Deba Kumar Das Vs Gauhati High Court and Others

Court: Gauhati High Court

Date of Decision: Oct. 16, 2007

Acts Referred: Constitution of India, 1950 â€" Article 225, 226, 233, 234, 235
Criminal Procedure Code, 1973 (CrPC) â€" Section 164
Penal Code, 1860 (IPC) â€" Section 420

Citation: (2007) 4 GLT 591

Hon'ble Judges: B.P. Katakey, J; Amitava Roy, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Amitava Roy, J.
The petitioner, an officer in the Assam Judicial Service in the instant proceeding under Article 226 of the Constitution of

India has questioned the legality and validity of the decision of this Court on the administrative side, to terminate his probation and pending issuance

of the consequential Government notification to that effect to restrain him from discharging judicial works, as contained in the letters dated

22/12/2006 and 11/1/2007 (Annexures 9,8 and 7 to the writ petition). It has been submitted by the learned State Counsel that the related issues

being sub-judice before this Court further follow up steps have been deferred. The termination of the petitioner''s probation, therefore, has not yet

been given effect to though he stands relieved of the judicial duties as on date.

2. We have heard Mr. PK Goswami, Sr. Advocate assisted by Mr. BM Choudhury and Mr. S. Bharali, Advocates for the petitioner, Mr. PK

Mushary, Sr. Government Advocate for the State respondents and Mr. BC Das, Sr. Advocate and Standing Counsel, Gauhati High Court for

respondents 1, 2 and 3.

3. The pleaded versions are essential to outline the respective cases of the parties and adequately comprehend the rival submissions. The petitioner

has averred that he is a Law Graduate from the Gauhati University and having enrolled himself as an Advocate in the year 1994 initiated his

practice as a member of the Gauhati High Court Bar Association. He responded to the advertisement issued by the Gauhati High Court (hereafter

referred to also as High Court) as on 21/4/2001 for appointment to the post of Grade III of the Assam Judicial Service (also referred to as

Service) and participated in the selection process. On being found suitable, he was appointed by the notification dated 6/4/2002 of the Secretary

to the Government of Assam, Judicial Department, along with 25 others in the Grade HI of the Service. The High Court by notification dated

12/4/2002 posted him as Judicial Magistrate, 2nd Class at Morigaon on probation for a period of one year from the date of appointment. He

accordingly joined the said post on 22/4/2002. He was thereafter upgraded and promoted as Civil Judge (Junior Division) No. 1 cum Judicial

Magistrate 1st Class at Morigaon. In April, 2005, he was transferred from Morigaon to Hojai, Sankar Dev Nagar as Judicial Magistrate 1sl Class

and had been functioning in the station since then.

4. According to the petitioner, he had been discharging his duties with due diligence without any reservation about the quality of his service from

any quarter. While he was on earned leave w.e.f. 14/12/2006 till 21/1/07 on medical ground, he came across a newspaper report disclosing that a

criminal case being Tinsukia PS. Case No. 70/2002 u/s 420 IPC had been registered against him and that the police from the Tinsukia Police

Station had visited his place of posting at Hojai, Sankar Dev Nagar on 18/12/2006 in connection therewith. The petitioner has contended that he

had no knowledge of the pendency of the criminal case before the above disclosure in the newspaper. On enquiries being made by him, he

thereafter came to learn that one Pabitra Das had lodged an FIR before the Officer in Charge, Tinsukia Police Station alleging that in the month of

June/July 1999, he had applied for allotment of a Foreign Liquor out let to the Excise Department, Government of Assam, and in the process had

met the petitioner who had introduced himself to be the proprietor of a local daily ""Ajir Natun Asom"" as well as a member of the Approval

Committee of Foreign Liquor. He also represented to have a subsisting cordial relation with the Chief Minister and the Excise Minister of the State

and assured the informant that he would get his work done on financial returns. The FIR further recorded that on 16/9/1999, the petitioner visited

the residence of the informant and received Rs. 1 Lakh in that regard. Thereafter the informant paid 1,20,000/- by drafts in the name of the

aforementioned newspaper. It was further imputed that though another sum of Rs. 1 Lakh was paid to the petitioner at Guwahati, the informant''s

work was not done and that the petitioner had thus misappropriated a total amount of Rs. 3,25,000/-. The petitioner has averred that on the

receipt of the FIR a GD entry being No.TSKPS.GDENo.537 of the same date was made.

5. According to the petitioner, the informant was a relation of his wife. In the year 1999, the petitioner''s wife Mrs. Aparna Das introduced and

published a daily newspaper titled ""Ajir Natun Asom"" which was duly registered with the appropriate authorities. In the month of July, 1999, she

approached the informant for some financial assistance and the latter having agreed, paid Rs. 1 Lakh to the establishment by an A/c Payee Bank

Draft which was handed over by the informant to the petitioner''s wife at her office at Tarun Nagar, Guwahati. The informant thereafter sent a Bank

Draft of Rs. 25,000/- also to the newspaper office by courier service. All the drafts were payable at Guwahati and were deposited in the current

Account No. 11077 of ""Ajir Natun Asom "" at Union Bank of India, Maidamgaon, Guwahati-28. However, due to unavoidable circumstances and

financial constraints, the daily had to be withdrawn from 31st October, 1999, and the petitioner''s wife having suffered heavy financial loss in the

venture, she as the proprietor of the Daily intimated the informant about the same. The latter also lay low for more than two years thereafter and

according to the petitioner after his induction in service contrived a plot to recover his money by subjecting him to harassment and intimidation and

with that end in view lodged a false FIR tarnishing his image.

6. The petitioner has insisted on his innocence and has asserted that the FIR stems from a personal grudge of the informant against him.

Apprehending arrest, he also approached this Court with a prayer for pre-arrest bail in Bail Application 3/2007, which was granted, on

17/1/2007. While the matter rested at that, the petitioner was served with a communication dated 11/1/2007 from the District and Sessions Judge,

Nagaon, whereby he was restrained from discharging judicial works in view of the letters dated 22/ 12/2006 and 11/1/2007 of the Registrar

General of this Court. Whereas the communication dated 22/12/2006 was one conveying the decision of this Court to the Government to

terminate his probation, the one dated 11/1/ 2007 required the District and Session Judge, Nagaon, to restrain the petitioner from discharging

judicial works in view of the said decision. In terms of the instructions received, the petitioner was thereafter relieved of the judicial works.

7. In substance he has contended that as in the rneantime he had completed the maximum period of probation prescribed by the relevant service

rules, he had acquired a permanent status and, therefore, he could neither be treated to be on probation nor there was any scope to terminate his

probationary service. While asserting that the services rendered by him was without any blemish and that no complaint in that regard had ever

existed he has condemned the order of termination of his probation as punitive being founded the allegations in the criminal case. The impugned

decision has been assailed also being violative of Article 311 of the Constitution of India and the principles of natural justice, he not having been

offered any opportunity to represent against the same.

8. The Registrar General of this Court in his affidavit filed on behalf of the respondents l,2and 3 while affirming the statements with regard to the

petitioner''s appointment in Grade III of the service has iterated that he had all along been a probationer till the passing of the impugned orders.

While denying the claimed ignorance of the petitioners about the pendency of the criminal case, the deponent has stated that the Investigating

Agency having sought the permission of this Court to arrest the petitioner on 1/12/2006, it was so accorded on 11/12/2006. Subsequent thereto,

the Administrative Committee of this Court in its meeting held on 8/1/2006 resolved to terminate the petitioner''s probation and the decision was

communicated to the Government by the Registrar General of this Court by his letter dated 22/12/2006. He by his letter dated 11/1/2007 also

required that the petitioner be restrained from discharging judicial works. The deponent has asserted that the order of termination of probation was

an order simpliciter passed in accordance with the relevant rules and the terms and conditions of the petitioner''s service. It has been stated that at

the time of the petitioner''s appointment, the Assam judicial Service Rules, 1967 (hereafter also referred to as 1967 Rules) were in force, which got

substituted by the Assam Judicial Service Rules, 2003, (hereafter referred to as the 2003 Rules) thereafter. The deponent denied that the petitioner

before the impugned decision had acquired any permanent status under the said Rules and reiterated that his probation had been terminated strictly

in accordance therewith. The deponent has elaborated contending that as the petitioner had been continuing on probation, he had no right to

continue in the post and his probation was terminated without casting any stigma on him and that the coincidence of the pendency of Tinsukia PS

Case No. 70/2002 did not in any manner alter the nature of the impugned decision to morph it into one of punishment. It has been pleaded that the

criminal case did not form the foundation of the impugned decision so as to wan-ant the application of Article 311 of the Constitution of India and

no enquiry under the above constitutional provision or the Assam Services (Discipline and Appeal) Rules, 1964, was thereafter called for.

9. The State respondent''s counter is affirmed by the Joint Legal Remembrancer and Joint Secretary to the Government of Assam, judicial

Department. The deponent therein besides stating that the petitioner on his appointment was under the exclusive control of this Court mentioned

that to his knowledge the police investigation in Tinsukia P.S. Case No. 70/2002 (GR Case No. 159/02) has already been completed and the

charge sheet submitted u/s 420 IPC.

10. In his rejoinder affidavit, the petitioner while generally reiterating and reaffirming the averments made in the writ petition, has pleaded that the

records of the criminal case revealed that on 10/9/2002, the informant had submitted a complaint before the Registrar General of this Court stating

about the same and leveling other allegations against him as well. Acting on this complaint, the Registrar (I & E) of this Court by his letter dated 16/

11/2002 requested the Chief Judicial Magistrate, Tinsukia, to submit a report thereon along with a photo copy of the case record of the police

case and case diary within a week and accordingly the latter on 4/12/2002 submitted the required records where after the Registrar (I & E) of this

Court by his letter dated 22/4/2003 asked the Chief Judicial Magistrate, Tinsukia, to intimate the Registry as to whether charge sheet/final report

had been filed in the case. By his letter dated 5/5/ 2003, the Chief Judicial Magistrate, Tinsukia, informed the Registrar (I & E) that neither the

charge sheet nor a final report had been submitted. On this the Chief Judicial Magistrate, Tinsukia, was directed to inform the Registry as and when

the charge sheet or final report was submitted. It was much thereafter that the Chief Judicial Magistrate, Tinsukia, by letter dated 8/12/2006

forwarded the photocopies of the relevant documents of the criminal case to the Registrar (Vigilance) of this Court. The Registrar (Vigilance) by

his communication dated 11/12/ 2006 informed the District and Sessions Judge, Nagaon, of this Court''s permission to the Investigating Agency to

arrest the petitioner.

11. Based on these revelations, the petitioner has insisted that a thorough enquiry into the imputations against him in the criminal case had been

made by the concerned authorities by examining the case diary, report and other documents before taking the decision to terminate his services

and that therefore the same is patently punitive in character. In this regard, the petitioner has also averred that the Investigating Officer of the police

case had been summoned by the Registrar (Vigilance) of this Court to enquire about the matter. He has maintained that no enquiry was made by

the authorities for assessing his performance in service or suitability for the post and instead the exercise was directed towards ascertaining the

correctness of the charges made in the criminal case. This rendered the impugned decision to be one of dismissal from service on his perceived

misconduct founded on the police case. While insisting that the respondent authorities have failed to indicate the ground for the termination of his

services, the petitioner has pleaded that the circumstances immediately preceding the impugned decision demonstrates a live nexus between an

assumed misconduct due to the criminal case and his ouster. He also alleged discrimination contending that whereas other officers recruited along

with him are continuing in service, he has been visited with the impugned order though some of his colleagues had been alerted in between for their

unsatisfactory performance. The petitioner has stated that he had received regular increments in his pay even on the expiry of the maximum period

of probation till the impugned order of termination.

12. In the above state of pleadings, Mr. Goswami has emphatically urged with reference to both the Rules, that the petitioner in any view of the

matter, having completed the maximum period of prescribed probationary service there under in the meantime he could not have been by any

means be construed to be on probation on the date of the resolution of the Administrative Committee and, therefore, the impugned order dated

22/12/2006 being patently illegal is liable to be interfered with. The learned Sr. Counsel maintained that the maximum period of probation having

been mandated by Rule 15(3) of the 2003 Rules, there was no scope for the invocation of the power under Sub-clause (6) thereof in the facts of

the instant case. Though under Rule 15(5) a specific order bearing on the satisfactory completion of the period of probation is stipulated, any delay

in that regard on the part of the concerned authorities would not per se extend the period of probation ordained by Rule 15(3) to the prejudice of a

member of the service. The omission to pass such an order, Mr. Goswami asserted though may entail delay in the confirmation of the officer

concerned, the same could not by any reasonable construction of the Rules have the effect of stretching the maximum period of probation

statutorily prescribed. The learned Sr. Counsel, therefore, assiduously insisted that on the expiry o f the maximum period of probation enjoined by

the Rules, the officer concerned ceases to be a probationer and in the absence of any order under Rule 15(5) acquires the status of a temporary

Government employee who could not be discharged or terminated as a probationer. Referring to Rule 15(10) of the Rules, Mr. Goswami urged

that the eventualities in which the period of probation can stand protracted having been unerringly recited therein, Rule 15(5) under no other

situation can have an overriding effect on Rule 15(3). That the petitioner had ceased to be a probationer after the completion of the maximum

period of probation prescribed is evidenced by the fact that he had been sanctioned increments thereafter, he contended referring to Rule 15(9)(a)

of the Rules.

13. Mounting his assailment on the impugned decision of termination of the petitioner''s probation, Mr. Goswami attributed the charges levelled

against the petitioner in the FIR and the pendency of the police case being the foundation thereof and thus punitive in character. He urged that no

adverse appraisal of the petitioner''s services having been made at any point of time rendering him otherwise unfit or unsuitable for the office, the

impugned decision would not have been taken but for the criminal case. He impeached the said decision to be not one of termination of the

petitioner''s services simpliciter but a penal action and that too without affording opportunity of any kind to him to represent against the same.

14. Inviting the attention of this Court to the disclosures from the records as narrated in the petitioner''s rejoinder affidavit, Mr. Goswami argued

that it was apparent there from that the respondent authorities conducted a preliminary enquiry into the imputations levelled against him, which thus

evidently comprised the foundation of the impugned decision. Not only the same, therefore, is punitive but having been taken without affording any

prior opportunity to the petitioner is subversive of the basic tenets of fairness in action, he urged. Mr. Goswami contended that though the High

Court was aware of the com-plaint against the petitioner as far back as on 30/9/2002, it did not acquaint him therewith and instead deferred action

thereon. Though the charge sheet in the police case has not yet been submitted, the respondent authorities suddenly got alive to the complaint and

resorted to the impugned decision. The attendant facts and circumstances, the learned Sr. Counsel pleaded manifest the arbitrariness and

unreasonableness of the decision rendering it ineffectual, null and void. He was vehemently critical of the order being conspicuously silent about the

reasons in support thereof. Even assuming without admitting that an action under Rule 15(6) was permissible in the contemporaneous facts, no

reason having been recorded to justify the discharge or the termination of the petitioner''s probation, it is in gross transgression of the said

provisions of the Rules and on that count alone is liable to be adjudged nonest in law, he pleaded.

15. Mr. Goswami has further argued relying on Chapter I of the Rules of the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya,

Manipur, Tripura, Mizoram and Arunachal Pradesh) at Guwahati (hereafter referred to as the Court Rules) that in terms of Rule 13, the resolution

of the Administrative Committee ought to have been circulated to all the Judges stating inter alia the matters that have been laid before it

(Administrative Committee) and the manner in which those have been disposed of. The learned Sr. Counsel also referred to Rule 19 requiring that

the proceedings of a Full Court and of an Administrative Committee be recorded in books to be maintained by the Registrar to be open to

inspection at all times when ever called for by any of the Judges. The learned Sr. Counsel argued that though the Administrative Committee

constituted by a number of Judges had been bestowed with the authority and power to decide on matters enumerated in Rule 3, the requirement of

circulation of its resolutions as engrafted in Rule 13 being a wholesome provision to elicit the response of the other Judges on issues of moment and

significance, any omission to comply therewith would render any action based on such resolution(s) invalid. As the circulation of the resolution(s) of

the Administrative Committee would facilitate expression of the views of the other Judges of this Court either in support or in dissension, the same

ought to be construed as mandatory more particularly when the consequential decision would be treated to be that of the High Court. The High

Court being in the administrative control of the subordinate judiciary the essentiality of such circulation would ensure the ultimate decision to be

broad based and truly representative in accord with the majesty and status of the institution as a whole. As a departure from such an imperative is

patent in the prevailing facts, Mr. Goswami argued that the impugned resolution of the Administrative Committee and hence the decision

terminating the petitioner''s services are unsustainble in law.

16. The learned Sr. Counsel assailed the resolution of the Administrative Committee also on the count that the agenda tabled before it on

8/12/2006 did not clearly include any item pertaining to petitioner''s retention in service. While reiterating that the sanction of increments to the

petitioner beyond the maximum period of probation was clearly indicative of successful completion of probationary period as contemplated by

Rule 16(9)(a) of the Rules, Mr. Goswami emphatically urged that the impugned decision is discriminatory as well, the petitioner''s contemporaries

with inferior performance having been retained in preference to him. Following decisions were relied upon. The State of Punjab Vs. Dharam Singh,

Baldev Raj Chadha Vs. Union of India (UOI) and Others, , Anoop Jaiswal Vs. Government of India and Another, , Registrar, High Court of

Madras Vs. R. Rajiah, , Ishwar Chand Jain Vs. High Court of Punjab anfd Haryana and Another, , Babu Lal Vs. The State of Haryana and

others, , Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, , and Municipal Corporation, Raipur Vs. Ashok Kumar Misra,

17. Per contra, Mr. Das has argued that a conjoint reading of the various sub-clauses of Rule 15 unequivocally demonstrates that a declaration

following the completion of the probationary period on its expiry and the assessment of the officer concerned are indispensable conditions

precedent for his confirmation in service. The learned Counsel urged that the officer concerned would therefore continue to be on probation till

such a declaration is made under Rule 15(5) and any other interpretation would render the said provision unintelligible and unworkable. As the

Rules governing the petitioner prescribes a declaration by the authority concerned certifying satisfactory completion of probation as a statutory pre-

requisite for his confirmation, he remained on probation on the date of the resolution of the Administrative Committee and the decision consequent

thereto and all contentions to the contrary being repugnant to the Rules are unsustainable. In face of the categorical enjoinment of a declaration on

satisfactory completion of the probationary service, the plea of automatic completion is of no avail, he submitted. Mr. Das emphasized that the

facts pertaining to the police case did not form the foundation of the impugned decision though the same might have constituted the motive to

conclude on the petitioner''s unsuitability to be retained in service. The resultant decision was neither stigmatic nor penal and did not either call for

any departmental enquiry or a pre-decisional hearing to him. As the petitioner at all relevant times was holding a judicial office, he was expected to

be above all controversies in the perspective of the societal expectations and the institutional dignity and credibility. According to the learned

Counsel, Rule 15(6) did not stipulate reasons to be recorded in the order and if the same were relevant and available on records, any omission to

disclose the same in the order would not be fatal.

18. Mr. Das dismissed the requirement of circulation of the resolutions of the Administrative Committee to be obligatory. Referring to the Court

Rules, the learned Sr. Counsel maintained that having regard to the power and authority of the Administrative Committee, its decisions on the

matters catalogued in Rule 3 were presumably independent of all other Judges construable per se as that of the High Court. The prescription of

circulation is only to keep the other Judges informed thereof and neither for modification of the same nor for reference to the Full Court by any

Judge in case of disagreement. Contending that Rule 14 clearly refers to a pre-decisional stage pertaining to any issue before any committee, Mr.

Das argued that the Administrative Committee having been invested with the exclusive authority to decide on the issues in Rule 3 of the Court

Rules and the circulation of any decision thereof being only a routine step any omission/failure in that regard would not ipso facto render either the

proceedings of the said Committee or any resolution taken therein unsustainable, invalid or indefensible in law. Mr. Das structured his submissions

on the following decisions Sukhbans Singh Vs. State of Punjab, , G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, , State

of Uttar Pradesh Vs. Akbar Ali Khan, , Shri Kedar Nath Bahl Vs. The State of Punjab and Others, , State of Maharastra v. Veerappa R. Saboji

and Anr. (1979)IILLJ393SC , State of Punjab Vs. Dharam Singh, , Samsher Singh Vs. State of Punjab and Another, , The High Court of Punjab

and Haryana and Others Vs. The State of Haryana and Others, , State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, , Tej Pal Singh

Vs. State of U.P. and Another, , Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others, , State of Gujarat

Vs. Akhilesh C. Bhargav and Others, , M.K. Agarwal v. Gurgaon Gramin Bank and Ors. [1987]3SCR640 , Ravindra Kumar Mishra v. U.P.

State Handloom Corporation Ltd. and Anr. 1987 (Supp.) SCC 739, Municipal Corporation, Raipur Vs. Ashok Kumar Misra, , State of Punjab

Vs. Baldev Singh Khosla, , Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, , AIR 2000 1706 (SC) , Wasim

Beg Vs. State of Uttar Pradesh and Others, , High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, .

19. The learned Sr. Government Advocate for the State respondents has argued that the charge sheet in the criminal case has already been

submitted. No records, however, was submitted in support of the above.

20. The contentious assertions have received our anxious consideration. The aspect of probation, having regard to the bearing thereon on the

decision making process commends for precedence in scrutiny. This necessarily demands a survey of the 1967 and 2003 Rules at the threshold.

Admittedly the petitioner had been recruited under Rule 5(4)(c) of the 1967 Rules in Grade III of the service to remain on probation initially for a

period of one year from the date of his appointment i.e. 12/4/2002. Before the expiry of the probation, the 1967 Rules were repealed to be

substituted by the 2003 Rules. Both the Rules have been framed by the Governor of Assam in exercise of power conferred by proviso to Article

309 read with Article 234 of the Constitution of India and, therefore, indubitably have a statutory force. Under Rule 9 of the 1967 Rules,

appointments other than those made to temporary posts were to be on probation for a period of one year from the date thereof. The second

proviso thereto proclaims that the Chief Justice in the case of Registrar, Deputy Registrar or Assistant Registrar and the High Court in the case of

other members of the service can relax or extend the period of probation and on the completion of such period the members of the service are to

be continued by the Chief Justice of the High Court as the case may be in their respective posts. The 1967 Rules, therefore, obviously did not

prescribe a maximum period of probation.

21. The 2003 Rules came into force w.e.f. the date of publication in the Assam Gazette (Extra Ordinary) i.e. 17/2/2003. The appointing authority

in terms of Rule 6 thereof for the Grade III cadre is the Governor. The conditions of eligibility and the procedure for recruitment have been

prescribed by Rule 7. The Rules apparently had come into force before the expiry of the petitioner''s initial period of probation reckonable from

12/4/2002 and axiomatically with the repeal of the 1967 Rules, he stood governed by the later Rules. The hub of the competing contentions

pertaining to probation being Rule 15 of the 2003 Rules, the same deserves extraction for ready reference.

Rule-15....

1. All appointments to the service by direct recruitment shall be on probation for a period of two years.

2. All appointments by promotion shall be on officiating basis for a period of two years.

3. The period of probation or officiation, as the case may be, for reasons to be recorded in writing, may be extended by the appointing authority

by such period not exceeding the period of probation or officiation, as the case may be specified in Sub-rules (1) or (2).

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 appointing

authority shall consider the suitability of the person so appointed or promoted to hold the post to which he was appointed or promoted, and-

(i) if it decides that he is suitable to hold the post to which he was appointed and has passed the special examinations or tests, if any. required to be

passed during the period of probation or officiation, as the case may be, it shall, as soon as possible, issue an order declaring him to have

satisfactorily completed the period of probation or officiation, as the case may be; and such an order shall have effect from the date of expiry of the

period of probation or officiation, including the extended period, if any, as the case maybe.

(ii) If the appointing authority considers that the person is not suitable to hold the post to which he was appointed or promoted, as the case may

be, shall by order-

(a) if he is a promotee, revert him to the post which he held prior to his promotion.

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

5. A person shall not be considered to have satisfactorily completed the period of probation or officiation, as the case may be, unless a specific

order to that effect is passed. Any de lay in passing such an order shall not entitle the person to be deemed to have satisfactorily completed the

period of officiation or probation.

6. Discharge of a probationer during the period of probation.

(i) Notwithstanding anything hereinabove, the appointing authority may, at any time during the period of

Probation, discharge from services, 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.

7. Appeal--No appeal shall lie against an order discharging a probationer or an order reverting a promotee to the post held by him prior to his

promotion.

8. Confirmation--A probationer who has been declared to have satisfactorily completed his period of officiation shall be confirmed as a full

member of the service in the category of post to which he was appointed or promoted. as the case may be. at the earliest opportunity in any

substantive vacancy, which may exist or arise.

9. Increment during the period of probation or efficiation-

(a) A probationer or promotee may draw the increments that fail due during the period of probation or officiation. He shall not however, draw any

increment after the expiry of the period of probation or officiation unless and until he is declared to have satisfactorily completed his probation or

officiation, as the case may be.

(b) When a probationer or promotee is declared to have satisfactorily completed his probation or officiation, as the case may be, he shall draw, as

from the date such order takes effect, the pay he would have drawn had he been allowed the increments for the whole of his service from the date

of his appointment on probation or officiation as the case may be.

(10) Notwithstanding anything contained in the Sub-rules (1) and (2) where validity of the appointment of any person-

a) As probationer is questioned in any legal proceedings before a Court of law, the period of probation of such person shall continue until the final

disposal of such proceedings.

(b) As the promotee on officiating basis is questioned in any legal proceeding, before a Court of law, the period of officiation of such promotee

shall continue until the final disposal of such proceedings.

22. The above provisions, on a plain reading yields the following features. Understandably the focus would be on the clauses pertaining to

probation alone. Rule 15(1) mandates that all appointments to the service by direct recruitment should be on probation for a period of two years.

This period in terms of Rule 15(3) may be extended by the appointing authority, for reasons to be recorded in writing by such peirod not extending

the one specified in Sub-clause (1). Rule 15(4) lays down that at the end of the period of probation or the extended period of probation or

officiation, as the case may be, the appointing authority should consider the suitability of the person so appointed or promoted to hold the post to

which he was appointed or promoted. Rule 15(4)(i) predicates that if the appointing authority decides that the person concerned is suitable to hold

the said post and has passed the special examinations or test, if any, so required to be passed during the period of probation, it would as soon as

possible issue an order declaring him to have satisfactorily completed the period of probation and such an order would have the effect from the

date of the expiry of the period of probation or the extended period as the case may be. If, however, the appointing authority as per Rule 15(4)(ii)

assesses the person to be unsuitable to hold the post, it would by order discharge him from service.

23. Rule 15(5), however, clarifies that a person shall not be considered to have satisfactorily completed the period of probation or officiation

unless a specific order to that effect is passed and any delay in passing such an order would not entitle him to claim to have satisfactorily completed

the period of probation. Sub-clause (6) vests the appointing authority with the power to discharge a probationer during the period of probation on

account of his unsuitability for the service. Rule 15(6)(ii) obligates the appointing authority to indicate the grounds for the discharge while

mentioning that no disciplinary enquiry would be necessary therefor.

24. Rule 15(8) deals with the confirmation inter alia of a probationer who had been declared to have satisfactorily completed the period of

probation as a full member of the service and in the post to which he had been appointed. Sub-clause (9)(a) imposes a restraint in the grant of

increments to the probationer on the expiry of the probation unless he is declared to have satisfactorily completed his probation. Sub-clause (b)

thereof recites that a probationer on being declared to have satisfactorily completed his probation would be entitled to draw from the date such

order takes effect, the pay he would have drawn had he been allowed the increments for the whole of his service from the date of his appointment

on probation. Rule 15(10) elucidates that the period of probation as mentioned in Sub-rule (1) and (2) notwithstanding, if the validity of

appointment of any person as a probationer is questioned in a proceeding before a Court of law, his period of probation would continue until the

final disposal thereof. Rule 24 ordains that a Judicial Officer appointed there under would be required to maintain integrity and conduct himself in

conformity with the dignity of the office he holds. The code of conduct as enumerated in Appendix A to the Rules amongst others emphasizes on

the cardinality of public confidence in the judiciary with a caveat that a judge must avoid all impropriety and any appearance thereof in his conduct.

25. In the case in hand on the date of the impugned decision, the petitioner had completed four years in service. That he had been receiving

increments even thereafter has not been disputed by the respondents. As both the sides have exhaustively referred to judicial pronouncements to

buttress their respective pleas, we feel it expedient to survey the same before embarking on the task of discerning the true construction and purport

of Rule 15.

26. In State of Punjab v. Dharam Singh (supra), the District Board Schools in which the respondents had been appointed as junior teachers was

provincialised along with similarly situated institutions and were taken over by the Punjab State w.e.f. 1/10/1957. Thereafter the Punjab

Educational Service (Provincialised Cadre) Class III Rules, 1961, under Article 309 was framed for regulating the conditions of service of the

teaching staff. Rule 6 thereof provided that the members of the service officiating or to be promoted against permanent posts shall be on probation

in the first instance for one year and on the completion of the said period, the authority competent to make such appointments might confirm the

member or if his work or conduct during the period of probation had been unsatisfactory, it might dispense with his service or might extend his

period of probation by such period as deemed fit or revert him to his former post in case of promotion. The proviso to Rule 6(3) specifically

mentioned that the total period of probation including extensions, if any, would not exceed three years.

27. Though the respondents were officiating in permanent posts and as contemplated under Rule 6(3) they continued on probation the maximum

period whereof expired on 1/10/1960 formal orders confirming them in their posts were not passed. Instead, their services were terminated in

1963. Having unsuccessfully challenged their termination before the learned Single Judge of the Punjab High Court, the respondents preferred

Letters Patent appeals and the appellate Court allowed the same. It was held that on the expiry of the three years period of probation, they were

deemed to have been confirmed in their posts and the impugned orders amounted to their removal from service by way of punishment in violation

of Article 311 of the Constitution of India and the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The appellant State contended

before the Apex Court that in absence of any formal order of confirmation, the respondents were to be deemed to have continued in their posts as

probationers. Recounting its earlier view, the Apex Court observed that when a first appointment or promotion is made on probation for a specific

period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be

deemed to continue as a probationer only in absence of any indication to the contrary in the original order of appointment or promotion or the

service rules. In such a case an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere

fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is not possible to hold that he should be

deemed to have been confirmed. Adverting to Rule 6(3) their Lordships ruled that where the service Rules fix a certain period of time beyond

which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that

post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in the post

as a probationer by implication. The Court concluded that such an implication is negatived by the service rule forbidding extension of the

probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to

continue in the post on completion of the maximum period of probation has been continued in the post. While dismissing the appeal of the State,

the Court noticed that the rules involved did not require the respondents to pass any test or to fulfill any condition before confirmation. It was held

that on the date of the impugned orders, the respondents had the right to hold their post and their ouster amounted to removal from service by way

of punishment without following the procedure laid in Punjab Civil Services (Punishment and Appeal) Rules, 1952, and the constitutional

requirements of Article 311 of the Constitution.

28. In Sukhbans Singh (supra), the appellant was selected to the post of Extra Assistant Commissioner by the Public Service Commission under

Rule 17 of the Punjab Civil Services (Executive Branch) Rules, 1930. Rule 22 thereof provided that candidates on first appointment to the service

would remain on probation for a period which in the case of candidates appointed from Register A-I or Register A-ll was 18 months. One of the

provisos thereto enabled the Governor to extend the period of probation of any candidate. Under Rule 24, on the completion of the period of

probation prescribed by, or determined by the Governor of Punjab under Rule 22, a member of the Service would be qualified for a substantive

permanent appointment. The appellant"s period of probation was not extended under Rule 22. His appointment as Extra Assistant Commissioner

was by way of promotion to the Provincial Civil Service (Executive Branch). He was subsequently reverted to the former post of Tehsilder. The

Apex Court was seized with the question as to what would be the status of the appellant after the expiry of his probationary period of 18 months.

It ruled that a probationer cannot automatically acquire the status of a permanent member of a service unless the Rules under which he is appointed

expressly provide for such a result. While noticing the absence of any such provision for conferring permanent status at the end of the probationary

period, the Apex Court held that in terms of Rule 24, a probationer then would merely be qualified for substantive permanent appointment. It,

therefore, declared that under the said Rules where a probationer was not reverted before the termination of his period of probation, he continued

to be a probationer though qualified for substantive permanent appointment.

29. In G.S. Ramaswamy (supra), under Rule 486 of Hyderabad District Police Manual, a Sub-Inspector on promotion as Circle Inspector was to

remain on probation for two years and could be reverted, if his work and conduct were not found satisfactory during that period, ft was further

provided therein that the promoted officer would be confirmed at the end of the probationary period, if they had given the satisfaction. Negativing

the contention of the petitioner''s that on completion of two years of probationary period they automatically became confirmed under the said

Rules, the Apex Court reiterated its view in Sukhbans Singh, surpa, and concluded that even though a probationer may have continued to act in the

post to which he was appointed on probation, he could not become a permanent servant merely because of efflux of time, unless the Rules of

service which governed him specifically laid down that the probationer would be automatically confirmed after the initial period of probation was

over. Referring to the words ""if they have given satisfaction"" appearing in Rule 486, the Apex Court observed that apparently the Rule did not

contemplate automatic confirmation after the probationary period of two years, for a promoted officer could only be confirmed, if he had given

satisfaction.

30. The respondent in State of U.P. v. Akbar Ali (supra), was selected for permanent promotion to the post of Tahsildar and in accordance with

Rule 12 of the Subordinate Revenue Executive Service (Tahsildars) Rules, 1944, was placed on probation for a period of two years. His

probation was terminated much after the said period. The respondent questioned the impugned decision before the Allahabad High Court under

Article 226 of the Constitution of India inter alia on the ground that on the expiry of the period of probation, he must be deemed to have been

confirmed as Tahsildar and that the termination of his probation being punitive and effected without affording him any opportunity to represent

against the same was invalid. Rule 12 of the aforementioned Rules required that every candidate on appointment would be placed on probation for

a period of two years which could under Rule 14 be extended to three years and that any extension beyond that period would require the sanction

of the Governor. Rule 15 provided for confirmation of a probationer under Rule 14 after he had passed the examination for Tahsildar and the

Commissioner had reported that he was fit for promotion and that his integrity was unquestionable. The Apex Court noticing that the respondent

had not passed the departmental examination before 1955 (the respondent''s probation was terminated on 13/8/57) held that in the scheme of the

Rules, confirmation in the post for a probationer did not follow merely on the expiry of the period of probation and that so long as the order of

confirmation was not made, he would continue to be a probationer. It laid down that if the order of appointment itself stated that at the end of the

probation the appointee would stand confirmed in the absence of any order to the contrary, he would acquire a substantive right to the post even

without an order of confirmation but in all other cases in absence of such an order or a service rule, an express order of such confirmation was

necessary to give him such right. The Apex Court elucidating the above proposition held that where after the period of probation an appointee is

allowed to continue in the post without an order of confirmation, the only possible view is that by implication, the period of probation is extended

and an appointee cannot be construed to have been confirmed from the mere fact that he was allowed to continue after the end of the period of

probation.

31. The decisions in Kedar Nath (supra) and State of Maharastra v. Veerappa R. Saboji and Anr. also record the same proposition of law and in

absence of any distinct features in the facts and the rules involved, the narration of the contextual facts is considered inessential.

32. The predominant legal proposition emerging from the above cluster of cases is that in absence of any clear indication in the appointment letter

or in the relevant rules governing the service conditions of the probationer that on completion of his probationary period he would automatically

stand confirmed in service, merely on the expiry of the said period, he cannot claim a confirmed status and instead he would continue as a

probationer till he is declared to be confirmed on a satisfactory compliance of the prescribed pre-requisites therefor.

33. The decisions dealt with hereinabove dwells on eventualities where an outer limit of the probationary period is prescribed by the related rules,

which, however, are silent about the consequences of an omission to pass appropriate orders bearing on the status of the probationer on the expiry

of the said period.

34. The appellant in Om Prakash Maurya, supra, while serving as Office Superintendent in Kisan Sahkari Chini Mills Ltd., Bisalpur District Pilibhit,

a sugar factory run and managed by the Uttar Pradesh Co-operative Mills Federation, was promoted to the post of Commercial Officer on

probation for one year on the condition that his probationary period may be extended further and that during the period of probation, he could be

reverted to the post of Office Superintendent without any notice. His period of probation was extended for one year till 4/9/1982 but thereafter

neither any further extension of period was caused nor was any order issued confirming him in the said post. He was thereafter reverted. He

contended before the jurisdictional High Court that on the expiry of the probationary period, he stood confirmed, a plea that was rejected. The

Apex Court recorded that Regulation 17 of the U.P. Co-operative Societies Employees Service Regulations, 1975, applicable to the facts of the

case required that all persons on appointment against regular vacancies would be placed on probation for a period of one year and the proviso

thereof though permitted extension of the said period it imposed a ceiling of one year in that regard. Regulation 18 provided for confirmation of an

employee on the satisfactory completion of the probationary period. The Apex Court held that on a conjoint reading of Regulation 17 and 18, it

was decipherable that an employee appointed against the regular vacancy was to be on probation for a period of more than two years and if during

the said period, the appointing authority was of the opinion that the employee has not made use of the opportunity afforded to him, it could

discharge him from service or revert him to his substantive post but had no power to extend the period of probation beyond the period of two

years. It marked that the Regulations did not expressly lay down as to what would be the status of an employee on the expiry of the maximum

period of probation where no order of confirmation was issued but the employee was allowed to continue in service. It concluded, founded on the

scheme of Regulation 17 and 18, that on the expiry of the two years of probationary period, the employee would stand confirmed by implication.

35. The appellant in M.K. Agarwal (supra), had been appointed as a Trainee Branch Manager on probation with the Gurgaon Gramin Bank for a

period of one year at the first instance. The Bank had reserved to itself the power to extend the said period for a further period of six months at the

end of which the probationer was to be confirmed if found suitable or discharged from service otherwise. The outer limit of 18 months

probationary period in case of the appellant expired in 1980, he, however, was not discharged. No express order of confirmation was made

either. His services were terminated on 17/8/ 1982. The Apex Court in the conspectus of the attendant facts and drawing sustenance from its view

in State of Punjab versus Dharam Singh, supra, held that in the face of the limitation on the power of the employer to extend the period of

probation beyond 18 months coupled with the obligation either to confirm or discharge of the probationer on the expiry thereof, the inescapable

inference was that if the appellant had not been discharged before the expiry of the maximum period of probation there was an implied

confirmation in absence of a statutory indication as to what would follow in absence of express confirmation at the end of even the maximum

period of confirmation.

36. In State of Gujarat versus Akhilesh C. Bhargav and Ors. (supra), the respondent No. 1 had challenged the order of his discharge dated

9/4/1974 from the Indian Police Service to which he was appointed on probation on 4/7/1969. The matter was taken up on appeal before the

Apex Court by the State of Gujarat. Rule 3(1) of the Indian Police Service (Probation) Rules, 1954, provided the probationary period of two

years to a person recruited to the Indian Police Service. The Central Government was thereby vested with the power of extending the said period.

In the case of the respondent No. 1, the period of probation was not extended. Though the probation rules did not provide any optimum period of

probation, Administrative instructions of the Ministry of Home Affairs, Government of India, published on 16/3/1973 provided a maximum of four

years of probation. The Apex Court held the view that on a conjoint reading of the Probation Rules and the Administrative Instructions, on the

expiry of four years form the date of the respondent No. 1 ''s appointment, he stood confirmed and, therefore, the order of discharge was

interfered with.

37. The renderings in this batch of decisions, therefore, project the view that if the Government Rules prescribe an ultimate limit of the period of

probation following which a probationer is to be either confirmed or discharged depending on the quality of his performance but is permitted to

continue in service without such declaration and the Rules are silent about the consequences in such an eventuality, the probationer would be

deemed to have been confirmed at the end of the maximum period of probation prescribed. There is yet another category of decisions which if

traversed would complete the entire gamut of the precedential law on the subject with which we are engaged.

38. The appellants in Samsher Singh, supra, had joined the Punjab Civil Services on probation. By orders dated 24/7/1967 and 15/12/1969, they

Samsher Singh and Ishwar Chand Agarwal, were terminated respectively. The latter inter alia contended that he having completed his initial period

of two years of probation on 11/11/1967 and the maximum period of three years period on 11/11/1968, he had acquired the confirmed status in

service thereafter. The Apex Court took note of the fact that Rule 7 in Part D of the Punjab Civil Service (Judicial Branch) Rules, 1951, stipulated

that every subordinate Judge in the first instance would be appointed on probation for two years but this period might be extended from time to

time expressly or impliedly so that the total period of probation including extension did not exceed three years. The explanation to Rule 7(1)

provided that the period of probation would be deemed to have been extended if a Subordinate Judge was not confirmed on the expiry of its

period of probation.

39. The Apex Court discerned from the prevailing facts that before the completion of three years, the High Court having found that the work as

well as the conduct of the appellant was unsatisfactory had issued a notice on 4/10/1968 requiring him to explain as to why his services would not

be terminated. It held in the context of the Explanation to Rule 7(1) that the provision recording the maximum period of probation for three years

was directory and the probationer would not get confirmed till an order to that effect was made. It also took note of the proviso to Rule 7(3),

which proclaimed that the completion of the maximum period of three years would not confer on the probationer with a right to confirmation till

there was a permanent vacancy in the cadre. With reference to Rule 9 which permitted termination of the employment of a probationer whether

during or at the end of the period of probation, the Apex Court concluded that where notice was given at the end of the probationary period, it

gets extended till the enquiry proceeding commenced under Rule 9 comes to an end. It, therefore, held against the plea of confirmation by

implication at the end of the maximum period of probation as urged by the appellant.

40. The respondents in Municipal Corporation, Raipur, versus Ashok Kumar Misra, supra, was appointed as LDC with the appellants on

22/9/1966 and was placed on probation for a period of two years which expired on 21 /9/1968. His services were terminated by one months

notice dated 9/12/ 1968. The respondents though had failed in the suit challenged the termination. The jurisdictional High Court in second appeal

upheld the assailment. The Apex Court observed that the Rules applicable required the placement of an appointee on probation for such period as

may be prescribed additionally authorizing the appointing authority to extend the same by a further period not exceeding one year. Further on

successful completion of probation and passing of the prescribed departmental examination, the probationer would be confirmed in service or post

to which he had been appointed. It in particular referred to the note appearing under Rule 8(2) of the Rules to the effect that a probationer whose

period of probation was not extended but had neither been confirmed nor discharged from service at the end of the period of probation would be

deemed to have continued in service subject to the condition of the same being terminable on the expiry of a notice of one calendar month by either

side. It, therefore, declared in terms thereof that after the expiry of the period of probation and before his confirmation, the appellant was deemed

to have continued in service as probationer. As confirmation of a probationer was subject to the satisfactory completion of the probation and

passing of the prescribed examinations, mere completion of the period of probation did not entitle him to aright of deemed confirmation.

41. In State of Punjab versus Baldev Singh Khosla, supra, as well the maximum period of probation under Rule 10 of the Punjab State

Cooperative Service (Class II) Rules, 1958, was pegged at three years. After the end thereof a show cause notice was issued to the respondent

who had been promoted as an Assistant Registrar of Cooperative Societies on 21 /3/1990 requiring him to explain as to why he should not be

reverted to the substantive cadre. He was eventually reverted to as proposed on 11/2/1994. The Apex Court was of the view that Rule 10(3)

envisaged that on the completion of the period of probation, the Government could, if vacancy existed, confirm a probationer and if his work or

conduct was not satisfactory could extend the period of probation for such period as it would deem fit and, thereafter pass necessary orders. It

ruled that the outer limit of three years of probation considered in the framework of Rule 10 was only to enable a probationer to continue in service

without being reverted or discharged from service for his failure to satisfactorily complete the period of probation and did not connote that on the

expiry thereof he would be deemed to have been confirmed. It concluded that so long as the order of confirmation was not made even after the

expiry of the probation, the probationer would remain and continue in service but by allowing him to be so, he could not be deemed to have been

confirmed.

42. A passing overview of the three types of decisions on the confirmation of a probationer was made by the Apex Court in Wasim Beg (supra). It

referred to the determination in Dayaram Dayal v. State of M. P. (1997) 7 SCO 443 which proclaimed that where the Rules provide that the

period of probation cannot be extended beyond the maximum, there will be a deemed confirmation at the end thereof unless there is anything

contrary to the Rules.

43. The Apex Court departed from the proposition in Dayaram Dayal, supra, in High Court of M.P. and others versus Satya Narayan Jhavar,

supra. It held that an order of confirmation is a positive act on the part of the employer, which it is required to pass in accordance with the Rules

governing the question of confirmation subject to a finding that the probationer is in fact fit for confirmation. While taking note of the fact that the

respondents here appointed as Civil Judge (Training) Class II in the Madhya Pradesh Judicial Service had been considered for confirmation by the

High Court but were adjudged unsuitable there for and were thus provided a further opportunity for improving themselves, the Apex Court opined

that merely because they were allowed to continue instead of being terminated, they could not be deemed to have been confirmed. Referring to

Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955, it laid down that the same

while prescribing a maximum period of probation, conferred a right on the appointing authority to confirm a probationer subject to his fitness and

passing of all departmental examination which negatived the inference of confirmation in the post by implication. It reiterated that an instance of

deemed confirmation of a probationer would arise when the letter of appointment so stipulates or the Rules governing the service conditions so

indicate. But merely because a maximum period of probation is provided in the service Rules continuance of the probationer thereafter would not

be indicative of his deemed confirmation. It held that subordinate judiciary was the foundation on which the institutional super structure was built

and thus it was the solemn duty of every authority on whom the administration of justice vests, to see that the foundation is not shaken by any

process, including the process of allowing an adjudged unsuitable person to man such post. It expounded that while interpreting Rule 24 and

examining the permissibility of deemed confirmation this principle ought to be borne in mind and unless the rules explicitly say so, by implication a

status of deemed confirmation ought not to be granted.

44. The gravamen of the judicial determinations as above proclaims against implied confirmation of a probationer merely on the expiry of the

maximum period of probation prescribed by the governing Rules if the same explicitly or implicitly indicate otherwise. The benefit of automatic

confirmation at the end of the probationary period may be accorded if either the appointment order unambiguously provides for the same or the

relevant rules expressly grant such a recognition. It is no longer res integra that a probationer has no right to hold the post during period of

probation and can be terminated either during or at the end of the said period for general unsuitability for the service. His confirmation is contingent

on satisfactory completion of his probationary stint and passing of departmental and other examinations, if any, prescribed by the Rules involved. If

a maximum period of probation is stipulated and the Rules applicable is silent about the consequences on the cessation thereof and the person

concerned continues in service, any inference of confirmation as had been held by the Apex Court in State of Punjab versus Dharam Singh, supra.

As noticed hereinabove, the Apex Court, in cases subsequent thereto, on the basis of the rules governing the probationers has declared against

implied confirmation of a probationer at the end of the probationary period on mere continuance thereafter in absence of any express order to the

said effect, if a different intention from the Rules, express or implied, was discernible. Axiomatically, therefore, the Rules applicable would be of

decisive significance in adjudging whether a probationer in a given case, if continues in service even after the completion of the maximum period of

a probation without a declaration of satisfactory completion thereof or performance or suitability, can be construed to have been confirmed by

implication. In other words, mere completion of the outer limit of probationary period prescribed by the governing Rules ipso facto would not

definitively confer on a probationer the status of a confirmed employee if neither the appointment letter guarantees such a consequence nor the

Rules sanction the same instead indicate to the contrary explicitly or otherwise.

45. Reverting to the Rules in hand, Clause 15(1) and 15(3) read conjointly prescribes the maximum period of probation to be four years and under

Rule 15(4) at the end of the said period, the appointing authority is required to consider the suitability of the person and in case it is so held

affirmatively an order declaring him to have satisfactorily completed the period of probation would have to be passed to have effect from the date

of expiry of the period of probation including the extended period, if any. If the assessment is otherwise it would end in discharge of the

probationer from service. Rule 15(5), is the pivotal provision, which in our view, guides the ultimate conclusion. In terms thereof, a person shall not

be considered to have satisfactorily completed the period of probation or officiation, as the case may be, unless a specific order to that effect is

passed. Deemed satisfactory completion of such period has thus been unmistakably ruled out in spite of any delay in passing such an order. Rule

15(8) is indubitable in its edict of requiring the declaration of satisfactory completion of period of probation as an imperative prerequisite for

confirmation of the probationer as a full member of the service. A cumulative reading of Clauses (5) and (8) in our considered opinion, therefore,

unerringly demonstrates that an order or a declaration at the end of the period of probation that a probationer had satisfactorily completed his

probationary period is an indispensable essentiality for his confirmation in service and that in absence of such an order or declaration, the person

concerned continues to be a probationer. Rule 15(3) though enjoins a maximum period of four years of probation, having regard to the legislative

prescription of a declaration of satisfactory completion of probationary period as a condition precedent for the confirmation of a probationer, the

same having regard to the scheme o f Rule 15, would be subservient to Sub-clause (5) thereof.

46. Rule 15 visibly is schematically distinct from Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961, under

consideration in State of Punjab versus Dharam Singh, supra. A provision akin to Sub-clause (5) of Rule 15 did not exist in the said rules. The

conclusions reached by the Apex Court in the contextual facts as obtained in the reported decision is not feasible in the existing factual scenario

and the framework of Rule 15. Rule 15(5) records a distinct legislative intendment that in absence of an order of satisfactory completion of the

probationary period, the probationer continues as such and the delay in making such declaration would only enable him to continue in service in the

said capacity.

47. Neither the instant provision is silent of the steps to be taken after the completion of the probationary period nor is it ambiguous about the

consequence of delay or omission to pass any order contemplated in Rule 15(4). The statutory design decipherable in Rule 15(1), 15(3), 15(4),

15(5) and 15(8) cumulatively read denies a deduction of cessation of the period of probation on the expiry of the ceiling laid in Rule 15(4). Any

other construction would dislodge the alignment of the provision and in particular render Rule 15(5) otiose.

48. Rule 15(9) and 15(10) evidently constitute integral parts of the parent provision and being assimilated in the same framework cannot be

extended an exposition in compatible with the other segments thereof. Though Sub-clause (10) specifies the eventualities in which a period of

probation would continue, this in our opinion does not mutilate against the interpretation as above. As a corollary, receipt of increments by the

petitioner beyond the maximum period of probation does not connote the end of his probationary period to ripen into confirmation. The plea that in

the teeth of the ceiling on the period of probation at the end thereof, in absence of any declaration of satisfactory completion thereof, the petitioner

ought to be construed as a temporary Government employee does not appeal for acceptance. We, therefore, unhesitatingly hold that on the date of

the resolution of the Administrative Committee and the impugned decision, the petitioner had been continuing as a probationer under the Rules.

49. The official records placed in course of the hearing reveal that on 16/11/2001, Pabitra Das @ Sen s/o Shri Kaluram Das, village-Dohutiachuk,

Ward No. 8, Mouza Rongagora, District-Tinsukia, had lodged an FIR with the Officer-in-Charge, Tinsukia P.S. stating that during June/July,

1999 he had submitted an application before the Deputy Commissioner, Tinsukia, for a foreign liquor licence from the Government of Assam. At

or about the same time, he got acquainted with the petitioner who introduced himself to be the proprietor of the daily ""Ajir Natun Asom"" as well as

a member of a Committee of the Excise Department of the State for granting such licence. He claimed to be close to the Chief Minister as well as

the Excise Minister of the State and represented that he was thus able to get any work done for monetary consideration. It was alleged that on

16/9/1999, the petitioner appeared at the informant''s residence and received Rs. 1 lakh. Thereafter he received a further amount of Rs. 1.25 lakhs

through a bank draft (a copy whereof was furnished with the FIR) in the name of the daily. In the month of March, 2000, the informant paid

another sum of Rs. 1 Lakh to the petitioner as demanded by him at Starline Hotel in Guwahati. The informant alleged that though the petitioner

assured to attend to his work immediately thereafter, his whereabouts remained unknown and in the process, he cheated and misappropriated Rs.

3.25 Lakhs. On enquiries being made, the informant further learnt that the petitioner had neither any access to the Excise Department nor any

acquaintance with any authority in power as represented.

50. It appears that on the receipt of the FIR, the police made Tinsukia Police Station GD entry being No. TSK PS. GDE No. 537 of the same

date and advised the informant to approach the Court of law for redress. It was on 22/2/2002 that on the said FIR Tinsukia P.S. Case No. 70/02

was registered u/s 420 I.P.C. and in course of the investigation, the statement of the informant u/s 164 Cr.P.C. was also recorded.

51. In the meantime, as narrated hereinabove, the petitioner had been appointed in the Assam Judicial Service on 12/4/2002. The informant on

30/9/2002 addressed a letter to the Registrar General of this Court informing him about the pendency of the above police case against the

petitioner and insisted for necessary action. A copy of the FIR was also forwarded with the said communication. A report was thereafter called for

by the Registrar from the Chief Judicial Magistrate, Tinsukia, and the latter in his reply dated 4/ 12/2002 confirmed the pendency of the police case

and forwarded Xerox copies of the corresponding the GR Case No. 159/02 as well as the case diary clarifying that till then the investigation had

not been completed. On receipt of the said report the matter when placed before the Hon''ble Portfolio Judge, Morigaon, where the petitioner was

posted, considering the seriousness of the allegations having the potential of undermining public confidence in the judiciary, his Lordship suggested

that the petitioner be refrained from performing any judicial work till he was fully exonerated of the accusations. This was on 17/3/2003. The then

Hon"ble the Chief Justice of this Court on 22/3/2003 instructed the Registrar to lay the matter, if charge sheet in the police case was submitted. On

the query made by the Registrar (I & E) of this Court thereafter, the Chief Judicial Magistrate, Tinsukia, by his letter dated 5/5/2003 informed him

that no charge sheet or final report had till then been laid in the police case.

52. It further transpires from the records that thereafter on 5/3/2005, one Akhtar Hussain submitted a complaint against the petitioner before the

District and Session Judge, Morigaon, alleging demand for illegal gratification in connection with Lahorighat P.S. Case No. 116/2000 and on his

failure to oblige him had convicted him in the case. Incidentally the appeal filed by the complainant along with others against their conviction i.e. CA

Case No. 9/2004 was allowed on 9/3/ 2005 and the impugned judgment and order of the learned Trial Court was set aside.

53. The complaint having been forwarded by the District and Session Judge, Morigaon, to this Court, a preliminary enquiry was ordered to be

conducted by the Registrar (I & E) therein. In the enquiry that followed, the statement of the peon named in the complaint and of the complainant

was recorded who stood by the allegations. The Administrative Committee of this Court in its meeting held on 5/4/2006 resolved to caution the

petitioner. The Registrar (Vigilance) by his communication dated 11/4/2006 duly conveyed the caution to him.

54. In the meantime, the informant in the Tinsukia RS. Case had addressed a letter on 8/4/2005 to the Chief Justice of this Court alleging that he

was being pressurized through Judicial Officers from Tinsukia to withdraw the FIR. He on 10/4/2006 submitted a representation before the Chief

Justice of this Court complaining against inaction of the concerned authorities in pursuing the police case. In October, 2006, two further complaints

were received lodged by practicing Advocates of Hojai, Sankardev Negara, Sub-Divisional Court, against the petitioner alleging corruption, abuse

of judicial power and discretion, undue favour etc. with specific reference to cases as mentioned therein. The District and Session Judge, Nagaon,

having been ordered by the High Court to offer his response thereto, the latter following a preliminary probe opined that to ascertain the

correctness or otherwise of the allegations, a thorough and systematic enquiry would be necessary. No such enquiry, however, was ordered.

55. Eventually on 8/12/2006, the District and Session Judge, Nagaon, forwarded the letter dated 29/11/2006 of Shri Tikheswar Gogoi, Sub-

Inspector of Tinsukia P.S. and the Investigating Officer of Tinsukia P.S. Case No. 70/2002 seeking permission to arrest the petitioner in

connection therewith. The letter of the Investigating Officer inter alia disclosed that in course of the investigation, the statement of the witnesses

including the complainant Pabitra Das had been recorded and the necessary seizures had also been made wherefrom a prima facie case u/s 420

IPC against the petitioner had been made out. The matter was placed before the Administrative Committee on the very same date. Along with the

said letter, an extract of the case diary had also been forwarded. The matter having been placed before the Administrative Committee on that day,

it, by its resolution dated 8/12/2006, granted the permission sought for and also decided to terminate the probation of the petitioner. The agenda

items before the Administrative Committee and the resolutions taken by it are extracted herein below.

AGENDA:

1. Consideration of the prayer made by the Superintendent of Police, Tinsukia to arrest Shri DK Das, Judicial Magistrate, Is'' Class, Hojai, in

connection with Tinsukia P.S. Case No. 70/02 u/s 420 IPC.

RESOLUTION:

Permission is accorded to the authority to arrest Shri D.K. Das, Judicial Magistrate, Isl Class, Hojai, in connection with Tinsukia P.S. Case No.

70/02 u/s 420 I.P.C.

It is further resolved to terminate the probation of the Officer.

56. Accordingly the Registrar (Vigilance) by his letter dated 11/12/2006 informed the District and Sessions Judge, Nagaon, Assam, about the

permission to arrest the petitioner. It is a matter of record that he thereafter approached this Court with an application for pre-arrest bail and by

order dated 17/1/2007 passed in BA No. 03/07, the same was granted.

57. The above revelations, therefore, testify that the petitioner as such could not maintain a totally non-controversial profile during his probationary

period as expected of a judicial officer. Being a probationer, he was evidently on trial for assessment of his suitability for confirmation in services.

Not only he figured as an accused in a criminal case which at the end of the investigation demonstrated his complicity in alleged offence, in none of

the complaint received against him he was given a clean chit. As a matter of fact, on one occasion he was even cautioned. It is apparent from the

records that neither any preliminary enquiry was conducted to ascertain the correctness or otherwise of the allegations on which the police case has

been registered by the Registrar nor any disciplinary proceeding was initiated with the said object.

58. The Administrative Committee, on a cumulative consideration of the materials on record including those pertaining to the police case, was

satisfied that the petitioner in the background of the attendant facts was not suitable to be retained in service. Though the police case appears to be

the proximate cause of the decision, it, by no means, as the records disclose, formed the foundation thereof. The subjective satisfaction of the

Administration Committee is logically traceable to coexisting facts and inputs and thus cannot be deprecated as unfounded, perverse or in defiance

of logic. Though the issue of termination or otherwise of the petitioner''s probation was not before the Administrative Committee in express terms,

under the residuary item, it was within the authority of the Administrative Committee in the perspective of the agenda item No. 1 to permissively

take the resolution as done. The fact that the High Court was aware of the complaint as early as on 13/9/2002 and had initially taken a decision to

defer further action till the submission of the charge sheet/FIR is not mutilative of justification or needfulness of the impugned decision. The

resolution of the Administrative Committee having regard to the above noted developments cannot be impeached as incompatible with the decision

to defer the appropriate step till the submission of the charge sheet/FIR. The plea that a preliminary enquiry was conducted against the petitioner

on the allegations on the police case to eventually terminate his services being not borne out by the contemporaneous records cannot be sustained.

Neither the conclusion that such termination was solely because of his alleged involvement in the criminal case is possible on the records.

59. While dilating on the applicability of Article 311 of the Constitution of India on the termination of temporary service, the Apex Court in

Ravindra Kr. Mishra, supra, held if the delinquency of the officer concerned is taken as an operative motive for doing so, the order is not

considered as punitive but if the decision is founded upon it, the termination is penal. It expounded that as long as the adverse features of the

employee remain the motive and do not get transformed as the foundation of the order of termination, it is unexceptionable. It, however, added that

no straightjacket test could be laid down to distinguish a motive from foundation and that the same has to be decided by the Court with reference

to the facts of given case.

60. Elaborating on the above dichotomy in Radhey Shyam Gupta (supra), it was held on an appraisal of other decisions that the termination of the

services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work was not

satisfactory would not be punitive inasmuch as the above facts are merely the motive and not the foundation, the reason being that evaluation was

not done with the object of probing into any misconduct on the part of the officer but for deciding as to whether he should be retained or continued

in service. The Apex Court observed that the position is not different even if a preliminary enquiry is held because the purpose thereof is to find out

if there is a prima facie material to initiate a regular departmental enquiry, the purpose thereof being not to identify the misconduct on the part of the

officer, if a termination follows without affording an opportunity, it would not be bad. The Apex Court opined that even if a regular departmental

enquiry started but is dropped and a simple notice of termination is passed it would not be punitive as no evidence had been recorded or any

finding on the charge arrived at. In such an eventuality, the allegations against the employee merely raise a cloud on his conduct whom the employer

was not inclined to continue with without, however ascertaining the truth thereof. If, however, the termination is preceded by an enquiry and

evidence and findings are arrived at behind the back of the officer on the basis thereof, the termination order would be violative of the principles of

natural justice and in such case, it would be based on misconduct and apparently punitive. Any such action without affording an opportunity of

hearing to the officer would thus be invalid and nonest in law.

61. The decision in Chandra Prakash Shahi versus State of U.P. and Ors. (supra), involved a probationer. While reiterating that a probationer has

no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general

unsuitability for the post in question, it was ruled that if for the determination of his suitability or for his further retention in service or for

confirmation, an enquiry is held and a decision is taken to terminate his services on the basis of that enquiry, the order would not be punitive in

nature. However, if there is an allegation of misconduct and an enquiry is held to find out the truth thereof and the termination is based on that

enquiry, the decision would be penal.

62. In Anup Jaiswal, supra, the Apex Court recounted with approval the following observations in Samsher Singh (supra).

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 of the

Constitution.

Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or

whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect, the authority may come to the conclusion

that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude, the probationer is unsuitable for

the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the

probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the

probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on

the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated

without following the provisions of Article 311, he can claim protection.

63. The decision in Babu Lal, supra, applied the same principles to interfere in the facts of the case, the termination of the appellant. The

pronounced judicially recognized determinants for ascertaining the true purport of termination of probationers when applied to the present facts do

not warrant a conclusion that the impugned resolution was punitive in nature. The facts and testaments forthcoming are not persuasive enough to

perceive that the petitioner''s alleged involvement in the criminal case had formed the foundation of the impugned decision of the resolution of the

Administrative Committee and the consequential impugned decision and that the action was punitive in character. The plea to that effect and the

assertion based on want of fairness and violation of principles of natural justice as well as Article 311 of the Constitution of India and the relevant

disciplinary rules is untenable.

64. The words ""unsuitable for service"" employed in Rule 15(6) convey a compendious connotation and comprehend unacceptability of an officer

vis-a-vis his office and the duties attached thereto. Having regard to the pristine majesty, probity and credibility of a judicial office, the holder

thereof is expected to be an epitome of honesty, integrity, erudition and fairness commanding unreserved esteem and confidence of the public and

the society at large. His conduct inside and outside the Court is under constant vigil and his office does not admit of misgivings. Public opinion

recognizes character and conduct of a judicial officer to be the indices of his reliability and trustworthiness as the arbiter of its causes. He is

expected to impeccably non-controversial to be confided for impartial justice. The unrelenting demand is for an unblemished personal life and

conduct as an ensign of rectitude--his verdict to be venerable and binding. In the changed social milieu where the teeming masses seek refuge in the

judiciary against perceived injustice from other quarters and the rising expectation of the sanctity of the justice dispensation regime, ajudicial

institution can ill afford to cast aside lightly situations as the type as in hand, lest public confidence in the system get irreversibly eroded leading to its

collapse.

65. In Baldev Raj Chaddha (supra), the Apex Court emphasized on the necessity of disclosure of materials in support of an order claimed to have

been passed in public interest so as to be satisfied that the same was sustainable on the touchstone of the ground offered.

66. The respondent''s probationary service was terminated in Krishnadevaraya Education Trust and another, supra, on the ground of unsatisfactory

performance. The order was challenged to be stigmatic. The Apex Court while acknowledging the employers right to terminate the services of a

probationer, if not satisfactory, observed that normally such an order does not mention the said ground to avoid a challenge of the same being

punitive. Such an order, if assailed, the employer would have to indicate the grounds on which the services of a probationer were terminated. It

held that if in response to the challenge the employer discloses the ground to be unsatisfactory service, it would not ipso facto convey that the

action was by way of punishment. The probationer remains on test and if the services are found to be unsatisfactory the employer has in terms of

the letter of the appointment the right to terminate his services, it added.

67. The decisions of the apex Court in High Court of Punjab and Haryana etc. v. State of Haryana and Ors. (supra), and State of Haryana v.

Inder Prakash Anand and Ors. (supra), are to highlight the scope and purport of control of the High Court over the subordinate judiciary as

conceptualized by Article 235 of the Constitution of India. It was underlined therein that this control is vested in the High Court to effectuate the

purpose of securing the independence of the subordinate judiciary and disciplinary control and not only the power to arrange the day to day

working of the Court. The Apex Court pronounced that the disciplinary control signified not merely a jurisdiction for awarding punishment for

misconduct but also embraced the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to

continue in service for the full term. It elucidated that the control envisaged in Article 235 was possessed of administrative, judicial and disciplinary

connotations.

68. The High Court in the context of Article 235 of the Constitution of India though is positioned as in loco parentis, no undue indulgence is

affordable at the cost of institutional goodwill. Competence and efficiency, bearing in mind, the role assigned to ajudicial officer are incomplete

measures to asses his suitability to be retained in service, if his conduct wears a question mark. The above traits do not necessarily complement

each other and occasionally surface as contrasting and mutilative attributes of one''s personality. Depending on the gravity of the imputation levelled

against ajudicial officer and the other attendant factors, he or she though otherwise proficient in performance may be assessed to be unsuitable qua

the office and the judicial institution. Any failure or deficiency of a judicial officer in the touchstone of credibility would then render him undesirable

for his post. Hence the enjoinment in Appendix A to the 2003 Rules against all impropriety and appearance of impropriety of ajudicial officer to

guard against possible erosion of public confidence thereby. The test though undoubtedly stringent and possibly rigorous than other services cannot

be relaxed.

69. There would, however, always be a margin of flexibility in the degree of satisfaction bearing on the suitability or otherwise of a judicial officer

on probation in a given fact situation but unless the appraisal of the determining eventualities and factors is palpably perfunctory, perverse,

unwarranted, illogical or is influenced by considerations impertinent and extraneous or is an yield of non-consideration of relevant criteria, no

interference in judicial review would be justified.

70. In the factual background the contention of discrimination vis-a-vis the petitioner''s contemporaries in service is also unconvincing. The

statutory mandate for recording the grounds of discharge in the order to that effect really underlines the existence thereof to reinforce the same. If

the grounds subsist and are cogent and relevant justifying the discharge of a probationer, mere omission to mention the same in the order would not

necessarily be fatal if taken note of and acted upon by the authority concerned. The sequence of events noticed hereinabove and the relevant facts

available before the Administrative Committee proclaim that its resolution followed a well articulated deliberations to terminate the petitioner''s

probation. By no means the present is a case of no material what so ever to logically wan-ant such a decision. The challenge to the resolution and

the impugned order on these grounds as well fails.

71. The question inter alia posed before the Apex Court before the State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, was whether

the recommendation of the Administrative Committee of the High Court of Allahabad on which the respondent was compulsorily retired from

service was in accord with the requirements of Article 233 and 235 of the Constitution of India. Referring to its verdict in State of High Court of

Punjab and Haryana versus State of Haryana, supra, it held that compulsory retirement of a District Judge was not an incident of the power of

appointment conferred by Article 233 of the Constitution on the Governor of the State but one of control vested in the High Court under Article

235. The respondent who was a District Judge in the State Judiciary had been compulsorily retired from service in terms of the recommendation of

the Administrative Committee of the Allahabad High Court on 9/1/1974, which was accepted by the Governor of Uttar Pradesh on 27/2/1975.

The Apex Court enunciated that though the control over subordinate Courts is vested in the High Court under Article 235, it did not follow that the

High Courts had no power to prescribe the manner in which the control and practice is to be exercised. It held the view that the wide ranging

variety of matters pertaining to such control makes it imperative that Rules must be framed to make the exercise thereof feasible, convenient and

effective as the power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done. The Apex Court

ruled that the High Courts posses the power under Article 235 to prescribe the manner in which the control over subordinate Courts vested in it

may be invoked. It negatived the contention that in the above perspective by the entrustment of the task of taking a decision on the issue of the

respondents compulsory retirement on the Administrative Committee, the High Court had abdicated its constitutional functions. Emphasizing that

the underlying objective of Article 235 being to ensure independence of the District Courts and the Courts subordinate thereto from the executive,

it held that empowerment of some of the Judges of the High Court to participate in a decision relating to a matter which falls within the domain of

its control and jurisdiction over subordinate Courts cannot be construed to be an effacement of its powers in favour of an extraneous authority. It

held that considering the nature of the power which Article 235 confers on the High Courts, it would be wrong to characterize as ""delegation"" the

process by which a Judge or some of the Judges of the Court is/are authorized to act on behalf of the whole Court. In so concluding, the Apex

Court observed that administrative functions are only a part, though an important part, of the High Court''s constitutional functions. As judicial

functions ought to occupy and do in fact consume the best part of a Judge''s time thus balancing these two fold functions, authorization of some of

the Judges to discharge the identified administrative duties would rather effectuate the purpose of Article 235. It pronounced that the

Administrative Judge or the Administrative Committee is a mere instrumentality through which the entire Court acts for the more convenient

transaction of its business, the assumed basis of the arrangement being that such instrumentalities would act in furtherance of the broad policies

evolved from time to time by the High Court as a whole. It thus disapproved the plea that a Judge or a Committee of the High Court authorized by

the Court to act on its behalf is a delegate of the Court. Though the Apex Court in the facts of the case had noticed that the other judges of the

High Court had no effective opportunity to consider the propriety or correctness of the Administrative Committee decision recommending to the

Government the respondent''s compulsory retirement, it did not repudiate the same (recommendation) on that count. The minutes of the

Administrative Committee meeting as the facts revealed, however, had been circulated among the other judges.

72. The order of compulsory retirement of the appellant in Tej Pal Singh, supra, was interfered with by the Apex Court as the recommendation

there for was in transgression of the relevant rules of the High Court Allahabad out lining the procedure to be followed by the Administrative

Committee in making the same. The appellant while was serving as Additional District and Sessions Judge, UP, the State Government moved the

High Court for his premature retirement. On 8/7/1968, the Administrative Judge agreed with the proposal where after the Governor passed the

order of retirement on 24/8/1968. Three days thereafter on 27/8/1968, the Administrative Committee of the High Court accorded its approval to

the recommendation. In terms of the High Court Rules, the Judge in the Administrative department before passing a final order on matters within

the purview of the Administrative Committee was required to circulate for information of the Judges of the said committee, his recommendations

having a bearing thereon on which any judge might signify his dissent and reasons there for in writing. Rule 5 of the said Rules made it obligatory for

the Judge in the Administrative Department to consult the Administrative Committee either by circulating the papers connected with the matter

together with his own opinion or recommendations thereon with the members of the committee amongst others on issues of importance on which

the Government desired the opinion of the Court. The Apex Court observed that in face of the essentials of the Rules, the Administrative Judge

could not have of his own recommended the compulsory retirement of the petitioner without any reference to the Administrative Committee. The

ex post facto approval of the Administrative Committee was held to be incapable of validating the otherwise incurable illegality.

73. The respondents in Registrar, High Court of Madras versus R. Rajiah, supra, having challenged their compulsory retirement from service, the

jurisdictional High Court upheld the same inter alia on the ground that there was no material on record to justify such a step. The Apex Court while

sustaining that finding noticed that the decision of the Review Committee constituted by the Chief Justice of the High Court for examining the case

of K. Rajeswaran, one of the respondents had neither been placed before a meeting of the Judges nor circulated amongst them and observed that

its recommendation thus was not strictly legal.

74. The Court rules framed in exercise of powers conferred by Article 225 of Constitution of India read with Article 6 of the Assam High Court

Order, 1948, deals inter alia with business not of judicial character"" in Chapter I thereof. Rule 1conceive of a Standing Committee consisting of the

Chief Justice and such other Judge or Judges appointed from time to time by him to be designated as the Administrative Committee. This

Committee is entrusted with the control and direction of the subordinate courts so far the same is exercise them judicially. Rule 3 recognizes the

power of the Administrative Committee without reference to the Judges generally amongst others to make recommendation for appointment of

District and Session Judges, Assistant District and Session Judges, Munsiff and Judicial Magistrate and for their promotion, degradation,

suspension or dismissal. In addition thereto special committees under Rule 7 may be appointed by the Judges at a meeting of the Full Court or by

the Chief Justice at any time to consider and report to the Full Court upon any matter which may be referred to it. Rule 13(1) requires that when

the Administrative Committee had acted under Rule 3, the relevant papers shall be laid on the tables and these shall be circulated to all the Judges

as soon after each meeting as possible, a notice stating the matters) which had been laid before such Committee and the manner in which they had

been disposed of. Under Rule 13(2) when a Special Committee is appointed under Rule 7, a notice shall be circulated to all the Judges informing

them of the names of the members thereof and all the matters which have been referred to it. If the Special Committee enters upon and conducts

any correspondence which the members thereof may consider desirable in order to enable them to prepare their report, relevant papers would be

laid on the table for the information of the Full Court. Rule 14 provides that it would be competent for any Judge to require any matter within the

cognizance of any Committee to be referred to the Full Court. The matters enumerated under Rule 15 require the consultation with all the Judges.

75. Whereas Rule 17 enjoins that with the notice of a meeting of the Administrative Committee or Full Court a list setting out the matters for

discussion should ordinarily be distributed, it is incumbent under Rule 19 that the proceedings of all meetings of the Full Court and of the

Administrative Committee be recorded in books to be kept for that purpose by the Registrar (now Registrar General) which would at all times be

open for inspection when called for by any of the Judges.

76. Before embarking on the expanse of the power of the Administrative Committee as envisioned in Rule 3 and the purport of the stipulation of

circulation of the proceedings thereof as lodged in Rule 13(1), it would be expedient to attend to the other provisions of the said Chapter of which

a passing reference has been made. Apparent it is from Rule 7 that a Special Committee is only a recommendatory body not endowed with any

power to take any independent decision of its own and is supposed to examine the matter(s) referred to it and submit its report for an appropriate

determination. Rule 14 on a plain reading suggests that while any matter is within the cognizance of any Committee including the Administrative

Committee, it would be competent for any Judge to require the same to be referred to the Full Court. This obviously relates to a pre-decisional

stage. The topics dealt under Rule 15 do not conceive of the issue that concerns us in the instant proceeding and, therefore, are not of any

consequence.

77. Rule 3 in distinction bestows an exclusive power in the Administrative Committee to decide on the issues set out in Clause (a) to (d) without

reference to the Judges generally. The language employed in Rule 3 proclaims the dominion of the Administrative Committee vis-a-vis those

subjects. There is no manner of doubt that the Administrative Committee in the instant case had the authority to decide on the issue of suitability or

otherwise of the petitioner for his further retention in service. Administrative Committee is a body distinctly different from the Special Committee

with an obvious autonomy in decisions on the topics detailed in Rule 3. Having regard to the nature and the extent of the power so conferred, it is

manifest that it represents the High Court in its decisions thereon. The Administrative Committee is unlike a Special Committee limited in its power

to make recommendations.

78. Does Rule 13(1) in the event of noncompliance thereof intend to nullify any decision of Administrative Committee in matters delineated in Rule

3? Is the circulation of the proceedings thereof an indispensable condition precedent for its decision to take effect as that of the High Court?

79. Rule 13(1) though in emphatic terms requires such circulation among all the Judges soon after each meeting of the Administrative Committee

disclosing the matters that had been laid before it and the manner in which those had been disposed of, it even remotely does not hint at the

consequence of any omission of such compliance. To read in such a fall out considering the contemplated necessity of such circulation and the

underlying objective we, are of the opinion that any obdurate insistence for such circulation as a peremptory prerequisite for the validity of the

resolution of the Administrative Committee on every issue as that of the High Court would not only be repugnant to the amplitude of the power

recognized and conferred in Rule 3 but also would render the administrative management of the institution to a great extent unworkable. Rule 3 and

13(1) read conjointly do not admit of such an imperative essentiality. The requirement of circulation as contained in Rule 13(1), in our view, is

directory in nature. No consequence for any omission there for having been spelt out by the Rules the same would not in any way impinge on the

validity of any resolution of the Administrative Committee on that count. The Administrative Committee having been entrusted with the power to

decide on the matters catalogued in Rule 3 without reference to the other Judges, the necessity of circulation of its resolutions logically would be

only to keep them cognizant thereof. Noticeably Rule 13 is conspicuously silent as to the steps that can be taken by any other Judge when

acquainted with such resolution unlike at a pre-decisional stage in any proceeding before any Committee as permissibly in Rule 14. The assertions

to the contrary therefore fail.

80. The above determination was considered necessary in view of importance of the issue and the bearing on, the decision of the Administrative

Committee of this Court. In the facts in hand, however, no contravention of Rule 13 or Rule 17 of the Court Rules is discernible. The Registry, on

requisition, has produced a register maintained in the regular and official course of business incorporating the proceedings of all meetings of the

Administrative Committee. The register inter alia contain the proceedings of the meeting of the said committee held on 8/12/2006 wherein the

impugned resolution was adopted. Official file bearing No. HC. XI.05/2006/RC has in it lodged the notices dated 16/12/2006 forwarding the

minutes of the Administrative Committee meetings held amongst others on 8/12/2006 addressed to the Private Secretaries of the Judges of this

Court at the Principal Seat and to the Registrars of the outlying Benches. The file also contains the acknowledgment of the addressees affirming

receipt of the said notice along with the Annexures thereto. The aforementioned records having been placed on the conclusion of the arguments,

the learned Counsels for the parties were afforded a fresh opportunity of hearing to make their submissions thereon. However, no arguments based

on the record were made. We, thus unhesitatingly conclude that Rule 13 and/or 19 of the Court Rules were duly complied with in the instant case.

81. In the face of the findings recorded as above, we do not feel persuaded to hold that the impugned resolution or the decisions calls for any

interference in the exercise of this Court''s power of judicial review. The petition thus, being without any merit, is dismissed.

82. Before parting, we consider it necessary to record a few observations on the needfulness of a timely decision on the question of suitability or

other wise of a probationer or an officiating promotee as contemplated in Rule 15 of the 2003 Rules. As alluded hereinabove, the said provisions

contemplate a ceiling on the period of probation or officiation of four years. Rule 15(4) enjoins that at the end of the period of probation or

officiation or the extended period of probation or officiation as the case may be, the appointing authority would consider the suitability of the

person so appointed or promoted to hold the post. Sub-Clause (i) of Rule 15(4) obligates the appointing authority to issue an order of satisfactory

completion of the period of probation or officiation as soon as possible, if it decides to the said effect. Though Rule 15(5) seeks to take care of any

delay in arriving at a decision on the satisfactory completion of the period of probation or officiation, we are of the considered opinion that to the

extent possible, such an eventuality ought to be avoided in order to obviate contentions of the kind raised in the present proceeding. The period of

probation having been stipulated by the Rules, we feel that all essential steps need be taken in advance so as to facilitate a decision on the suitability

or otherwise of the probationer or the officiating promotee as early as possible thereafter in due time. While this is not to signify that this issue even

otherwise remains unattended to by the Registry, it would be in fitness of things, if it, except in cases covered by Clause (10) of Rule 15, initiates

the process of identifying the cases of such probationers and officiating promotees whose period of probation or officiation is nearing completion

and place the matter before the Hon''ble the Chief Justice for causing consideration of their cases immediately 6n the culmination of the period so

much so that appropriate orders can be passed by the appointing authority defined in Rule 6 as expeditiously as possible and preferably within a

month there from. These steps in our estimate would accord and comply with the demand expedition mandated by Rule 15(4) in this regard. No

costs.