

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.255 OF 2023**

Sri Koushik Karmakar,

Son of Krishnapada Karmakar,
Resident of Indranagar, ITI Road,
P.O.- Indranagar, Agartala, Tripura(W)-799006.

.....**Petitioner(s)**

Versus

1. State of Tripura,

Represented by the Secretary,
Law Department, Government of Tripura,
New Secretariat Complex, P.O- Secretariat,
Agartala, West Tripura.

2. Hon'ble High Court of Tripura,

Represented by Registrar General,
Agartala, Tripura West.

3. DLR & Deputy Secretary Law,

Government of Tripura, New Secretariat Complex,
P.O- Secretariat, Agartala West Tripura.

4. The District & Sessions Judge,

Khowai, Tripura, PIN-799202.

.....**Respondent(s)**

For the Petitioner(s) : Petitioner-in-Person.
Mr. C.S. Sinha, Advocate.
Mr. D.C. Saha, Advocate.

For the Respondent(s) : Mr. S.S. Dey, Advocate General.
Mr. B.N. Majumder, Sr. Advocate.
Mr. B. Paul, Advocate.
Ms. A. Chakraborty, Advocate.

Date of hearing : 16.01.2024.

Date of delivery of
Judgment & Order : 24/01/2024

Whether fit for reporting : YES.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

T. AMARNATH GOUD(J)

Heard petitioner-in-person as well as Mr. C.S. Sinha, learned counsel appearing for the petitioner. Also heard Mr. S.S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the State-respondent as well as Mr. B.N. Majumder, learned Sr. counsel assisted by Mr. B. Paul, learned counsel appearing for the respondent-Hon'ble High Court of Tripura.

2. The brief fact of the case is that vide the order of appointment dated 25th November 2020, the petitioner was selected as a Grade-III Judicial Officer. On 1st December 2020, he joined Tripura Judicial Service. After completion of 6(six) months training period, he was posted as Civil Judge, Junior Division cum J.M. 1st Class Khowai Tripura. On 29th of March 2022, the petitioner received a show cause notice which was sent to the petitioner vide No.F.69(53)-HC/VIG/2022/8459 dated 23rd March, 2022 by the Registrar Vigilance, High Court of Tripura. The petitioner gave his reply dated 4th April 2022 to the said show cause notice. On 18th July 2022, the petitioner received a notice vide No.F.9(a)(191)-HC(VIG0/2022/16657, dated 12.07.2022 issued by the Registrar Vigilance, High Court of Tripura alleging that the Registry of the High Court of Tripura received a letter from the Hon'ble Minister of

Social Justice and Empowerment, Government of India, New Delhi with a recommendation for transfer of the petitioner from Khowai District Court to West Tripura District/Sepahijala District or any other District adjacent to the house of the petitioner. The petitioner was accused of approaching the Hon'ble Minister of State for Social Justice and Empowerment, Government of India to recommend his transfer. The petitioner was charged with exercising extraneous influence upon the High Court. Thereafter, the District and Sessions Judge, Khowai vide No.F.2(18)-DJ/KH/Acctt/2022/8386-91 dated 21st November 2022 reduced the 50% of his approved house rent for reimbursement. The petitioner challenging the validity of the order dated 21st November 2022 passed by the learned District and Sessions Judge, Khowai, and preferred a prayer before the learned District and Sessions Judge, Khowai on 25th February 2023 for cancellation of the same. On 29.11.2022, the Hon'ble Full Court took a decision recommending that the petitioner's "*demeanour is unbecoming of a judicial officer and his integrity is also douthful*". Relying on the recommendation dated 29.11.2022 of the Hon'ble Full Court, the Law Department, Government of Tripura issued a Notification dated 27th December 2022 discharging the petitioner from service.

2.1 Thereafter, the petitioner on 25.01.2023 filed a WP(C) No.66 of 2023 before this Court and on 01.02.2023, this

Court on the submission of the learned counsel of the petitioner dismissed the petition as withdrawn with liberty reserved upon the petitioner to file afresh.

2.2. Hence, the petitioner filed his present writ petition seeking the following reliefs:-

- " a. Admit the petition;*
- b. Call for the records.*

C. Issue Writ of Certiorari calling upon the respondents to show cause as to why the notification number F.2926)-LAW/ESTT.2/2009/17509-556, dated- December 27, 2022, should not be declared bad in law and quashed.

d. Issue writ of certiorari calling upon the respondents to show cause as to why the full court recommendation dated 29.11.2022 of the Hon'ble High Court of Tripura should not be declared unreasonable, unjustified and bad in law.

e. Issue writ of mandamus calling upon the respondents to show cause as to why the petitioner should not to be allowed reinstatement to his post of Civil Judge, Junior Division cum JM First Class with all consequential reliefs.

f. Issue a writ of certiorari calling upon the respondent to show cause as to why the order vide No.F.2(18)-DJ/KH/Acctt/2022/8386-91 dated 21st November, 2022 passed by the learned District and Sessions Judge, Khowai should not be declared bad in law and quashed.

g. Pass an interim order staying operation of notification number F.2(26)-LAW/ESTT.2./2009/17509-556, dated- December 27, 2022 pending disposal of the writ petition.

h. Pass any other order(s) which Your Lordship may deem fit and proper in the case."

3. Though Mr. C.S. Sinha, learned counsel is appearing on behalf of the petitioner, but, it is submitted at the Bar that the petitioner-in-person would argue for himself in this present matter.

3.1. The petitioner-in-person submits before this Court that he has been a judicial officer under the Tripura Judicial Service and on the recommendation of the Full Court meeting of this Court

dated 29.11.2022 resolving *"his demeanour as unbecoming of a judicial officer and his integrity as also doubtful"*, was discharged from his services vide order of the Law Department, Government of Tripura dated 27th December 2022.

3.2. The petitioner submits that the allegations of misconduct against the petitioner are:-

a) *The petitioner approached the Hon'ble Minister of State for Social Justice & Empowerment, Government of India for recommending his transfer which was conceived by the Full Court as a serious misconduct of exercising extraneous influence on the authority of the Hon'ble High Court of Tripura.*

b) *And, the comment of the District & Session Judge, Khowai dated 30th May 2022 stating that she did not receive any WhatsApp communication regarding the petitioner's acute illness on 4th March 2022. However, the petitioner asserted that he did inform was conceived by the Full Court that he had made a false statement that he informed the District & Session Judge, Khowai about his illness on 4th March 2022 which the Full Court considered as serious misconduct on the part of the petitioner.*

3.3. On the point of 1st allegation, the petitioner-in-person submits that he did not approach the Minister of State for Social Justice & Empowerment, Government of India for a

recommendation of transfer since the contents and particulars of the petitioner's life and the letter itself proved an abhorrent and reprehensible plot of conspiracy for creation of spurious foundation for discharge of petitioner from service.

3.4. The petitioner-in-person on the 2nd point of allegation submits that the comment of learned District and Sessions Judge, Khowai dated 30th May, 2022 that she did not receive any WhatsApp message about the petitioner's acute illness and that he could not join office on 4th March 2022 is a deliberate fallacious comment, since, the petitioner on 4th March 2022 has communicated through WhatsApp to the District & Session Judge, Khowai and the Assistant Sessions Judge, Khowai that he was severely ill and could not join office that day. The petitioner still has WhatsApp communication on his mobile phone with the District & Sessions Judge, Khowai, and the Assistant Sessions Judge, Khowai. Hence, the entire foundation of discharge of the petitioner is based on spurious, planted & questionable materials and deliberate incorrect reporting of the District & Sessions Judge, khowai.

3.5. The petitioner-in-person states that the impugned order dated 27.12.2022 which indicates that his integrity and services as a Judicial Officer is doubted creates a stigma. The said discharge order has been passed without conducting an inquiry and giving him opportunity and accordingly, the said order is liable to be

set aside. In addition to this, he also draws the attention of this Court to the proceeding of the District Judge which indicates that the House Rent Allowance(HRA) of Rs.23,500/- which was drawn by the petitioner was reduced to Rs.12,128/-.

3.6. The petitioner-in-person on the point that a probationer cannot be discharged from his service without inquiry, referred to **paras-12 and 14** of the Hon'ble Apex Court Judgment dated **3rd December 2022** passed in **Civil Appeal Nos.7841-7842 of 2012** titled as **State Bank of India and order Vs. Palak Modi and another**. The same is reproduced here-in-under:-

"12. In State of Punjab and another v. Sukh Raj Bahadur (1968) 3 SCR 234, Mitter, J. considered several precedents and culled out the following propositions:

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

14. In **Samsheer Singh v. State of Punjab (1975) 1 SCR 814**, a seven-Judge Bench considered the legality of the discharge of two judicial officers of the Punjab Judicial Service, who were serving as probationers. A. N. Ray, CJ, who wrote opinion for himself and five other Judges made the following observations:

"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may, in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case, the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside".

3.7. The petitioner-in-person to support his argument also referred to the **Act** and the **Headnote** of the Hon'ble Supreme Court Judgment reported in **1984 AIR 636** titled as **Anoop Jaiswal Vs. Government of India and anr.**, which is produced herein other:-

"ACT:

Constitution of India-Art. 311 (2) - Applicability of Protection under Art. 311 (2) available if the order of discharge is found to be by way of punishment. To see whether an order of discharge is by way of punishment. form of the order is not decisive. Court must go behind the form and ascertain the true character of the order.

HEADNOTE:

The appellant who had been selected for appointment in the Indian Police Service was undergoing training as probationer in the National Police Academy. On June 22, 1981 due to rain the appellant as well other probationers reached late by a few minutes at the changed venue for conducting P. T. For this delay explanation was called from all the probationers. In his explanation the appellant sincerely regretted the lapse. The appellant was considered to be one of the ring-leaders who was responsible for the delay. The Director of the Academy without holding an enquiry into the alleged misconduct recommended to the Government that the appellant should be discharged from service. On the basis of that recommendation the Government by its order dated November 9, 1981 discharged the appellant from service. The Government rejected the appellant's representation against the order discharging him. The appellant challenged the validity of the order under Art. 226 of the Constitution. The High Court dismissed the petition at the admission stage. Hence this appeal. The appellant contended that the order discharging him was in reality an order terminating his services on the ground of misconduct and as such could not have been passed without holding an enquiry as contemplated under Art. 311(2) of the Constitution and the relevant rules governing such an enquiry. Allowing the appeal,

HELD: The impugned order of discharge is set aside. Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee. [563 E-F]

Parshotam Lal Dhingra v. Union of India, [1958] S. C. R. 828; Shamsher Singh & Anr. v. State of Punjab, [1975] 1 S.C.R., 814; State of Punjab & Anr.

v. Shri Sukh Raj Bahadur, [1969] 3 S.C.C. 603; State of Bihar & Ors. v. Shiya Bhikshuk Mishra, [1971] 2 S. C. R. 191; R.S. Sial v. The State of U. P. & Ors., [1974] 3 S. C. R. 754; State of U.P. v. Ram Chandra Trivedi, [1977] 1 S. C. R. 462; and I. N. Saksena v. State of Madhya Pradesh, [1967] 2 S. C, R. 496; referred to.

In the instant case, on going through the record and taking into account all the attendant circumstances the Court is satisfied that the alleged act of misconduct on June 22, 1981 was the real foundation for the action taken against the appellant and that the other instances stated in the course of the counter affidavit are mere allegations which are put forward only for purposes of strengthening the defence which is otherwise very weak. The case is one which attracted Article 311 (2) of the Constitution as the impugned order amounts to a termination of service by way of punishment and an enquiry should have been held in accordance with the said constitutional provision. That admittedly having not been done, the impugned order is liable to be struck down”.

3.8. Petitioner-in-person in support of his argument that on the ground of misconduct if a Judicial Officer is discharged, inquiry is required, he referred to **para-11** of the Hon’ble Supreme Court Judgments cited in **[2012] 9 SCR 1141** titled as **Pradip Kumar Vs. Union of India** dated **14th December, 2012** which is reproduced herein-under :-

"11. Nonetheless the order of discharge cannot be upheld, as it is stigmatic and punitive in nature. It is a matter of record that during three years of service no order was issued extending the period of probation of the respondent. He completed the mandatory period of probation on 21st November, 2007, therefore, it was expected of the department to take a decision about the performance of the respondent within a reasonable period from the expiry of one year. It is also a matter of record that the respondent continued in service without receiving any formal or informal notice about the defects in his work or any deficiency in his performance. This Court, in the case of [Sumati P. Shere Dr. Vs. Union of India & Ors.](#), emphasised the importance of timely communication of defects and deficiencies in performance to a probationer, so that he could make the necessary efforts to improve his work. Non-communication of his deficiencies in work would render any movement order of such an employee on the ground of unsuitability arbitrary. In Paragraph 5 of the judgment, it is observed:-

"5. We must emphasise that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such

communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability."

3.9. Stating thus, the petitioner-in-person prays before this Court that the impugned orders are hit by the Principle of Natural Justice, and since no inquiry was conducted as contemplated under Article 311 of the Constitution of India, the present writ petition needs to be allowed with all benefits.

4. On the other hand, Mr. S.S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the State-respondent submits that the petitioner was not discharged on the ground of misconduct as evident after a bare perusal of the discharge order dated 27th December 2023. The petitioner was a probationer Judicial officer and not a civil servant. As such, the petitioner is not covered under Article 311 of the Constitution of India and a writ Court will not sit as an Appellate Authority in the matter. The subjective satisfaction of the Full Court on the Administrative side cannot be a matter of judicial discretion.

To strengthen his argument, the learned Advocate General cited paras-**13, 14, 16, 19, and 24** of the Hon'ble Supreme Court Judgment dated 19.03.2020 cited in **AIR 2020 SC 2811** titled as **Rajasthan High Court Vs. Ved Priya and anr**, the same is produced herein under:-

"13. At the outset, we may observe that both the appellant as well as the impugned judgment have elucidated the correct statement of law regarding the width and sweep of judicial review by a High Court over the decisions taken by its Full Court on administrative side. Although it would be a futile task to exhaustively delineate the scope of writ jurisdiction in such matters but a High Court under [Article 226](#) has limited scope and it ought to interfere cautiously. The amplitude of such jurisdiction cannot be enlarged to sit as an 'appellate authority', and hence care must be taken to not hold another possible interpretation on the same set of material or substitute the Court's opinion for that of the disciplinary authority. This is especially true given the responsibility and powers bestowed upon the High Court under [Article 235](#) of the Constitution. The collective wisdom of the Full Court deserves due respect, weightage and consideration in the process of judicial review.

14. The present case is one where the first respondent was a probationer and not a substantive appointee, hence not strictly covered within the umbrella of [Article 311](#). The purpose of such probation has been noted in *Kazia Mohammed Muzzammil v. State of Karnataka*:-

25. The purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation. ..."

16. It is thus clear that the entire objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. Such an exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job. The true test of suitability is actual performance of duties which can only be applied after the candidate joins and starts working.

19. Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable. Its only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are 'removed' in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of 'stigmatic' removal only that a reasonable opportunity of hearing is sinequanon. Way back in *Parshotam Lal Dhingra v. Union of India*, a Constitution Bench opined that:

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

24. Even otherwise, it may not be true that just because there existed on record some allegations of extraneous considerations that the High Court was precluded from terminating the services of Respondent No.1 in a simplicitor manner while he was on probation. The unsatisfactory performance of a probationer and resultant dispensation of service at the end of the probation period, may not necessarily be impacted by the fact that meanwhile there were some complaints attributing specific misconduct, malfeasance or misbehavior to the probationer. If

the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pickup a specific instance and forms his opinion on the basis of over all performance during the period of probation, the theory of action being punitive in nature, will not be attracted. Onus would thus lie on the probationer to prove that the action taken against him was of punitive characteristics".

4.1 The Learned Advocate General submitted that the discharge order of the petitioner is not punitive but a discharge simplicitor order. The discharge order of a probationer is guided by Rule-15(4) of the Tripura Judicial Service Rules. 2003 which states as under:-

"(4) At the end of the period of probation or offication, as the case may be, the High Court shall consider the suitability of the person to hold the post /grade to which he is appointed or promoted, and-

(i)xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(ii) If the officer is not found suitable to hold the post/grade to which he is appointed or promoted, as the case may be, the Governor on the recommendation of the High Court or, as the case may be, the High Court, being the appointing authority, shall

(a) if he is a promote revert him to the post/grade which he held prior to his promotion;

(b) if he is a probationer, discharge him from service."

4.2. Further on the point of House Rent Allowance(HRA), the learned Advocate General submits that only 24% of the basic pay is the HRA that an employee is supposed to draw, and if that is the case, Rs.27,000/- and odd was the basic salary of the petitioner. Then the HRA would amount to around Rs.6,480/- to which the petitioner is entitled, whereas, in the present case, the

petitioner was drawing around Rs.23,500/- as HRA which is not permissible.

Stating this, the learned Advocate General urged this Court to dismiss this writ petition.

5. Mr. B.N. Majumder, learned Sr. counsel assisted by Mr. B. Paul, learned counsel submits that the impugned order cannot be set aside as the same is legally sustainable. Mr. Majumder, learned Sr. counsel referred to Rule 15(6) of the Judicial Service Rules, 2003 wherein it is stated that:-

"(6) (i) Notwithstanding anything hereinabove, the appointing authority as aforesaid may, at any time during the period of probation discharge from service, a probationer on account of his unsuitability for the service.

(ii) An order under sub-Rule(1) shall indicate the grounds for the discharge but no disciplinary enquiry shall be necessary.

[emphasis added]

This particular provision has not come under challenge before this Court, so in the case of the petitioner, no inquiry needs to be called for.

5.1. To strengthen his said argument, learned Sr. counsel referred to **para-18** of the Hon'ble Supreme Court Judgment cited in **2010 AIR SCW 6007** titled as **Khazia Mohammed Muzammil Vs. State of Karnataka and ors.**, dated **08.07.2010** which is reproduced herein-under:-

"18. On a clear analysis of the above enunciated law, particularly, the Seven Judge Bench judgment of this Court in the case of Samsher Singh (supra) and three Judge Bench judgments, which are certainly the larger Benches and are binding on us, the Courts have taken the view with reference to the facts and relevant Rules involved in those cases that the

principle of 'automatic' or 'deemed confirmation' would not be attracted. The pith and substance of the stated principles of law is that it will be the facts and the Rules, which will have to be examined by the Courts as a condition precedent to the application of the dictum stated in any of the line of the cases afore noticed. There can be cases where the Rules require a definite act on the part of the employer before officer on probation can be confirmed. In other words, there may a Rule or Regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction issue an order of confirmation. Where the Rules are of this nature the question of automatic confirmation would not even arise. Of course, every authority is expected to act properly and expeditiously. It cannot and ought not to keep issuance of such order in abeyance without any reason or justification. While there could be some other cases where the Rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties, even in those cases it is difficult to attract the application of this doctrine. However, there will be cases where not only such specific Rules, as noticed above, are absent but the Rules specifically prohibit extension of the period of probation or even specifically provide that upon expiry of that period he shall attain the status of a temporary or a confirmed employee. In such cases, again, two situations would rise: one, that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The Courts have repeatedly held that it may not be possible to prescribe a straight jacket formulae of universal implementation for all cases involving such questions. It will always depend upon the facts of a case and the relevant Rules applicable to that service.

[emphasis added]

5.2. To support his argument, learned Sr. counsel heavily relied upon the **Paras-3, 10, 11, and 12** Judgment of the Hon'ble Supreme Court cited in **AIR 2011 SCW 1874** titled as **Rajesh Kumar Srivastava Vs. State of Jharkhand and ors.**, dated **10.03.2011** which is reproduced herein-under:-

"3. After completing his training period, a notification was issued on 21.05.2002, appointing him as a Probationer Munsif. The said notification was issued by the Government of Jharkhand. He was posted at Dhanbad by a notification issued by the High Court. On 04.06.2002, he assumed the charge as Probationer Munsif at Dhanbad. On 15.07.2002, he was conferred with the power of Judicial Magistrate 1st Class. While he was discharging his duties as such, he passed an order on 06.01.2003, discharging all the accused under [Section 239](#) Cr.P.C. in G.R. No. 4698 of 1995 under [Sections 406, 408, 420, 120-B](#) IPC.

10. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action

and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

11. *In a recent decision of this Court in [Rajesh Kohli vs. High Court of J & K & Anr.](#) reported at (2010) 12 SCC 783: 2010 (10) JT 276, almost a similar issue cropped up for consideration, in which this Court has held that the High Court has a solemn duty to consider and appreciate the service of a judicial officer before confirming him in service and for this not only judicial performance but also probity as to how one has conducted himself is relevant and important. It was also held in the same decision that upright and honest judicial officers are needed in the district judiciary, which is the bedrock of our judicial system.*

12. *The order of termination passed in the present case is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and therefore there is no infirmity in the impugned judgment and order passed by the High Court.*

5.3. Mr. B.N. Majumder, learned Sr. counsel further draws the attention of this Court to the Order dated 17th June, 2019 indicating that the Officer by virtue of his transfer is entitled to claim the actual i.e., 100 % of the HRA which is rental allowance to the satisfaction of the Unit Head i.e., District Judge or the Administrative Head and prayed that the writ petition be dismissed.

5.4. Learned Sr. counsel appearing for the respondent-High Court further states the discharge order of the petitioner was a discharge simpliciter and stated that the Hon'ble High Court of Tripura on 09.03.2022 received one confidential report that learned

District & Sessions Judge, Khowai, wherefrom, it is revealed that the petitioner was found unavailable in his Court/chamber during several visits of the learned District Judge & Sessions Judge Khowai.

6. At the fag end of the argument, petitioner-in-person submits that the observation given in the impugned Full Court dated 29.11.2022 that the petitioner's "*demeanour is unbecoming of a judicial officer and his integrity is also doubtful*" is the stigma and the Full Court of this Court came to the said conclusion based on the flawed materials and reports. The said observation of the Full Court is hampering the future employment prospects of the petitioner. Further, the order of discharge is a punitive order that is also without inquiry.

7. Heard learned counsel appearing for both the parties and perused the evidence on record.

8. Before coming to the conclusion of this case, let us examine the allegations against the petitioner herein.

8.1. The 1st allegation against the petitioner is that the petitioner approached the Hon'ble Minister of State for Social Justice & Empowerment, Government of Tripura for recommending his transfer which was conceived by the Full Court of this Court as an attempt to exercise extraneous influence on the authority over the Hon'ble High Court of Tripura.

8.2. Here the petitioner contended that he did not approach the Hon'ble Minister for State for issuing any such letter or even the contents of the D.O letter prove that the same has been done for the creation of a spurious foundation for discharge of petitioner from service. Here, it is seen from the record that the Registry of the High Court of Tripura received a D.O. letter dated 14.06.2022 from the Hon'ble Minister of State for Social Justice & Empowerment, Government of India, New Delhi with a recommendation for transfer of the petitioner from Khowai District to West Tripura District/Sepahijala District or any other District adjacent to his house. Registrar(Vigilance) of this High Court vide letter dated 12th July, 2022 sought an explanation from the petitioner on the said issue within seven days from the date of receipt of the communication. The petitioner herein received the said letter in the afternoon of 18th July, 2022, but relied on the same vide letter dated 22nd July 2022 simply stating that he did not approach the Hon'ble Minister of State for Social Justice & Empowerment regarding the recommendation of his transfer from his present place of posting to other station. It is seen from the record that on 11.05.2022, the petitioner made a prayer before the Registrar General of this Court for his transfer to any station near his residence at Agartala. The ground stated by the petitioner for such transfer was the ill health of his parent and being the only son,

he is unable to take care of them. The matter was placed before the authority, wherein it was observed by order dated 23.05.2022 that the petitioner against whom show cause notice was issued should not be transferred and again the matter was referred to the Full Court. The Full Court by its resolution dated 02.06.2022 rejected the prayer of the petitioner. It is at that point, the High Court received the same D.O. letter from the Hon'ble Minister of State requesting consideration of his transfer as stated herein-above. From the said D.O. letter, it transpired that the petitioner had approached the Minister for his transfer. On this Point, the petitioner was noticed asking explanation of the same by order dated 08.07.2022, the petitioner replied to the said notice by his letter dated 22.07.2022 stating that he has not approached the Minister. After proper perusal of the conduct of the petitioner in approaching before the Registry of this Court for his transfer and thereafter issuance of a D.O. letter by a Hon'ble Minister of State recommending his transfer inspires high suspicious in the mind of this Court that the D.O. letter of Hon'ble Minister of State was issued without the petitioner approaching the Hon'ble Minister and the same was 'Act of God'. This Court is not in a position to accept the contention of the petitioner that the Hon'ble Minister of State for Social Justice & Empowerment, Government of India issued a letter recommending his transfer without the knowledge of the

petitioner. The petitioner contents that he does not know the Hon'ble Minister of State and he further contents that somebody to defame the petitioner with a malafide intention had played the said game behind the back and he pleads innocence to that effect. The said submission is hypothetical and cannot be accepted. This Court feels that such conduct of the petitioner is unbecoming of a Judicial Officer. So, according to this Court, the petitioner has not been able to prove his innocence on this point.

9. The 2nd part of the allegation that the petitioner overstayed his leave and was found unavailable in several visits of the Learned District and Sessions Judge, Khowai.

9.1. A bare perusal of the evidence on record reveals that this Hon'ble High Court of Tripura on 09.03.2022 received one confidential report from the learned District & Sessions Judge, Khowai, wherefrom it is revealed that the petitioner was found unavailable in his Court/Chamber during several visits of the learned District and Sessions Judge, Khowai.

9.2. The learned District and Sessions Judge, Khowai further stated that the petitioner was granted two days' casual leave and permission to leave the station until resumption of his duty on 04.03.2022, but, the petitioner overstayed for a further two days without sanction of such leave and even without making any

application seeking leave after joining. Learned District Judge further informed that the petitioner in spite of being informed absented himself in the office during the visit of Hon'ble Mr. Justice A. Lodh to Khowai on 05.03.2022. On receipt of such letter, the petitioner was issued a show cause notice which he replied by his letter his letter dated 04.04.2022. The petitioner stated that during the period of leave on 2nd and 3rd March, 2022, he fell seriously ill and he joined on 7th March, 202. The petitioner also stated that during the visit of the learned District Judge, Khowai to his Court and chamber, he was in his rented accommodation to attend nature's call as there is no lavatory attached to his chamber. The petitioner also stated that he was not communicated about the visit of the learned District and Sessions Judge, Khowai by his Bench Clerk. The learned District and Sessions Judge, Khowai immediately called the said Bench Clerk and he admitted that he did not intimate the fact of such visit to the petitioner and at once the said Bench Clerk was transferred to another Court by learned District and Sessions Judge, Khowai. Regarding overstay, the petitioner stated that he communicated his illness over WhatsApp to the learned District & Sessions Judge, Khowai. The petitioner also mentioned that on the date of the visit of Hon'ble Mr. Justice A. Lodh, he was seriously ill to attend the Court.

9.3. Thereafter, the High Court sought comments from the learned District and Sessions Judge, Khowai. The learned District and Sessions Judge Khowai stated that it came to her knowledge that no staff member informed the visit of learned District & Sessions Judge Khowai and at the same time, the learned District and Sessions Judge denied having received any WhatsApp communication regarding illness of the petitioner. The said reply was placed before the authority, it was observed that the petitioner made a false statement which manifested serious wrong and the matter was referred to the Full Court. Thereafter the Full Court after considering the reply of the petitioner and report of the learned District Judge came to the conclusion as mentioned here-in-above. This Court feels that the comments of the learned District Judge clearly proved that the petitioner made a false statement regarding the said issue. Further, it is seen from the above observation that the petitioner has had a series of excuses without proper reasoning on various occasions, which creates doubt in the mind of this Court on the reasoning of the excuses for not remaining present in his Court/Chamber.

10. On the point that the petitioner was discharged from his service without inquiry, this Court again seeks to reproduce Rule 15(6) of the Judicial Service Rules, 2003 wherein it is stated thus:-

"(6) (i) Notwithstanding anything hereinabove, the appointing authority as aforesaid may, at any time during the period of probation discharge from service, a probationer on account of his unsuitability for the service.

(ii) An order under sub-Rule(1) shall indicate the grounds for the discharge but no disciplinary enquiry shall be necessary.

[emphasis added]

10.1. The petitioner was a probationer at the time of his discharge and this particular provision has not come under challenge before this Court. As such, inquiry in the case of the petitioner is not called for.

10.2. Further, this Court is of the view that the discharge order of the petitioner is order simpliciter and not punitive in nature and the same is guided by Rule-15(4) of the Tripura Judicial Service Rules. 2003. The same is again reproduced herein-under:-

"(4) At the end of the period of probation or officiation or the extended period of probation or officiation, as the case may be, the High Court shall consider the suitability of the person to hold the post /grade to which he is appointed or promoted, and-

(i)xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(ii) If the officer is not found suitable to hold the post/grade to which he is appointed or promoted, as the case may be, the Governor on the recommendation of the High Court or, as the case may be, the High Court, being the appointing authority, shall

(a) if he is a promote revert him to the post/grade which he held prior to his promotion;

(b) if he is a probationer, discharge him from service."

[emphasis added]

11. Further, this Court agrees with the submission of learned Advocate General that the petitioner was a probationer Judicial officer and not a civil servant. As such, the petitioner is not covered under Article 311 of the Constitution of India. The service

rule of the petitioner being a Judicial Officer is covered by Judicial Service Rules. 2003. Further the ambit of the Article 311 of the Constitution of India pertains to the permanent employees.

12. On the point of House Rent Allowance (HRA), this Court is in consonance with the submission of learned Advocate General that only 24% of the basic pay is the HRA that an employee is supposed to draw. In that case, Rs.27,000/- and odd was the basic salary of the petitioner, then, the HRA would amount to around Rs.6,480/- to which the petitioner is entitled, whereas, in the present case, the petitioner was drawing around Rs.23,500/- as HRA which is not permissible.

13. In terms of the above discussions and findings, the Judgments as cited by the petitioner-in-person are not relevant to the fact of this present case.

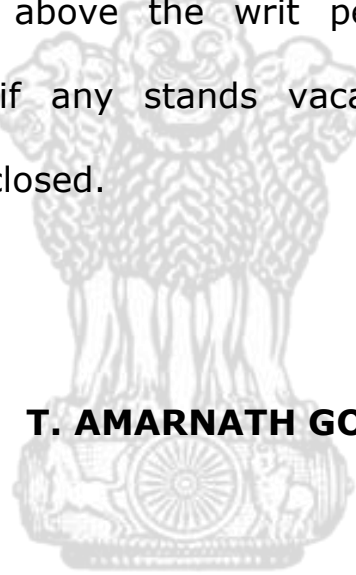
14. Petitioner -in - person during his argument submits that the observation given in the impugned Full Court dated 29.11.2022 that the petitioner's "*demeanour is unbecoming of a judicial officer and his integrity is also doubtful*" is the stigma and the same is hampering the future employment aspect of the petitioner. Here it is to be observed that in view of the above discussed facts and circumstance; it is optimally clear that the conduct of the petitioner is unbecoming of a Judicial Officer and doubtful. However, this Court is of the opinion to take a lenient view and keeping the career of petitioner in mind, the observation given by the Full Court

that the petitioner's "*demeanour is unbecoming of a judicial officer and his integrity is also doubtful*", the same could be replaced with the observation that "*the conduct of the petitioner is unbecoming of Judicial Officer and doubtful*" and the same is ordered. With the above modification, the impugned notification issued for discharging the petitioner from service is affirmed and upheld.

15. In view of the above the writ petition stands dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J



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