



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.825 of 2017

Order reserved on: 24-2-2022

Order delivered on: 13-5-2022

Ganesh Ram Berman, S/o Late Rajuram Berman, (ST) aged about 43 years, Ex-member of C.G. Higher Judicial Service, R/o Ward No.19, Near Pre-Metric Girl's Hostel, Indira Nagar, Janjgir, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. High Court of Chhattisgarh, through Registrar General, High Court, Bodri, Bilaspur (C.G.)
2. State of Chhattisgarh, through Principal Secretary, Law, Mahanadi Bhavan, Mantralaya, New Raipur (C.G.)

---- Respondents

For Petitioner: Mr. B.N. Mishra, Advocate.

For Respondent No.1 / High Court: -

Mr. Prafull N. Bharat, Senior Advocate with Mr. Shashank Thakur, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

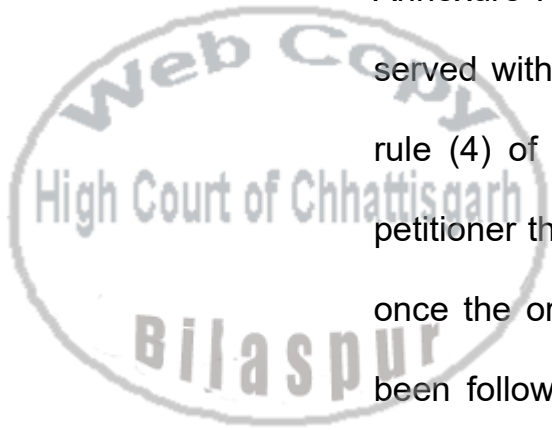
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. This petition is directed against the order dated 6-2-2017 (Annexure P-5) by which the State of Chhattisgarh exercising the power under sub-rule (4) of Rule 9 of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, 'the HJS Rules') and on the recommendation of the High Court of Chhattisgarh, terminated the services of the petitioner with immediate effect.



2. The petitioner was appointed as District Judge (Entry Level) by order dated 30-10-2014 (Annexure P-2) and he was posted as Additional District Judge, Raipur. It is the case of the petitioner that during the continuance of the period of probation, he was served with a memo dated 26-8-2016 by the Registrar (Vigilance) along with memo dated 31-8-2016 issued by the District & Sessions Judge, Raipur with a copy of anonymous complaint making certain allegations against him and two other judicial officers. The petitioner was directed to submit his explanation on the anonymous complaint and on the inspection report of the Registrar (Vigilance) which he submitted on 24-9-2016 vide Annexure P-4, but he was not informed anything further and he was served with the order of termination dated 6-2-2017 in terms of sub-rule (4) of Rule 9 of the HJS Rules. It is the further case of the petitioner that the order of termination is stigmatic / punitive in nature, once the order of termination is stigmatic and punitive, it must have been followed by a full-fledged departmental enquiry which has not been done, as such, the impugned order of termination is liable to be quashed. It is also the case of the petitioner that the inspection report of the Registrar (Vigilance) along with the explanation of the petitioner was submitted to the Standing Committee and the Standing Committee in its meeting dated 24-1-2017 took a decision and resolved to recommend the termination of services of the petitioner under sub-rule (4) of Rule 9 of the HJS Rules. The Standing Committee was not empowered to recommend the termination of the petitioner's services to the State Government and it was only the Full Court of the High Court which was authorised to recommend for termination of the services of the petitioner in view of the provisions





contained in Article 235 of the Constitution of India. It is also the case of the petitioner that the Full Court has never authorised the Standing Committee as contained in terms of Rule 4-C under Chapter I-A of the High Court of Chhattisgarh Rules, 2007 (for short, 'the Rules of 2007') read with Rule 9(4) of the HJS Rules to recommend the termination of a probationer. As such, the termination of the petitioner is liable to be quashed on the aforesaid two grounds.

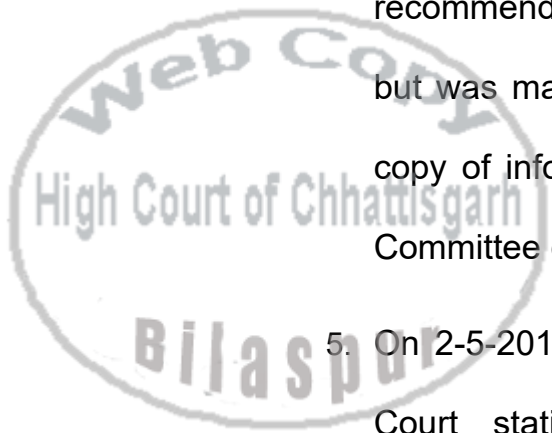
3. Return has been filed by respondent No.1 / High Court stating inter alia that the order of termination of the petitioner, who is a probationer, is strictly in accordance with Rule 9(4) of the HJS Rules. It has been pleaded that an anonymous complaint dated 3-12-2015 and another complaint dated 18-1-2016 was made by Shri J.P. Agrawal, Civil Court, Raipur, which were placed before the Portfolio Judge for consideration and pursuant to the order of the then Portfolio Judge, records of criminal cases including bail, criminal appeal and criminal revision decided by the petitioner as Judicial Officer were called for and ultimately, the Registrar (Vigilance) conducted enquiry and submitted report and in the enquiry, no apparent irregularity was found in the sessions case, criminal appeals and criminal revisions for the period from August, 2015 to January, 2016 decided by the petitioner and two other judicial officers, however, certain irregularities were found in respect of four bail applications decided by the petitioner which shows the inability of the petitioner to act as a Judicial officer and his working was found not to be satisfactory. Ultimately, inspection report dated 15-6-2016 submitted by the Registrar (Vigilance) was placed before the Portfolio Judge, Raipur for consideration and it was placed before the Standing Committee and





the matter was ultimately considered by the Standing Committee vide resolution dated 16-8-2016 which called for explanation of the petitioner after furnishing the copy of report and in compliance of resolution dated 16-8-2016, memo dated 26-8-2016 was issued to the petitioner seeking his explanation. Ultimately, decision was taken to terminate the services of the petitioner and his services were recommended to be terminated which was accepted by the State Government and the impugned order was came to be passed.

4. Thereafter, the petitioner filed rejoinder on 15-2-2018 followed by additional rejoinder on 13-7-2018 stating inter alia that recommendation for his termination was not made by the Full Court, but was made by the Standing Committee. The petitioner also filed copy of information obtained with regard to composition of Standing Committee dated 6-2-2017 vide Annexure P-6.
5. On 2-5-2019, additional return was filed by respondent No.1 – High Court stating that the Standing Committee has only made recommendation in contemplation of Chapter I-A of the Rules of 2007 and final decision was taken by the Full Court, and not taken by the Standing Committee as alleged by the petitioner.
6. On 27-1-2022, the petitioner filed documents along with copy of the extract of the Minutes of the Meeting of the Standing Committee dated 24-1-2017 obtained under the Right to information Act to demonstrate that his termination was recommended by the Standing Committee and on the same day, the matter came up for hearing before this Court and time was sought and granted to counsel for respondent No.1 to file additional return, and ultimately, additional return has been filed on behalf of respondent No.1 on 18-2-2022 stating that the petitioner's

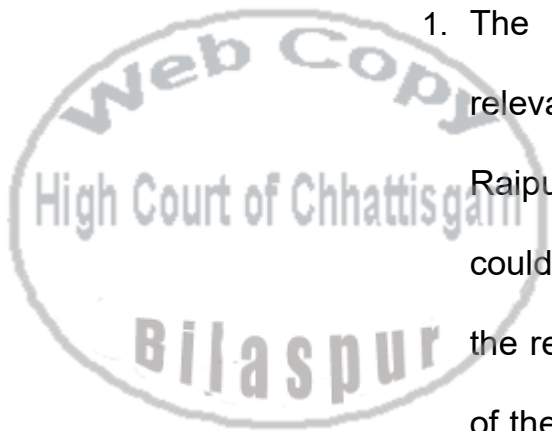




matter was placed for consideration before the Standing Committee and the Standing Committee taking into account the fact that the petitioner was on probation, recommended for termination of his services and pursuant to the recommendation of the Standing Committee, the Government of Chhattisgarh, Law and Legislative Affairs Department has passed order dated 6-2-2017 terminating the services of the petitioner. No further pleadings have been filed by the parties.

7. Mr. B.N. Mishra, learned counsel appearing for the petitioner, would make the following two fold submissions: -

1. The petitioner was a duly appointed judicial officer at the relevant point of time and working as Additional District Judge, Raipur. Even if his services were not satisfactory, his services could not be dispensed with by the State Government except on the recommendation of the Full Court of the High Court in view of the provision contained in Article 235 of the Constitution read with sub-rule (4) of Rule 9 of the HJS Rules and the Standing Committee so constituted under Rule 4-A read with Rule 4-C (Chapter I-A) of the Rules of 2007, has no jurisdiction to make recommendation for termination of the petitioner's services, it is only the Full Court which has power and jurisdiction to terminate the services of the probationer which is apparent from Rule 4-C, particularly clause (ix) as well as (xii), of the Rules of 2007 by which the Standing Committee has been conferred power to make recommendation to the State Government for compulsory retirement of judicial officer. Therefore, termination of the petitioner's services only on the recommendation of the





Standing Committee is absolutely illegal and bad in law. Reliance has been placed upon the decisions of the Supreme Court in the matters of High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and another¹, Rajasthan High Court v. Ved Priya and another² and Registrar General, High Court of Patna v. Pandey Gajendra Prasad and others³, to buttress his submission.

2. The petitioner was working as probationer at that particular point of time and his termination was punitive and stigmatic in nature, therefore, a full-fledged departmental enquiry was necessary which has not been done in the present case and therefore the termination is unsustainable and bad in law. Reliance has further been placed upon the decisions of the Supreme Court in the matters of Dr Vijayakumaran C.P.V. v. Central University of Kerala and others⁴ and Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others⁵ in support of his contention. As such, the impugned order of termination be set aside and the petitioner be reinstated in service along with full back-wages.

8. Mr. Prafull N. Bharat, learned Senior Counsel appearing for the High Court / respondent No.1, while replying to the submissions made by Mr. B.N. Mishra, would submit as under: -

1. Though the recommendation has been made by the Standing Committee to terminate the services of the petitioner taking into

1 (1998) 3 SCC 72
2 2020 SCC OnLine SC 337
3 (2012) 6 SCC 357
4 (2020) 12 SCC 426
5 (2015) 15 SCC 151





account that the petitioner was probationer, acting upon the said recommendation of the Standing Committee and accepting the recommendation, the Department of Law & Legislative Affairs, Government of Chhattisgarh has passed order dated 6-2-2017 (Annexure P-5) terminating the services of the petitioner which is strictly in accordance with law as it is covered by Rule 4-C(ix) of the Rules of 2007. Reliance has been placed upon the proviso appended to clause (xii) of Rule 4-C of the Rules of 2007 to buttress his submission.

2. The impugned order Annexure P-5 would show that it is neither stigmatic nor punitive in nature, it is a plain and simple order based on the recommendation of the High Court that the impugned order of termination has been passed for which regular departmental enquiry was neither contemplated nor adjudicatory, therefore, under Rule 9(4) of the HJS Rules, the petitioner's services have been terminated. Reliance has further been placed upon the decisions of the Supreme Court in the matters of Rajesh Kumar Srivastava v. State of Jharkhand and others⁶ and Director, Aryabhatta Research Institute of Observational Sciences (ARIES) and another v. Devendra Joshi and others⁷ in support of his contention.

9. Mr. Ravi Kumar Bhagat, learned Deputy Govt. Advocate appearing for the State / respondent No.2, would support the impugned order which has been passed as per the recommendation of the High Court and submit that the same is strictly in accordance with law.

6 (2011) 4 SCC 447

7 (2018) 15 SCC 73





10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the material available on record with utmost circumspection.

11. Upon hearing learned counsel for the parties, following two questions posed for consideration: -

1. Whether the Standing Committee constituted by notification dated 4-7-2015 would have competence and jurisdiction to recommend the termination of the petitioner's services (probationer) to the State Government in terms of sub-rule (4) of Rule 9 of the HJS Rules read with Article 235 of the Constitution of India?

2. Whether the termination of the petitioner's services from the post of District Judge was punitive / stigmatic warranting holding of full-fledged enquiry against him into the allegations of misconduct?

Answer to Question No.1: -

12. In order to answer the question, it would be appropriate to notice

Article 235 of the Constitution of India, which states as under: -

“235. Control over subordinate courts.—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”



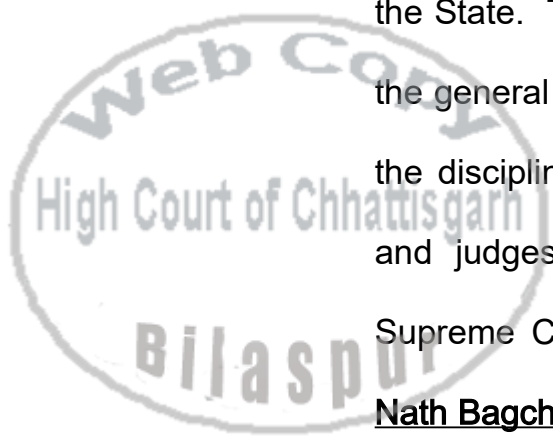


13. A focused glance of the aforesaid provision would show that while the posting and promotion of District Judges shall be in the hands of the Governor acting in consultation with the High Court,—the posting and promotion and granting of leave to officers of the State Judicial Service other than District Judges shall be exclusively in the hands of the High Court, subject, of course, to such appeals as are allowed by the law regulating conditions of the service.

14. Article 235 of the Constitution of India speaks about two distinct powers. The first is power of appointment, posting and promotion of District Judges and second is power of control over Judicial Officers of the State. The word “control” employed in Article 235 means not only the general superintendence of the working of the Courts but includes the disciplinary control of the judicial officers, i.e., the district judges and judges subordinate to him. The Constitution Bench of the Supreme Court in the matter of State of West Bengal v. Nripendra Nath Bagchi⁸ has held that the word “control” used in Article 235 of the Constitution means disciplinary control and dealt with the nature of the control vested in the High Court under Article 235 over district judges.

It has been held as under: -

“15. We do not accept this construction. The word “control” is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words “disciplinary control” or “disciplinary jurisdiction” have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word “control” must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification Control and Appeal) Rules used the word “control” and the only rules which can legitimately come under the word “control” are the Disciplinary Rules. Further





as we have already shown, the history which lies behind the enactment of these Articles indicate that "control" was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. ..."

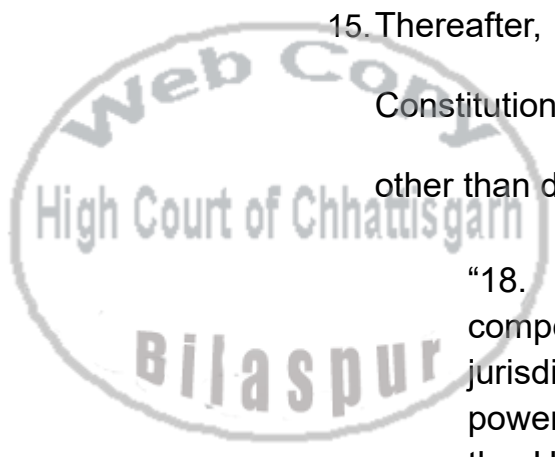
15. Thereafter, their Lordships further held that under Article 235 of the Constitution, High Court can hold enquiries, impose punishments other than dismissal or removal and observed as under: -

"18. There is, therefore, nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Article 235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction."

16. Further, a three Judge Bench of the Supreme Court in the matter of

Baradakanta Mishra v. High Court of Orissa⁹ held that the control

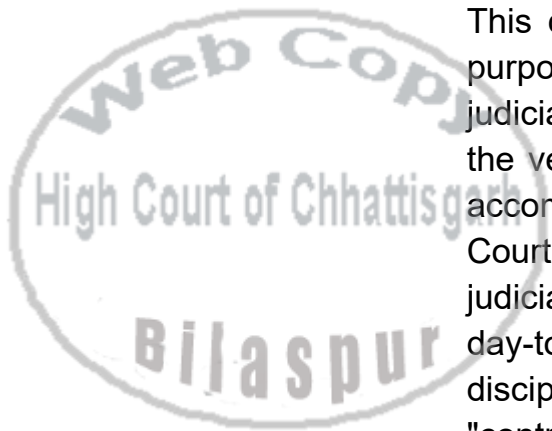
9 (1976) 3 SCC 327





vested in the High Court under Article 235 of the Constitution is complete control subject only to the power of the Governor in the manner of appointment including initial posting and promotion of District Judges and dismissal, removal, reduction in rank of District Judges. It has been observed as under: -

“20. The scope of Article 235 has been examined by this Court in several decisions. The important decisions are State of West Bengal v. Nripendra Nath Bagchi, AIR 1966 SC 447; High Court of Calcutta v. Amal Kumar Roy, AIR 1962 SC 1704; High Court of Punjab and Haryana v. State Haryana (In the matter of N.S. Rao), (1975) 1 SCC 843. The effect of the decisions is this. The word "control" as used in Article 235 includes disciplinary control over District Judges and Judges inferior to the post of District Judge. This control is vested in the High Court to effectuate the purpose of securing independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. The word "control" is accompanied by the word "vest" which shows that the High Court is made the sole custodian of the control over the judiciary. Control is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction on the presiding Judge. The word "control" includes something in addition to the mere superintendence of these courts. The control is over the conduct and discipline of Judges. The inclusion of a right of appeal against the orders of the High Court in the conditions of service indicates an order passed in disciplinary jurisdiction. The word "deal" in Article 235 also indicates that the control is over disciplinary and not mere administrative jurisdiction. The control which is vested in the High Court is complete control subject only to the power of the Governor in the manner of appointment including initial posting and promotion of District Judges and dismissal, removal, reduction in rank of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal subject however to the conditions of service to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that





clause. The High Court alone could make enquiries into disciplinary conduct.”

17. In the matter of Registrar (Admn.), High Court of Orissa, Cuttack v. Sisir Kanta Satapathy (Dead) by LRs.¹⁰, their Lordships of the Supreme Court (Constitution Bench) after reviewing all earlier judgments held that the High Court retains the power of disciplinary control over the subordinate judiciary, and observed as under: -

“16. We are clearly of the view that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer, on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order (vide *Inder Prakash Anand case*, (1976) 2 SCC 977 and *Rajiah case*, (1988) 3 SCC 211).”

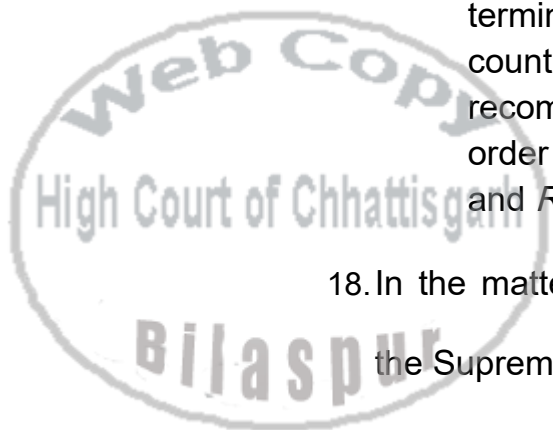
18. In the matter of Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu¹¹, the Supreme Court has held that the control of the High Court over the subordinate judiciary by virtue of Article 235 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation, and observed as under: -

“40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a) (i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control,

10 (1999) 7 SCC 725

11 (1979) 2 SCC 34





the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).

(ii) In Article 235, the word 'control' is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court, being exclusive, and not dual, an inquiry into the conduct of a member of judiciary can be held by the High Court alone and no other authority. (*State of West Bengal v. Nripendra Nath Bagchi* (supra); *Shamsher Singh v. State of Punjab* (1974) 2 SCC 831; *Punjab and Haryana High Court v. State of Haryana* (sub nom *Narendra Singh Rao*, (1975) 1SCC 831).

(iii) Suspension from service of a member of the judiciary, with a view to hold a disciplinary inquiry.

(b) Transfers, promotions and confirmation of such promotions of persons holding posts in the judicial service, inferior to that of District Judge. (*State of Assam v. S. N. Sen*, (1971) 2 SCC 889, *State of Assam v. Kuneswar Saikia* (1969) 3 SCC 505).

(c) Transfers of District Judges [*State of Assam v. Ranga Muhammad* (supra); *Chandra Mouleshwar v. Patna High Court* (supra)].

(d) Recall of District Judges posted on ex-cadre posts or on deputation on administrative posts. (*State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647).

(e) Award of Selection grade to the members of the judicial service, including District Judges, it being their further promotion after their initial appointment to the cadre. (*State of Assam v. Kuneswar Saikia* (supra)).

(f) Confirmation of District Judges, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233, on probation or officiating basis. [*Punjab & Haryana High Court v. State of Haryana* (supra)].





(g) Premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts (*State of U.P. v. Batuk Deo Pati Tripathi* (supra).”

19. However, it follows from the aforesaid judgments that the High Court cannot terminate the services of a District Judge or impose any punishment of reduction in rank which power belongs to the Governor as appointing authority under Article 311(1) of the Constitution though the word “control” in the Article gives the High Court power to make enquiries and disciplinary control and to recommend imposition of such punishment (see Baradakanta v. Registrar¹² and High Court of Punjab and Haryana v. State of Haryana¹³).

20. In the matter of T. Lakshmi Narasimhachari v. High Court of A.P.¹⁴, the Supreme Court has held that the competent authority to remove a judicial officer is Governor and not the High Court, recommendation will be binding on the Governor.

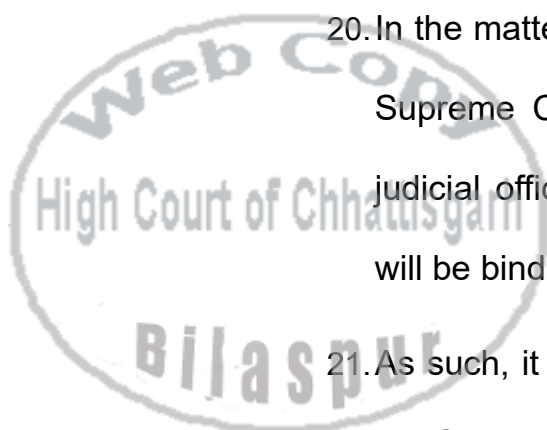
21. As such, it is quite vivid that the High Court by virtue of Article 235 of the Constitution of India exercises complete and exclusive control over the subordinate judiciary including District Judge, but in case of termination and dismissal, the High Court can only recommend the imposition of punishment to the Governor and such recommendation would be binding on His Excellency the Governor.

22. Reverting to the facts of the case in the light of the aforesaid legal position, it would be appropriate to refer to Rule 9(5) of the HJS Rules which also confers Rule 9(4) which states that on completion of probation, the High Court may recommend termination of the service of a direct recruit. Rule 9(4) of the HJS Rules states as under: -

12 AIR 1974 SC 710

13 AIR 1975 SC 613

14 (1996) 5 SCC 90





“9. Probation.—

(4) The High Court may, at any time, before the completion of probation or officiation, as the case may be, recommend termination of the service of a direct recruit or recommend reversion of a promotee member of the Service to his substantive post from which he was promoted.”

23. Coming to the facts of the case, in the instant case, anonymous complaints were made against the petitioner and against two more judicial officers on 3-12-2015 and 18-1-2016 which was enquired by the High Court through the Registrar (Vigilance) who submitted inspection report on 15-6-2016 and in the report, it was categorically mentioned that in four bail applications some irregularities were found by the learned Registrar (Vigilance) and the Registrar (Vigilance) recommended discreet enquiry against the petitioner. However, the inspection report was supplied to the petitioner by memo dated 31-8-2016 seeking his comment vide Annexure P-3 which the petitioner replied on 24-9-2016 refuting the allegations of misconduct of any kind. Ultimately, it appears that the meeting of the Standing Committee was held vide Annexure P-6 (page 86 of the paper book) in which on 24-1-2017 assessment chart and vigilance report were placed before the Standing Committee. At this stage, it would be appropriate to notice the Extract of the Minutes of the Meeting of the Standing Committee held on 24-1-2017 (pages 15 & 16 of the paper book) in which the petitioner's case for confirmation of District Judge (Entry Level) and issuance of certificate in terms of sub-rule (5) of Rule 9 of the HJS Rules has been considered and following resolution was passed: -

“(c) The Standing Committee considered the overall performance and entire service record of Shri Ganesh Ram





Burman. On perusal of the record, it is found that he is not fit for confirmation in service. Therefore, it is resolved to recommend termination of his services under Sub-rule (4) of Rule 9 of the Chhattisgarh Higher Judicial Service (Recruitment & Conditions of Service) Rules, 2006.”

24. Thus, resolution was passed recommending termination of the petitioner's services under sub-rule (4) of Rule 9 of the HJS Rules and ultimately, accepting the recommendation of the Standing Committee, on 6-2-2017, the order of termination of the petitioner's services was passed by the competent authority by order and in the name of the Governor of Chhattisgarh vide Annexure P-5 which states as under: -

**GOVERNMENT OF CHHATTISGARH
LAW & LEGISLATIVE AFFAIRS DEPARTMENT,
MANTRALAYA, MAHANADI BHAWAN,
NAYA RAIPUR (C.G.) 492002**

//ORDER//

Raipur, dated 06.02.2017

F.No.-1296/ 276/XXI-B/C.G./17. - The Government of Chhattisgarh, accepting the recommendation of the Hon'ble High Court of Chhattisgarh made in accordance with sub-rule (4) of Rule 9 of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006, for termination of services of Shri Ganesh Ram Burman, Member of Higher Judicial Service, presently posted as Chairman, permanent Lok Adalat, Jagdalpur, hereby, terminates the services of above mentioned Shri Ganesh Ram Burman, with immediate effect.

**By order and in the name of the
Governor of Chhattisgarh,
Sd/-
(Ravishankar Sharma)
Principal Secretary,
Government of Chhattisgarh
Law & Legislative Affairs Department**

25. The principal challenge made on behalf of the petitioner is that the Standing Committee was neither authorised nor empowered to make recommendation for termination of the petitioner's services in terms of





sub-rule (4) of Rule 9 of the HJS Rules and therefore the consequent termination by the State Government is illegal and liable to be set aside.

26. The Supreme Court in the matter of **State of Uttar Pradesh v. Batuk Deo Pati Tripathi and another**¹⁵ has held that control vested in High Court over Subordinate Judiciary implies power to frame Rules to make the exercise of the control feasible, convenient and effective; this includes power to constitute and permit a Judge or some of the Judges to act on behalf of all; and no delegation or abdication of power is involved in such situation.

27. In order to resolve the said plea, it would be appropriate to notice that the Standing Committee has been constituted by the High Court in exercise of the powers conferred under Articles 225 & 227 of the Constitution of India with effect from 4-7-2015 under Chapter I-A which has been inserted in the Rules of 2007. Rule 4-A of the Rules of 2007 speaks about constitution of Standing Committee, Rule 4-C provides the powers of the Standing Committee with reference to the Judges and Rule 4-C(ix) speaks about power of the Standing Committee to pass orders of suspension, initiation of departmental proceedings, etc., which states as under: -

“4-C. The Standing Committee shall have power, without reference to the Judges generally—

(i) to (viii) xxx xxx xxx

(ix) to pass orders of suspension, initiation of departmental proceedings against members of the Higher Judicial Service and Subordinate Judicial Service, and consequential orders in the said proceedings other than that of dismissal from service;”



28. However, clause (xii) of Rule 4-C of the Rules of 2007 expressly confers jurisdiction to the Standing Committee to make recommendation to the State Government for compulsory retirement of any Judicial Officer of any rank. Clause (xii) of Rule 4-C of the Rules of 2007 provides as under: -

“4-C. The Standing Committee shall have power, without reference to the Judges generally—

(xii) to make recommendation to the State Government for compulsory retirement of any Judicial Officer of any rank :”

29. Not only this, Rule 4-O of the Rules of 2007 provides for the matters which shall be taken by the Judges at the meeting of the Full Court.

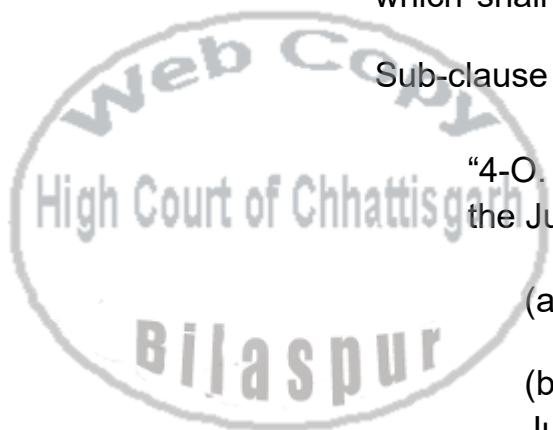
Sub-clause (b) of clause (i) of Rule 4-O reads as follows: -

“4-O. (i) On the following matter decision shall be taken by the Judges at a meeting of the Full Court:—

(a) xxx xxx xxx

(b) All recommendations for the dismissal from office of Judicial Officer.”

30. A focused glance of Rule 4-C(ix) of the Rules of 2007 would show that the High Court has conferred to the Standing Committee only the power to pass orders of suspension, initiation of departmental proceedings against members of the Higher Judicial Service and Subordinate Judicial Service, and consequential orders in the said proceedings other than that of dismissal from service. However, the power to make recommendation to the State Government for compulsory retirement of any Judicial Officer of any rank has also been conferred to the Standing Committee, but no power either expressly or impliedly to make recommendation for dismissal of a Judicial Officer / District Judge has been conferred in favour of the



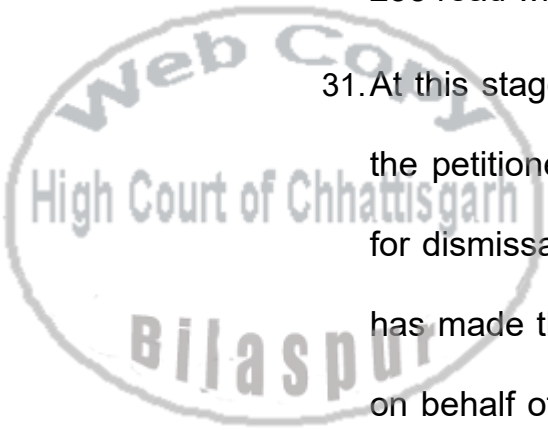


Standing Committee by the High Court. Even otherwise, Rule 4-O(i) (b) of the Rules of 2007 clearly states and makes the power of the Standing Committee more explicit that all recommendations for the dismissal from office of Judicial Officer shall be made at a meeting of the Full Court of all Judges. This makes it vividly clear that the Standing Committee had no power and jurisdiction to make recommendation to the State Government for dismissal of the petitioner from the office of the District Judge and it was only the power and jurisdiction of the Full Court to make recommendation to terminate the services of the petitioner / probationer in terms of Article 235 read with Rule 9(4) of the HJS Rules.

31. At this stage, it would be appropriate to mention that it is the case of the petitioner that the Full Court has not made any recommendation for dismissal of the petitioner and it was the Standing Committee that has made the said recommendation. Additional return has been filed on behalf of the High Court on 2-5-2019 supported by the affidavit of the then Additional Registrar (D.E.) stating in paragraph 5 as under: -

“5. ... It is respectfully submitted that the standing committee has only made the recommendation in contemplation of Chapter 1-A of the Rules of 2007, the final decision was taken by the full court and not by the standing committee.”

Thereafter, on 27-1-2022, the petitioner filed documents demonstrating that decision has been taken by the Standing Committee and again the High Court took time to file additional return and finally, additional return was filed on 18-2-2022 supported by the affidavit of the Additional Registrar (D.E.) in which it has been stated as under: -

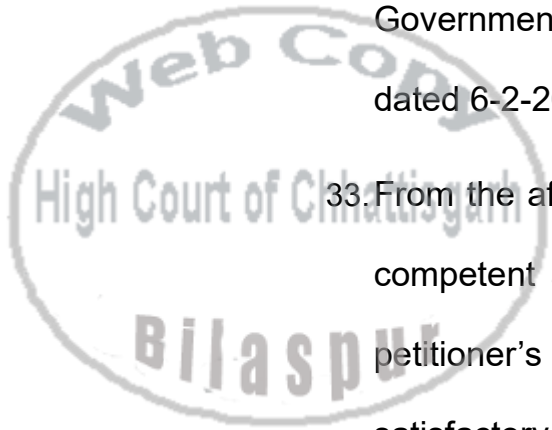




“(D) That, the case of the petitioner was placed before the standing committee and the standing committee taking into account the fact that the petitioner was on probation recommended for termination of the services. That, pursuant to the recommendation of the standing committee, Government of Chhattisgarh, Law and Legislative Affairs Department has passed the order dated 06-02-2017 terminating the service of the petitioner. It is submitted that the order of termination is simplicitor in nature and does not casts any stigma on the petitioner. Hence, does not warrant any interference by this Hon’ble Court.”

32. A careful perusal of the additional return filed by the High Court on 18-2-2022 would show that it is the Standing Committee which has recommended the case of the petitioner for termination to the State Government and on that basis, the State Government passed order dated 6-2-2017 terminating the services of the petitioner.

33. From the aforesaid factual position on record, it is quite vivid that the competent authority to make recommendation for termination of the petitioner’s services on the ground that his services were not satisfactory, was the Full Court of the High Court in view of Article 235 of the Constitution of India and in view of the judgments of the Supreme Court noticed herein-above, however, in the present case, admittedly, the Full Court had not made any recommendation for termination of the petitioner’s services and it is the Standing Committee that has made such recommendation for dismissal of his services which the Standing Committee was neither empowered nor authorised in terms of notification dated 4-7-2015 to make recommendation to terminate the services of the petitioner. Since the power to make recommendation to the State Government to terminate the services of the petitioner is vested with the Full Court of the High Court by virtue of Article 235 of the Constitution of India, the Full Court





would only be the competent authority to exercise such power, but, in the instant case, no such recommendation has been made by the Full Bench of the High Court to terminate the services of the petitioner in terms of Rule 9(4) of the HJS Rules. Since the High Court has not made any recommendation in terms of Rule 9(4) of the HJS Rules to terminate the petitioner's services, the order of termination passed by respondent No.2 on the basis of recommendation of the Standing Committee is *ipso facto unconstitutional*, non est and without authority of law, and deserves to be quashed.

Answer to question No.2: -

34. Since this Court has already held herein-above while answering question No.1 that the order of termination passed by respondent No.2 State Government is *ipso facto* unconstitutional, non est and without authority of law, the question as to whether the impugned order terminating the services of the petitioner is punitive or stigmatic in nature, in my considered opinion need not be gone into as the impugned order was passed on the basis of recommendation made by incompetent authority.

35. Very recently, the Supreme Court in the matter of **Sunny Abraham v. Union of India and another**¹⁶ at para 11 while deciding that any decision not having the authority of law would be non-est explained the doctrine of non-est in the following words: -

“... The term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having



approval of the Disciplinary Authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid.”

36. Since the impugned order of termination has already been held to be unconstitutional, non est and without authority of law, this question though placed for consideration, is not being gone into as held herein-above and question No.2 is answered accordingly.

37. As a fallout and consequence of the aforesaid discussion, question No.1 is answered in favour of the petitioner and question No.2 is answered in the terms stated herein-above. In view of the above stated analysis, impugned order dated 6-2-2017 (Annexure P-5) terminating the petitioner's services is liable to be and is hereby quashed. However, this will not bar respondent No.1 to proceed in accordance with law. The petitioner is directed to be reinstated in service forthwith along with all consequential service benefits except back-wages. The question of back-wages will be considered by the competent authority. However, the petitioner may make representation to the competent authority within 30 days from today claiming back-wages which shall be considered by the competent authority within next 60 days in accordance with law keeping in view the relevant rules and regulations.

38. Accordingly, the writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

