in this regard shall now be issued by respondent No. 2 without further delay.

(52) As a result of the above decision, C.W.P. No. 3542 of 1985 has been rendered infructuous and is disposed of accordingly.

H.S.B.

Before J. V. Gupta, J.

URMILA DEVI,—*Petitioner.*

versus

HARI PARKASH,—*Respondent.*

Civil Revision No. 3163 *of* 1986.

January 21, 1987

Hindu Marriage Act (*XXV of* 1955)—*Section* 24—*Applications for grant of maintenance pendente lite filed by both husband and wife—Trial Court finding that neither party had sufficient means to support themselves—Court recording a finding that the husband being an able bodied person was capable of working—Said husband—Whether required to maintain his wife and liable to pay interim maintenance under Section* 24 *of the Act.*

Held, that if a husband is an able-bodied person capable of working, then, he is supposed to maintain his wife and to pay the maintenance as required under Section 24 of the Hindu Marriage Act, 1955. It is for the purposes of fixing the amount under the said section that the applicant's own income and that of the respondent is to be taken into consideration. In the absence of any income as such of either party, the husband being an able-bodied person and capable of working can be considered as capable of maintaining his wife and required to maintain his wife and to pay interim maintenance under Section 24 of the Act. (Para 6)

Petition under Section 115 *CPC from the order of the Court of Shri K. C. Dang, Additional District Judge, Karnal, dated* 16*th September,* 1986 *dismissing the applications with no orders as to costs.*

Claim : Petition for dissolution of marriage by a decree of divorce under Section 13 *of the Hindu Marriage Act.*

Claim in Revision : For reversal of the order of the lower Court.

V. K. Bali, Advocate, *for the petitioner.*

J. C. Verma, Advocate, *for the respondent.*