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(BEFORE K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.)

REGISTRAR, HIGH COURT OF GUJARAT  
AND ANOTHER

.. Appellants;

*Versus*

C.G. SHARMA

.. Respondent.

Civil Appeals No. 4019 of 2002<sup>†</sup> with No. 575 of 2003,  
decided on November 17, 2004

**A. Service Law — Probation — Automatic confirmation after expiry of period of probation — Held, cannot be claimed as a right when relevant rules require work being found to be satisfactory and existence of vacancy — Gujarat Judicial Service Recruitment Rules, 1961, R. 5(4)**

*Held :*

Even if the period of two years of probation prescribed under Rule 5(4) of the Rules expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory, which are the prerequisites or preconditions for confirmation. The language of the Rule itself excludes any chance of giving deemed or automatic confirmation. The probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Under the relevant Rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and therefore, the contention that the respondent's services were deemed to have been continued on the expiry of the probation period, is misconceived. (Paras 26 and 43)

*State of Maharashtra v. Veerappa R. Saboji*, (1979) 4 SCC 466 : 1980 SCC (L&S) 61, relied on

*State of Punjab v. Dharam Singh*, (1968) 3 SCR 1 : AIR 1968 SC 1210, cited

**B. Service Law — Termination of service — Probationer — Discrimination alleged — Each officer's case evaluated on its own merits on the basis of overall performance while assessing suitability and decision to retain or to discharge taken in conformity with norms settled — Held, allegation that while other similarly situated officers were allowed to continue in service, respondent was given discriminatory treatment by terminating his service, not sustainable — Constitution of India, Art. 14 — Discrimination** (Para 29)

**C. Service Law — Termination of service — Probationer — Adverse remarks — Unsatisfactory work — Assessment of overall performance — Civil Judge (Junior Division) and Judicial Magistrate, First Class given adverse entries like "not industrious", "less diligent", "below average", "no clarity of thought and expression", "poor in civil work", "complete judicial aloofness lacking", "conduct suspicious" — District Judges concerned, having regard to unsatisfactory performance and questionable integrity**

<sup>†</sup> From the Judgment and Order dated 5-9-2001 of the Gujarat High Court in LPA No. 1721 of 1999 in SC Application No. 11218 of 1994

- recommending extension of his probation period from time to time and ultimately opining that no further extension called for — Standing Committee of High Court, on consideration of not only periodical confidential report but also overall performance including complaints raising doubts about his integrity, having found his performance unsatisfactory, recommending termination of probationary service and Full Court approving the recommendation — On perusal of the confidential reports and other relevant vigilance files respondent judicial officer, held, not entitled to continue in service in public interest and in the interest of judicial administration — Judiciary (Paras 32, 37 and 43)

- Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*, (1999) 3 SCC 60 : 1999 SCC (L&S) 596; *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, (2002) 1 SCC 520 : 2002 SCC (L&S) 170; *Ishwar Chand Jain v. High Court of Punjab & Haryana*, (1988) 3 SCC 370 : 1988 SCC (L&S) 797; *P.C. Joshi v. State of U.P.*, (2001) 6 SCC 491 : 2001 SCC (L&S) 984; *M.S. Bindra v. Union of India*, (1998) 7 SCC 310 : 1998 SCC (L&S) 1812; *Chandra Prakash Shahi v. State of U.P.*, (2000) 5 SCC 152 : 2000 SCC (L&S) 613; *Nepal Singh v. State of U.P.*, (1985) 1 SCC 56 : 1985 SCC (L&S) 1; *Dayaram Dayal v. State of M.P.*, (1997) 7 SCC 443 : 1997 SCC (L&S) 1797, referred to

- D. Service Law — Termination of service — Simpliciter or punitive — Probationer (Civil Judge and Judicial Magistrate) — Termination of service of, under Rules on being satisfied about his work being unsatisfactory on evaluation of overall performance considering the confidential reports, complaints questioning his integrity, vigilance report, etc. — Hence no opportunity needs to be given — It is purely a matter of subjective satisfaction — Termination order not violative of Arts. 14, 16 and 311 — Constitution of India, Arts. 14, 16 and 311

Held :

- Since the overall performance of the respondent was found to be unsatisfactory by the High Court during the period of probation, it was decided by the High Court that the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of Articles 14, 16 and 311 of the Constitution. The order of termination is termination simpliciter and not punitive in nature and, therefore, no opportunity needs to be given to the respondent. (Para 43)

- What is to be considered in such matters is the examination of overall entries of the officer concerned and not the entry here and there. It may well be in some cases that in spite of satisfactory performance still the authority may desire to not to extend the probation of an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person. There is no denying of the fact that in all organisations there is a great deal of dead wood and, more so in government and judicial departments, which has to be replaced in public interest. Therefore, it is purely a matter of subjective satisfaction of the High Court. In such case, the record so considered would naturally include the entries in the confidential reports/character rolls/vigilance reports, both favourable and adverse. There cannot be any justification for interference by the Supreme Court in such cases. (Para 47)

- Wasim Beg v. State of U.P.*, (1998) 3 SCC 321 : 1998 SCC (L&S) 840; *H.F. Sangati v. Registrar General, High Court of Karnataka*, (2001) 3 SCC 117 : 2001 SCC (L&S) 534;

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*State of U.P. v. Bihari Lal*, 1994 Supp (3) SCC 593 : 1995 SCC (L&S) 177 : (1994) 28 ATC 586, *relied on*

*State of Gujarat v. Akhilesh C. Bhargav*, (1987) 4 SCC 482 : 1987 SCC (L&S) 460 : (1987) 5 ATC 167; *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*, 1986 Supp SCC 95 : 1986 SCC (L&S) 421 : (1986) 1 ATC 95; *State of Punjab v. Dharam Singh*, (1968) 3 SCR 1 : AIR 1968 SC 1210; *M.K. Agarwal v. Gurgaon Gramin Bank*, 1987 Supp SCC 643 : 1988 SCC (L&S) 347; *Parshotam Lal Dhingra v. Union of India*, 1958 SCR 828 : AIR 1958 SC 36; *Samsher Singh v. State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550; *Satya Narayan Athya v. High Court of M.P.*, (1996) 1 SCC 560 : 1996 SCC (L&S) 338, *cited*

**E. Service Law — Judiciary — Termination of service — Complaints against judicial officers — Consideration of, while terminating services — High Court should protect its honest officers by ignoring ill-conceived and motivated complaints**

An honest judicial officer is likely to have adversaries in the mofussil courts and if complaints are entertained on trifling matters relating to judicial orders, which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. If judicial officers are under constant threat of complaint and enquiry on trailing matter and if the High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is, therefore, imperative that the High Court should also take steps to protect its honest officer by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. The judicial officers have also to face sometimes quarrelsome, unscrupulous and cantankerous litigations but they have to face them boldly without deviating from the right path and that they are not expected to be overawed by such litigants or fall to their evil designs. (Para 42)

CA No. 4019 of 2002 allowed

CA No. 575 of 2003 dismissed

R-M/30811/CL e

Advocates who appeared in this case :

L. Nageswara Rao, Senior Advocate (Ms Hemantika Wahi, Advocate, with him), for the Appellants;

Colin Gonsalves, Senior Advocate (Vikram and Rajesh Pandey, Advocates, with him), for the Respondent.

**Chronological list of cases cited**

**on page(s)** f

1. (2002) 1 SCC 520 : 2002 SCC (L&S) 170, *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences* 139e-f
2. (2001) 6 SCC 491 : 2001 SCC (L&S) 984, *P.C. Joshi v. State of U.P.* 140d-e
3. (2001) 3 SCC 117 : 2001 SCC (L&S) 534, *H.F. Sangati v. Registrar General, High Court of Karnataka* 139e, 147b
4. (2000) 5 SCC 152 : 2000 SCC (L&S) 613, *Chandra Prakash Shahi v. State of U.P.* 140d-e
5. (1999) 3 SCC 60 : 1999 SCC (L&S) 596, *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences* 139e, 147d-e
6. (1998) 7 SCC 310 : 1998 SCC (L&S) 1812, *M.S. Bindra v. Union of India* 140d-e
7. (1998) 3 SCC 321 : 1998 SCC (L&S) 840, *Wasim Beg v. State of U.P.* 139d-e, 146f-g
8. (1997) 7 SCC 443 : 1997 SCC (L&S) 1797, *Dayaram Dayal v. State of M.P.* 140e-f
9. (1996) 1 SCC 560 : 1996 SCC (L&S) 338, *Satya Narayan Athya v. High Court of M.P.* 147e-f h
10. 1994 Supp (3) SCC 593 : 1995 SCC (L&S) 177 : (1994) 28 ATC 586, *State of U.P. v. Bihari Lal* 147g

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11. (1988) 3 SCC 370 : 1988 SCC (L&S) 797, *Ishwar Chand Jain v. High Court of Punjab & Haryana* 140d
- a 12. (1987) 4 SCC 482 : 1987 SCC (L&S) 460 : (1987) 5 ATC 167, *State of Gujarat v. Akhilesh C. Bhargav* 140e, 147a-b
13. 1987 Supp SCC 643 : 1988 SCC (L&S) 347, *M.K. Agarwal v. Gurgaon Gramin Bank* 147a-b
14. 1986 Supp SCC 95 : 1986 SCC (L&S) 421 : (1986) 1 ATC 95, *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation* 140e-f, 147a-b
15. (1985) 1 SCC 56 : 1985 SCC (L&S) 1, *Nepal Singh v. State of U.P.* 140e
- b 16. (1979) 4 SCC 466 : 1980 SCC (L&S) 61, *State of Maharashtra v. Veerappa R. Saboji* 139e-f, 140a-b, 141c-d, 141g-h
17. (1974) 2 SCC 831 : 1974 SCC (L&S) 550, *Samsher Singh v. State of Punjab* 147b-c, 147c-d
18. (1968) 3 SCR 1 : AIR 1968 SC 1210, *State of Punjab v. Dharam Singh* 140e-f, 142d, 147a-b
- c 19. 1958 SCR 828 : AIR 1958 SC 36, *Parshotam Lal Dhingra v. Union of India* 147b-c

The Judgment of the Court was delivered by

- DR. AR. LAKSHMANAN, J.**— The above two appeals were filed by the Registrar of the High Court of Gujarat and Mr C.G. Sharma respectively against the final judgment and order dated 5-9-2001 passed by the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 1721 of 1999 in
- d Special Civil Application No. 11218 of 1994 whereby the High Court allowed the letters patent appeal filed by Mr C.G. Sharma, the respondent in CA No. 4019 of 2002 and appellant in CA No. 575 of 2003 and directed that Mr C.G. Sharma shall be entitled to all the consequential benefits as if the termination order had never been passed. Aggrieved by the findings of the Division Bench in regard to his contention of deemed confirmation, Mr C.G. Sharma filed Civil Appeal No. 575 of 2003.
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2. Both these appeals raised common question of law about the interpretation of the provisions of sub-rule (4) of Rule 5 of the Gujarat Judicial Service Recruitment Rules, 1961 (hereinafter referred to as “the Rules”) regarding the power of the Government to extend the period of probation. Hence both these appeals have been heard together and are being
- f disposed of by a common judgment.

3. Mr C.G. Sharma, the respondent in CA No. 4019 of 2002 was appointed as Civil Judge (Junior Division) and Judicial Magistrate, First Class on probation for a period of two years vide government notification dated 7-6-1991. He joined his duties on 29-6-1991. By the order dated 22-9-1994, the respondent’s services were terminated with immediate effect
- g on account of unsuitability for the post held by him upon the recommendations of the High Court. The said order was challenged in Special Civil Application No. 11218 of 1994 on various grounds, more particularly, on the ground that two years’ period of probation having expired, the respondent must be deemed to have been confirmed on the post of Civil Judge (Junior Division) and, therefore, the respondent’s services
- h could not have been terminated without holding a departmental enquiry. The respondent also invoked the principles of natural justice by contending that

opportunity of hearing should have been afforded to him before terminating his services. It was also contended before the learned Single Judge that the respondent had tried to the best of his capacity to dispose of the cases and that many others who had no disposal as per the norms were confirmed in the post but because of the pick-and-choose approach the respondent's services came to be terminated. a

4. The petition was resisted by the Registrar of the High Court pointing out that the respondent's case was examined by the High Court and having regard to the fact that the overall performance of the respondent was not satisfactory, the High Court recommended to the State Government on 12-9-1994 to terminate the respondent's services with immediate effect on account of unsuitability for the post held by him and accordingly, the State Government issued a notification terminating the respondent's services. It was further contended that the respondent was originally serving as an Assistant in the establishment of the High Court and upon termination of his services as a Civil Judge (Junior Division) and Judicial Magistrate, First Class, he has been taken back by the establishment of the High Court with effect from 27-9-1994. It was also submitted that there were adverse remarks in the confidential reports which were communicated to the respondent and that the period of probation was extended by one year w.e.f. 17-6-1993. During the subsequent period also, the respondent was communicated the adverse remarks for the quarters between 15-6-1993 and 15-5-1994 and that the High Court considered the respondent's overall performance and on 12-9-1994 recommended to the State Government to terminate the respondent's services on the ground of unsuitability for the post. b  
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5. Though various grounds have been taken in the writ petition, learned counsel appearing for Mr C.G. Sharma before the High Court have concentrated on the legal contention regarding the interpretation of the relevant rule and the consequential question about the status of Mr C.G. Sharma as probationer or officer deemed to have been confirmed on the post of Civil Judge. There was no effective challenge on the merits of the decision of the High Court to the effect that Mr C.G. Sharma was found unsuitable for the post in question. The learned Single Judge of the High Court, on a consideration of the arguments advanced, came to the conclusion that there is no automatic confirmation on the expiry of the probation period of two years in the first instance and that on the expiry of the said period and on the fulfilment of the requirement of sub-clauses (a) and (b) a government servant becomes eligible for being confirmed. Holding so, the petition filed by Mr C.G. Sharma was dismissed. e  
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6. Being aggrieved, Mr C.G. Sharma preferred letters patent appeal assailing the judgment of the learned Single Judge on three grounds:

(1) The first ground was that with the expiry of the period of two years of probation in 1993 when the respondent was allowed to continue, he stood automatically confirmed and that there was no question of termination of his services without holding any enquiry. h



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a (2) The judgment of the learned Single Judge suffers from the vice of the non-adjudication of the plea that the respondent had been subjected to pick and choose inasmuch as the other officers, who had no disposal as per the norms, were confirmed whereas Mr C.G. Sharma had been terminated and this point was not considered by the learned Single Judge.

b (3) That except the case of less disposal in civil cases, which was also the basis for the communication of remarks, there was nothing against Mr C.G. Sharma so as to warrant his termination and the assessment of the work of Mr C.G. Sharma, as mentioned in two charts produced by the Registrar of the High Court of Gujarat and sifting of the assessment of disposal of cases qua the assessment of disposal of cases for the other officers who are included in these charts would show that it is a clear-cut case of pick and choose.

c 7. So far as the first point is concerned, the learned Judges of the Division Bench, interpreting the Rule, found that the point has been fully dealt with by the learned Single Judge in the context of sub-rule (4) of Rule 5 of the Rules. The Division Bench held that even if the two years' period expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, the work has to be satisfactory, which is a prerequisite or precondition for confirmation. The Division Bench held that there is no question of deemed confirmation.

8. So far as the second point is concerned, the Division Bench held that there has been no adjudication of this grievance by the learned Single Judge and the impugned judgment suffers from the vice of non-adjudication.

e 9. Coming to the third point, the Division Bench, on a perusal of two charts filed by the Registrar of the High Court of Gujarat, held that it is a clear and transparent case of arbitrary exercise of the power and the respondent's contention is right that he had been subjected to pick and choose. According to the Division Bench, the work of the respondent was never assessed to be inadequate or poor in any quarter and was assessed to be very good for two quarters and adequate for nine quarters out of eleven quarters, in all, for which he was assessed. The Division Bench also observed that it is a foolproof case in which the respondent has been wronged and wrongly picked up for termination and that different yardsticks have been applied insofar as the respondent is concerned.

f 10. In the result, the Division Bench allowed the appeal filed by the respondent Mr C.G. Sharma and set aside the order passed by the learned Single Judge by holding that the respondent shall be entitled to all consequential benefits as if the termination order had never been passed subject to the adjustment of the emoluments drawn by him as an employee of the High Court staff.

g 11. Aggrieved by the above judgment and final order, the Registrar of the High Court of Gujarat and the State of Gujarat preferred SLP (C) No. 22808

of 2001. Leave was granted on 12-7-2002. Hence, Civil Appeal No. 4019 of 2002. This Court, after issuing notice, ordered to maintain the status quo.

12. We heard Mr L. Nageswara Rao, learned Senior Counsel, assisted by Mrs H. Wahi, learned counsel, appearing for the Registrar of the High Court of Gujarat and for the State of Gujarat and Mr Colin Gonsalves, learned Senior Counsel, assisted by Mr Vikram and Mr Rajesh Pandey, learned counsel appearing for Mr C.G. Sharma. a

13. We have been taken through the entire pleadings and annexures filed by both sides and the judgments of the learned Single Judge and of the Division Bench. b

14. It is to be noticed here that though various grounds have been raised in the writ petition, the learned counsel appearing for Mr C.G. Sharma concentrated only on the legal contention on the interpretation of the relevant Rule and the consequential question about the status of Mr C.G. Sharma as probationer or officer deemed to have been confirmed on the post in question. No argument was addressed before the learned Single Judge on other grounds raised. However, before the Division Bench, three contentions were raised by the respondent herein as narrated above and the judgment was delivered on that basis. It is seen from the judgment that the Division Bench after holding that there is no question of automatic or deemed confirmation, however, was concentrating on the other points, namely, the adequacy of the disposal of the cases in civil and criminal matters which was not even argued before the learned Single Judge. The Division Bench found fault that the respondent has been wronged and wrongly picked up for termination. However, the Division Bench failed to note that the adequacy or inadequacy of disposal is not the only consideration for passing the impugned order when the respondent herein was appointed on probation for a period of two years. The Division Bench also found fault with the learned Single Judge that there had been no adjudication of the grievance of the respondent in regard to the disposal of the cases and set aside the judgment of the learned Single Judge on the ground of vice of non-adjudication. c  
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15. When the hearing of the case was halfway through, we felt that we should summon the original records from the High Court, namely, the ACRs and the vigilance reports so that the overall performance of the respondent can be analysed and a decision could be taken. Accordingly, we summoned the records and the same was placed before us. We perused the same also. f

16. Mr L.N. Rao, learned Senior Counsel, contended before us that the Division Bench of the High Court was not justified in permitting the respondent herein to agitate the question of standard of assessment of satisfactory performance of the work done by him in comparison to his colleagues, when this point was not argued before the learned Single Judge or raised in the memorandum of LPA. He also submitted that the whole approach by the Division Bench is incorrect and that the Division Bench was not justified in permitting the respondent to agitate the question of g  
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- assessment of satisfactory performance of the work done by him as a Civil Judge. Mr L.N. Rao, however, submitted that while exercising the power under letters patent appeal, the Court is exercising the power under Article 226 of the Constitution. It is not sitting in appeal over the decision of the High Court on the administrative side. The High Court was exercising power of judicial review when the conclusion reached by the High Court, on the administrative side, is based on evidence, the High Court on the judicial side is devoid of power to reappraise the evidence and come to a different conclusion. He would further submit that the Division Bench erred in picking up one of the aspects of the assessment in allowing of the LPA. The order of termination was passed by the High Court on the administrative side after examining all aspects and his overall performance which was found not satisfactory.

17. Concluding his arguments, Mr L.N. Rao submitted that the Division Bench erred in law in applying the concept of equality as envisaged in articles of the Constitution in a negative manner. When any authority shows to have committed illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on ground of denial thereof. Mr L.N. Rao further submitted that the impugned judgment of the High Court is *ex facie* wrong and, therefore, the said judgment is liable to be set aside.

18. Mr L.N. Rao cited the following decisions of this Court in support of his contentions:

1. *Wasim Beg v. State of U.P.*<sup>1</sup>
2. *H.F. Sangati v. Registrar General, High Court of Karnataka*<sup>2</sup>
3. *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*<sup>3</sup>
4. *State of Maharashtra v. Veerappa R. Saboji*<sup>4</sup>
5. *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*<sup>5</sup>

19. Mr Colin Gonsalves, learned Senior Counsel appearing for Mr C.G. Sharma, submitted that the High Court was not right in concluding that in the absence of express provision for extension of probation, there would be no deemed confirmation. It was further contended that when the maximum period of probation was of two years under the Rules in the absence of anything to the contrary, continuance in service would mean confirmation.

20. He further submitted that the learned Single Judge failed to examine and consider all the arguments and contentions advanced at the time of hearing and failed to record the same and to deal with the same in the impugned judgment. He would further submit that since the respondent was

1 (1998) 3 SCC 321 : 1998 SCC (L&S) 840  
2 (2001) 3 SCC 117 : 2001 SCC (L&S) 534  
3 (1999) 3 SCC 60 : 1999 SCC (L&S) 596  
4 (1979) 4 SCC 466 : 1980 SCC (L&S) 61  
5 (2002) 1 SCC 520 : 2002 SCC (L&S) 170



in service after the completion of the probation period, it was a case of deemed confirmation. According to him, the High Court committed an error by misreading sub-rule (4) of Rule 5 of the Rules and thereby coming to an entirely erroneous conclusion that Rule 5(4) of the Rules was in pari materia with the Rule which was considered by this Court in the case of *State of Maharashtra v. Veerappa R. Saboji*<sup>4</sup>. It was further argued by the learned Senior Counsel that the High Court committed an error in law by holding that condition (a) of a vacancy existing and (b) the work being found satisfactory, by itself excludes any chance of giving deemed or automatic confirmation. He would further add that the High Court failed to appreciate that in the facts and circumstances of the case, since the respondent's services were deemed to be confirmed, the question of mere dismissal or withdrawal of appointment does not arise without conducting proper departmental enquiry.

21. Concluding his arguments, learned Senior Counsel appearing for Mr C.G. Sharma, submitted that the impugned judgment of the Division Bench insofar as it relates to deemed confirmation is wrong and is, therefore, liable to be set aside.

22. Mr Colin Gonsalves cited the following decisions of this Court in support of his contentions:

1. *Ishwar Chand Jain v. High Court of Punjab & Haryana*<sup>6</sup>
2. *P.C. Joshi v. State of U.P.*<sup>7</sup>
3. *M.S. Bindra v. Union of India*<sup>8</sup>
4. *Chandra Prakash Shahi v. State of U.P.*<sup>9</sup>
5. *Nepal Singh v. State of U.P.*<sup>10</sup>
6. *State of Gujarat v. Akhilesh C. Bhargav*<sup>11</sup>
7. *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*<sup>12</sup>
8. *State of Punjab v. Dharam Singh*<sup>13</sup>
9. *Dayaram Dayal v. State of M.P.*<sup>14</sup>

23. Before considering the rival submissions, it is beneficial to reproduce sub-rule (4) of Rule 5 of the Rules:

“5. (4) Unless otherwise expressly provided every person appointed under the preceding sub-rules shall be on probation for a period of two years and on the expiry of such period, he may be confirmed if:

- (a) there is a vacancy; and
- (b) his work is found to be satisfactory.”

- 6 (1988) 3 SCC 370 : 1988 SCC (L&S) 797
- 7 (2001) 6 SCC 491 : 2001 SCC (L&S) 984
- 8 (1998) 7 SCC 310 : 1998 SCC (L&S) 1812
- 9 (2000) 5 SCC 152 : 2000 SCC (L&S) 613
- 10 (1985) 1 SCC 56 : 1985 SCC (L&S) 1
- 11 (1987) 4 SCC 482 : 1987 SCC (L&S) 460 : (1987) 5 ATC 167
- 12 1986 Supp SCC 95 : 1986 SCC (L&S) 421 : (1986) 1 ATC 95
- 13 (1968) 3 SCR 1 : AIR 1968 SC 1210
- 14 (1997) 7 SCC 443 : 1997 SCC (L&S) 1797

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**24.** According to Mr L.N. Rao, the Rule in question does not provide for any maximum period of probation and, therefore, the ordinary and general rule would apply and that in any view of the matter the Rule itself contains an indication that the services could not be treated as confirmed unless a specific order is passed after the expiry of probationary period if there is a vacancy and if the officer's work is found to be satisfactory.

**25.** According to Mr Colin Gonsalves, the aforesaid Rule provides the maximum period of probation of two years and since the services of the respondent were continued for more than two years, the respondent must be deemed to have been confirmed in service and, therefore, the termination of his service after more than three years without holding any departmental enquiry under Article 311(2) of the Constitution was illegal.

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

**27.** In this context, it is useful to reproduce para 6 of the judgment of this Court in the case of *State of Maharashtra v. Veerappa R. Saboji*<sup>4</sup> on the question of deemed confirmation which reads as under: (SCC pp. 471-72, para 6)

“6. There are two parts of clause (iv): (1) that it is imperative to put every person appointed under sub-rule (2) on probation for a minimum

period of two years ‘unless otherwise expressly directed’, and (2) on the expiry of the said period of two years the person appointed may be confirmed if there is a vacancy and if his work is found to be satisfactory. The plain meaning of the rule is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. On the expiry of the said period and on the fulfilment of the requirement of sub-clauses (a) and (b) a government servant becomes eligible for being confirmed and normally he is likely to be confirmed. But it is a matter of common knowledge in many branches of government service including the judiciary that for administrative reasons or otherwise the confirmation is delayed and is made at a subsequent time. It may also be delayed for watching the work of the government servant for a further period. The expression ‘unless otherwise expressly directed’ governs only the first part of clause (iv) and not the second as was attempted to be argued by Mr Nariman. In my opinion the rule in question, therefore, comes under the ordinary and normal rule that without an express order of confirmation the government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. It is not covered by the exceptional rule like the one which was the subject-matter of consideration of this Court in *State of Punjab v. Dharam Singh*<sup>13</sup>.”

28. In view of our above findings on the question of deemed confirmation, Civil Appeal No. 575 of 2003 filed by Mr C.G. Sharma shall stand dismissed.

29. Learned counsel appearing for the respondent claimed parity by placing a submission to the effect that though the disposal in civil matters in the case of the respondent was the main basis for discharge but other similarly situated persons have been allowed to continue in service and this petitioner was given discriminatory treatment. This contention, in our opinion, is misconceived in law and facts. It is seen from the record that the overall performance of the respondent was considered while assessing the suitability and continuing the respondent and that there is no similarity of situation and/or facts of the case of the respondent and eleven others named in the chart. In our view, each officer’s case has been evaluated on its own merits and decision has been taken in conformity with the norms settled. We are of the opinion that the contention put forward by the learned counsel for the respondent claiming parity with other co-officers has no merits and, therefore, the same is rejected.

30. The argument of the learned Senior Counsel for the respondent that there is no finding on the fact either by the Vigilance or by any Unit Judge that would cast any doubt regarding the integrity and nothing has been placed on record by the authority before any of the courts to even remotely suggest that the respondent had indulged in any practice that would cast doubts about his integrity. Since the learned Single Judge and the learned Judges of the Division Bench have not adverted to this fact, we, in order to see the record

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by ourselves, and in order to shorten the litigation, summoned the original records and perused the same.

a **31.** We have closely perused the confidential register of the respondent and it contains series of adverse entries and it is abundantly clear that the respondent was not having good reputation as judicial officer and his service was far from satisfactory.

b **32.** The District Judges concerned, in view of his unsatisfactory performance and questionable integrity, have also recommended for extension of probation from time to time and ultimately the District Judge was of the opinion that no further extension of probation was called for.

c **33.** We have also perused the original correspondence in connection with the probation of the respondent. It is seen from the above records that the Vigilance Cell of the High Court also investigated some matters regarding his integrity. The District Judge was of the opinion that though there would be no proof about integrity but it is a fact that his integrity was doubtful and the representations made by the officer were also filed on many occasions. The representation made by the respondent in regard to the communication of adverse remarks was ordered to be filed before the Chief Justice and the other portfolio judges.

d **34.** It is useful to reproduce the remarks made by Mr Justice R.K. Abichandani while considering the note put up by the office on 8-8-1994. The remarks reads as under:

e “As per the office note at Points 1, 4, 13, 17, the reports of the DJ against Mr C.G. Sharma contain following remarks: ‘Not industrious’, ‘Less diligent’, ‘Below average’, ‘Inadequate disposals’, ‘*His conduct was suspicious* and he is a dull Judge’, ‘Complete judicial aloofness is lacking’, ‘No clarity of thought and expression’, ‘Knowledge of law up to the mark’, ‘Poor in civil work’, ‘Average in diligence’. Since his extended probation has come to an end, the period of probation is required to be extended for six months in view of his unsatisfactory performance so far. The DJ be asked to closely watch the officer for his performance and conduct.”

f **35.** However, the Chief Justice ordered the matter to be placed before the Standing Committee. The Standing Committee took the following decision:

g “Considering unsuitability of Mr C.G. Sharma, Civil Judge (Junior Division) and Judicial Magistrate, First Class, Dabhoi, for the post he is holding at present, it was decided to place the matter before the chamber meeting for consideration and appropriate decision.”

**36.** Decision was taken at the chamber meeting on 5-9-1994 which is reproduced as under:

h “Having regard to the fact that the overall performance of Mr C.G. Sharma, Civil Judge (Junior Division) and Judicial Magistrate, First Class, Dabhoi is not at all satisfactory, it was decided that, his probation be terminated on the ground of unsuitability for the post he holds and

Government be moved to pass necessary orders in the matter with immediate effect.

It was further decided that since extended period of probation of Mr C.G. Sharma is over on 28-6-1994 (AOH), it will stand extended till Government issue orders terminating his probation.” a

**37.** Thus, it is seen that the respondent is not industrious, less diligent, below average and inadequate disposals and that the conduct was suspicious and complete aloofness is lacking and no clarity of thought and expression, poor in civil work and fair in criminal work and average in diligence. In our opinion, such an officer should not be allowed to continue in service in public interest and in the interest of the judicial administration. b

**38.** In our opinion, the Division Bench was not justified in permitting the respondent herein to agitate the question of standard of assessment of satisfactory performance of the work done by him in comparison to his other colleagues when this point was not argued before the learned Single Judge or even raised in the memorandum of the letters patent appeal. The learned Single Judge has expressly indicated in his judgment that no other points were urged save and except about the interpretation of the relevant Rule. The Division Bench was, therefore, not right in law in permitting the respondent on second thought to address the Court on merits about the standard of assessment of his performance. Even in the memorandum of the letters patent appeal, the point that the High Court had not applied the correct standard of assessment of the performance was not raised. The reasoning assigned by the Division Bench is, therefore, not justified. c  
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**39.** In our opinion, judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or the tribunal. When the conclusion reached by the authority is based on the evidence, the tribunal is devoid of power to reappraise the evidence and would come to its own conclusion on proving of the charge. The perusal of the entire record including the record summoned from the Gujarat High Court would only go to show that the order of termination was passed by the High Court on the administrative side after examining all aspects and his overall performance which was found “not satisfactory”. It is also seen from the file that Unit Judge, in charge of Mehsana District when the respondent was working as a Civil Judge at Mehsana and Unit Judge of Vadodara as also the Chief Justice recommended that the probation of the respondent should not be extended. The recommendations were considered by the Standing Committee and also referred to the Full Court. An affidavit was filed by the Registrar in the High Court on 9-10-2000 and the High Court has not referred to the said affidavit. In the affidavit, the Registrar emphasised that performance and extension on the basis of the work on the overall assessment does not indicate any room for confirmation of the probation period as judicial officer. However, the Division Bench picked up one aspect of the e  
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- assessment and allowed the appeal. As rightly pointed out by Mr L.N. Rao, learned Senior Counsel appearing for the Registrar of the High Court of Gujarat and the State of Gujarat that the Division Bench applied the concept of equality as envisaged in articles of the Constitution in a negative manner. In our opinion, Article 14 cannot be extended to legalise illegal orders that the others have wrongly got the benefit of the orders. A wrong order cannot be the foundation for claim of equality. It is also seen from the further affidavit filed on behalf of the Registrar of the High Court of Gujarat that on receiving instructions from the Advocate-on-Record, it was proposed to reconsider the matter on the administrative side. The matter was placed before the Standing Committee for further consideration with the office note dated 25-2-2002. On further study of the relevant file of the respondent, the Standing Committee was of the opinion that the decision of the Full Court of the High Court, on the administrative side, proposing to terminate the services of the respondent probationer by the impugned order dated 22-9-1994 was taken in the interest of the judicial administration of the State and was bona fide.
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- 40.** It is also seen from other records that the Standing Committee of the High Court while proposing termination of the respondent, considered not only periodical confidential reports received from the District Judge, Mehsana but also considered his overall performance including the complaints raising doubts about his integrity. As already stated, the Standing Committee considered the respondent herein to be “not industrious”, “less diligent”, “a dull Judge” as also the fact that he was “lacking in complete judicial aloofness” and that “his conduct was suspicious”. We have already perused the endorsement made by the Administrative Judge dated 10-8-1994 as also the subsequent decision taken in the Standing Committee meeting on 25-8-1994 and of the Full Court on 5-9-1994 which approved the recommendation of the Standing Committee.
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- 41.** Mr Colin Gonsalves, learned Senior Counsel appearing for the respondent, submitted that the termination order is void inasmuch as the order of termination would be punitive and also amount to a stigmatic order. He would further submit that questioning the integrity of a judge is perhaps the most serious charge against a judicial officer and no person can be terminated on such a serious charge without affording the employee a reasonable opportunity to rebut such serious and stigmatic allegations. It was submitted that the respondent was neither given any show-cause notice levelling any charge questioning his integrity nor any opportunity whatsoever has been given to such an officer against such a serious allegation. Therefore, he would submit that the termination order is liable to be struck down on the ground that the action of termination is punitive without following the principles of natural justice and, therefore, void and also in contravention of Article 311(2) of the Constitution.
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- 42.** It is true that an honest judicial officer is likely to have adversaries in the mofussil courts and if complaints are entertained on trifling matters relating to judicial orders, which may have been upheld by the High Court on
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the judicial side, no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. It is also true that if judicial officers are under constant threat of complaint and enquiry on trailing matter and if the High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is, therefore, imperative that the High Court should also take steps to protect its honest officer by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. It is also true that the judicial officers have also to face sometimes quarrelsome, unscrupulous and cantankerous litigations but they have to face them boldly without deviating from the right path and that they are not expected to be overawed by such litigants or fall to their evil designs. This ratio was laid down in several judgments of this Court.

43. But the facts and circumstances in the case on hand are entirely different and the administrative side of the High Court and the Full Court were right in taking the decision to terminate the services of the respondent, rightly so, on the basis of the records placed before them. We are also satisfied, after perusing the confidential reports and other relevant vigilance files, etc. that the respondent is not entitled to continue as a judicial officer. The order of termination is termination simpliciter and not punitive in nature and, therefore, no opportunity needs to be given to the respondent herein. Since the overall performance of the respondent was found to be unsatisfactory by the High Court during the period of probation, it was decided by the High Court that the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of Articles 14, 16 and 311 of the Constitution. The law on the point is crystallised that the probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Under the relevant Rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and in that view of the matter, the contentions of the respondent that the respondent's services were deemed to have been continued on the expiry of the probation period, are misconceived.

44. This Court, in the judgment in the case of *Wasim Beg v. State of U.P.*<sup>1</sup> while considering the confirmation and its scope held as under: (SCC p. 328, para 15)

“15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation

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beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with *State of Punjab v. Dharam Singh*<sup>13</sup>, *M.K. Agarwal v. Gurgaon Gramin Bank*<sup>15</sup>, *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*<sup>12</sup>, *State of Gujarat v. Akhilesh C. Bhargav*<sup>11</sup>.”

**45.** This Court in the case of *H.F. Sangati v. Registrar General, High Court of Karnataka*<sup>2</sup> held as under: (SCC p. 121, para 8)

“8. It is well settled by a series of decisions of this Court including the Constitution Bench decision in *Parshotam Lal Dhingra v. Union of India*<sup>16</sup> and seven-Judge Bench decision in *Samsher Singh v. State of Punjab*<sup>17</sup> that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In *Samsher Singh case*<sup>17</sup> it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post; the competent authority may come to the conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation. Recently, in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*<sup>3</sup>, having reviewed the entire available case-law on the issue, this Court has held that termination of a probationer’s services, if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence would be valid. In *Satya Narayan Athya v. High Court of M.P.*<sup>18</sup> the petitioner appointed on probation as a Civil Judge and not confirmed was discharged from service in view of the non-satisfactory nature of his service. This Court held that the High Court was justified in discharging the petitioner from service during the period of probation and it was not necessary that there should have been a charge and an inquiry on his conduct since the petitioner was only on probation and it was open to the High Court to consider whether he was suitable for confirmation or should be discharged from service.”

**46.** In the case of *State of U.P. v. Bihari Lal*<sup>19</sup> the employee was found to be of bad category compulsorily retired for not showing improvement despite adverse remarks for several years. The High Court set aside the compulsory

15 1987 Supp SCC 643 : 1988 SCC (L&S) 347

16 1958 SCR 828 : AIR 1958 SC 36

17 (1974) 2 SCC 831 : 1974 SCC (L&S) 550

18 (1996) 1 SCC 560 : 1996 SCC (L&S) 338

19 1994 Supp (3) SCC 593 : 1995 SCC (L&S) 177 : (1994) 28 ATC 586

retirement and the employee was reinstated on the same day. Appeal filed by the State was allowed. In para 4 of this judgment, this Court held as under: (SCC p. 594, para 4)

“It is now settled law that the entire service record should be considered before taking a decision to compulsorily retire a government servant exercising the power under Rule 56(j) of the Fundamental Rules. It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse, be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a government servant. The court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the court/tribunal in exercise of its judicial review.”

47. In our opinion, what is to be considered in such matters is the examination of overall entries of the officer concerned and not the entry here and there. It may well be in some cases that in spite of satisfactory performance still the authority may desire to not to extend the probation of an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person. There is no denying of the fact that in all organisations there is a great deal of dead wood and, more so in government and judicial departments, which has to be replaced in public interest. Therefore, as pointed out by many courts in India and by this Court, it is purely a matter of subjective satisfaction of the High Court. In such case, the record so considered would naturally include the entries in the confidential reports/character rolls/vigilance reports, both favourable and adverse. There cannot be any justification for interference by this Court in such cases.

48. We have decided the case on hand on the facts and circumstances of the case with reference to the relevant Rules, original records such as confidential reports, vigilance reports and other annexures filed along with the writ petitions. A number of judgments were cited by the counsel on either side. We are not inclined to refer to all those judgments and make this judgment a voluminous one as according to us the judgments cited by both the parties are distinguishable on facts and on law.

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- 49.** In the result, Civil Appeal No. 4019 of 2002 filed by the Registrar of the High Court of Gujarat and the State of Gujarat is allowed and Civil Appeal No. 575 of 2003 filed by Mr C.G. Sharma stands dismissed. However, there will be no order as to costs.

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(BEFORE Y.K. SABHARWAL AND D.M. DHARMADHIKARI, JJ.)

- b** VIRENDRA KUMAR SRIVASTAVA . . . Appellant;

*Versus*

U.P. RAJYA KARMACHARI KALYAN NIGAM  
AND ANOTHER . . . Respondents.

Civil Appeal No. 5047 of 2000<sup>†</sup>, decided on November 23, 2004

- c** **A. Constitution of India — Art. 12 — “Other authorities” — Relief to person aggrieved or employees against the body, entity or corporation held to be a part of the “State” under — Held, said relief is a subject-matter in each case for the court to determine on basis of structure of body concerned and also its financial capability and viability**

- d** **B. Constitution of India — Art. 12 — “Other authorities” under — Tests for, laid down in majority and minority opinions in *Pradeep Kumar Biswas case*, (2002) 5 SCC 111, collectively applied — Held, the multiple test which is to be applied as laid down by the majority view in the said case is to ascertain the nature of financial, functional and administrative control of the State over the body concerned, and whether it is dominated by the State and the control can be said to be so deep and pervasive, so as to satisfy the court of the “brooding presence of the Government” (as described in the minority view in the said case) on the activities of the body concerned —**  
**e** **Minority opinion in said case explained**

- f** **C. Constitution of India — Arts. 12 and 226 — “Other authorities” under Art. 12 — U.P. Rajya Karmachari Kalyan Nigam, if — Held, on a detailed examination of the administrative, financial and functional control of the said Corporation that there is no doubt that it is nothing but an “agency and instrumentality of the State” and the control of the State is not only “regulatory” but it is “deep and pervasive” — Multiple test laid down in *Pradeep Kumar Biswas case*, (2002) 5 SCC 111 is fully satisfied in the present case — Said Corporation is therefore covered by the definition of “State” under Art. 12, and is amenable to writ jurisdiction of High Court under Art. 226**

- g** The question that arose before the Supreme Court was whether U.P. Rajya Karmachari Kalyan Nigam (for short “the Corporation”) was covered by the definition of “State” under Article 12 of the Constitution and was amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. The services of the petitioner had been terminated from the post of salesman in one of the stores of the Corporation against which he had approached the High Court.

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<sup>†</sup> From the Judgment and Order dated 30-9-1999 of the Allahabad High Court in SA No. 60(SB) of 1995