2024:CGHC:29469-DB

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 11-07-2024

Judgment delivered on : 07-08-2024

WA No. 422 of 2020

Prabhakar Gwal S/o Shri Mukti Gwal, aged about 49 years Caste- Gada (Scheduled Caste Cadre), Occupation- Former Judge, R/o Village- Nanakpali, Post Office- Chatti Girola, Tehsil and Police Station- Saraipali, District- Mahasamund (Chhattisgarh)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Department of Law and Legislative Affairs, Mahanadi Khand, Nawa Raipur, Atal Nagar, District : Raipur, Chhattisgarh
2. High Court of Chhattisgarh Through Registrar General, High Court at Bodri, N.H. No. 200, District : Bilaspur, Chhattisgarh

---- Respondents

(Cause Title taken from Case Information System)

For Appellant	:	Mr. Shailendra Kumar Bajpai, Mr. Santosh Kumar Pandey and Mr. Mahesh Gahlot, Advocates
For Respondent No.1/State	:	Mr. Sangharsh Pandey, Govt. Advocate
For Respondent No.2/ High Court of Chhattisgarh	:	Mr. Prafull N. Bharat, Senior Advocate assisted by Mr. Amrito Das, Advocate

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Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV JUDGMENT

***Per* Ramesh Sinha, Chief Justice**

1. Heard Mr. Shailendra Kumar Bajpai, Mr. Santosh Kumar Pandey and Mr. Mahesh Gahlot, learned counsel for the appellant. Also

heard Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State / respondent No.1 and Mr. Prafull N. Bharat, learned Senior Advocate assisted by Mr. Amrito Das, learned counsel, appearing for respondent No.2/High Court of Chhattisgarh.

2. The present intra Court appeal has been filed against the order dated 17.08.2020 passed by the learned Single Judge in WPS No.2795 of 2016 ***(Prabhakar Gwal v. State of Chhattisgarh and Another)***, whereby the learned Single Judge has dismissed the writ petition challenging the order dated 01.04.2016 passed by respondent No.1, by which the writ petitioner / appellant has been dismissed from service.

3. Brief facts relevant for filing the present appeal, according to the appellant, are that the appellant/writ petitioner (hereinafter referred to as "the appellant" wherever necessary) was initially appointed as Civil Judge, Class-II through order dated 27.12.2005 issued by the Principal Secretary, State of CG, Law & Legislative Affairs Department, Raipur. The appellant was thereafter promoted to the post of Civil Judge, Class-I in the year 2012 and then in the year 2015 to the post of Additional Chief Judicial Magistrate and posted at Raipur where he was also given charge of Special CBI Magistrate. On 17.03.2015 the wife of the appellant made a complaint to the Registrar General and Registrar (Vigilance) of the High Court of Chhattisgarh against the then District & Sessions Judge, Bilaspur that he is unnecessarily

harassing her husband/appellant thereby compelling him to commit suicide. On 11.05.2015 the Registrar (Vigilance) issued a Memorandum to Smt. Pratibha Gwal (wife of petitioner) for submitting an affidavit in support of her complaint dated 17.03.2015 within seven days of its receipt.

4. On 17.07.2015 the present appellant passed a judgment in PMT Paper Leak Scam for registration of FIR against the then Superintendent of Police, Raipur, other police personnel and the persons involved in the crime. On 03.08.2015 one Ramdas Athwale, R/o Masanganj, Bilaspur (CG), made a complaint to the Hon'ble Chief Justice of India, Hon'ble Chief Justice of this Court, District & Sessions Judge as well as Chief Judicial Magistrate and the Additional Chief Judicial Magistrate of Raipur (appellant herein) for disclosure of the names of main culprits of CG PMT Paper Leak Scam and other recruitment. This complaint was dispatched by the complainant on 10.08.2015 and received by the appellant on 14.08.2015. On the same day, the appellant taking cognizance on the above complaint, forwarded the same to P.S. Ganj, Raipur for doing the needful and informing the Court accordingly. As per the said complaint, Chief Minister, other Ministers of the State and officers of the State are involved in the said scam.

5. On 07.08.2015 the appellant made a complaint to Police Station-Civil Line, Raipur of being victimized of criminal conspiracy being hatched by the higher police authorities and the influential political leaders against whom the appellant had passed a judgment on

17.07.2015 concerning the PMT Paper Leak Scam. Thereafter, on 21.08.2015 the appellant submitted an application to the Director, Public Prosecution through the then District & Sessions Judge, Raipur thereby seeking transfer of ADPO Shri Radheshyam Nagwanshi as he was not cooperating with the Court and was creating nuisance in collusion with the police authorities and the political leaders against whom he had passed judgment in PMT scam. When the said news was published in Dainik Bhaskar newspaper on 25.08.2015, a Memorandum was issued by respondent No.2/High Court of CG on 27.08.2015 to all the District & Sessions Judges of the State, with a direction to circulate it amongst all the concerned, regarding strict compliance of Government Servants Conduct Rules or else face appropriate disciplinary action. On 14.09.2015 the appellant submitted an application to the Registrar General and the Hon'ble Chief Justice of the Supreme Court of India through District & Sessions Judge, Raipur and Registrar General of High Court of CG for cancellation of his illegal transfer order whereby he was transferred from District-Raipur to District-Sukma (CG). On 15.09.2015 (received on 26.09.2015), the then Registrar (Vigilance) of High Court of CG issued a show cause notice to the appellant for lodging of report in Civil Lines Police Station, Raipur against Shri Ramlal Chouhan-MLA, Saraipali, Shri Dipanshu Kabra, Ex.S.P., Raipur and others without prior intimation/permission to/of the High Court and sought his reply within seven days of its receipt.

6. On 22.09.2015, Pratibha Gwal, wife of the appellant made a complaint to Hon'ble the Chief Justice and Registrar General of the Supreme Court against the then Chief Justice of High Court of CG, one of the then Judge of High Court of CG, the then Chief Minister of State of CG, some ministers, the then Superintendent of Police, Shri Dipanshu Kabra and his relatives for hatching criminal conspiracy against her husband for protecting the persons involved in CG PMT Paper Leak Scam and for causing loss to her husband by getting him transferred.

7. On 23.09.2015 Pratibha Gwal, wife of the appellant, made a complaint to Hon'ble the Chief Justice of India for taking appropriate action in the matter of corruption in the construction work of Court buildings at Raipur and Bilaspur against the concerned contractors, PWD Engineers, the then Chief Justice of this High Court and and one of the then sitting Judge, the then District & Sessions Judge, Bilaspur.

8. The High Court of CG sent a second show cause notice on 23.09.2015 to the appellant on the same subject matter with a direction to submit reply within seven days of its receipt.

9. On 24.09.2015 the appellant made a complaint to the Station House Officer, P.S. Civil Line, Raipur for taking action against the unknown persons who are trying to obtain information about his location through telephone. On the same day, appellant submitted an application to the Registrar General of High Court of CG for grant of additional time till 5th October, 2015 to join his duties at Sukma.

10. On 29.09.2015 a Memo was issued by the then District & Sessions Court, Raipur to the wife of the appellant Smt. Pratibha Gwal thereby informing about sending of intimation to the High Court regarding lodging of complaint by the appellant at Civil Line Police Station, Raipur against the MLA and the police officials on 07.08.2015.

11. In his Annual Confidential Report for the period from 01.04.2014 to 31.03.2015, the appellant was graded 'D' by the concerned District Judge and accordingly, a D.O. letter was issued by the High Court of CG on 30.09.2015 to the appellant seeking his representation, if any, against the adverse remarks mentioned in the said D.O. letter, within 15 days.

12. On 05.10.2015 the appellant submitted a short reply to the show cause notice dated 15.09.2015 to the Registrar (Vigilance), High Court of CG, through the then District & Sessions Judge, Dantewada for want of clarity as to the contents of the notice and the non-availability of all the relevant documents.

13. On 31.10.2015 the appellant made a complaint at Police Station-Arang, Distt. Raipur regarding the incident of marpeet with him and illegal recovery from him in the name of toll tax. Copy of the complaint and FIR bearing Cr. No. 350/15 were also annexed therewith.

14. On 19.11.2015 an order was issued by the then District & Sessions Judge, South Bastar, Dantewada to the appellant thereby intimating about sanction of earned leave of the appellant

from 19.10.2015 to 09.11.2015 i.e. for total 22 days by rejecting the earlier sanctioned earned leave from 19.10.2015 to 13.11.2015 i.e. for total 26 days.

15. On a complaint case under Section 200 of CrPC being filed by Amit Dubey, against the appellant under Sections 294 and 506 of IPC, the Additional Chief Judicial Magistrate, Raipur passed an order on 01.12.2015 thereby fixing the case for primary evidence.

16. On 01.12.2015, the Director of Chhattisgarh State Judicial Academy addressed a letter to the then District & Sessions Judge, Dantewada thereby informing about the First State Level Conference on Criminal Justice (Fair Investigation & Fair Trial) to be held on 12th September, 2015 at Nimora, Raipur, and circulation of this information amongst all the judicial officers of the district.

17. On 07.12.2015, the appellant submitted an application-cum-complaint to the the District & Sessions Judge, Dantewada for informing the concerned higher judicial and administrative officials about the interference of Collector, Sukma in the judicial proceedings being conducted by the appellant. The appellant on 07.12.2015 also made a complaint to the Registrar General of High Court of CG through District & Sessions Judge, Dantewada against the then ADJ, Raipur and the then Civil Judge, Class-I, Bilaspur for passing order in civil case without jurisdiction and requested for taking appropriate action against them for their termination from service.

18. On 09.12.2015, the appellant also submitted a complaint to the Registrar General of High Court of CG through the then District & Sessions Judge, Dantewada against the then Chief Judicial Magistrate, Bilaspur. On 22.12.2015, the appellant sent a Memo to the Director General of Police, Raipur and the Inspector General of Police, Jagdalpur Range, Distt. Bastar for inquiring into the matter of illegally impleading the innocent villagers in criminal cases. The appellant also annexed copy of the complaint dated 22.12.2015 received by him from the villagers in this regard.

19. On 29.12.2015, appellant made an application to the Station House Officer, P.S. Arang, Distt. Raipur under Section 195 of CrPC for filing complaint case for the offence under Sections 193 and 120B of IPC against Amit Dubey, GP Singh (Inspector General of Police), Radheshyam Nagwanshi (ADPO), Mohd. Sajid Khan (Advocate), Ramlal Chouhan (MLA of Saraipali), Dipanshu Kabra (former Superintendent of Police, Raipur) and other concerned persons.

20. On 12.01.2016, appellant submitted a complaint to the Registrar General of High Court of CG through District & Sessions Judge, Dantewada against the then Information Officer in Civil Court at Sakti for illegal exercise of jurisdiction by first appellate information officer for the last 5-6 months, without authority of law and therefore, requested for his termination from service after taking appropriate action. The appellant also annexed with the said complaint, certified copy of certain orders passed by the said judicial officer.

21. On 18.01.2016, the Deputy Inspector General of Police, Raipur wrote a letter to the Inspector General of Police, Range Bastar, with regard to receipt of Memo sent by the appellant for inquiry into the matter of false implication of the innocent villagers in criminal cases.

22. On 25.01.2016, the Registrar (Vigilance) of High Court of CG issued a show cause notice to the appellant to explain within seven days of receipt of the notice as to why appropriate disciplinary action be not initiated against him for making false and frivolous complaints against the judicial officers named therein.

23. On 26.01.2016, the appellant addressed a Memo to the Director General of Police, Raipur and the Inspector General of Police, Range Jagdalpur, Distt. Bastar for inquiry into the matter of illegal impleadment of the innocent persons in the criminal cases of naxal activities. The appellant also annexed copy of the complaints with the said Memo.

24. On 03.02.2016, one Kailash Jain, Advocate, Sukma, made a complaint to the Superintendent of Police, Sukma against Chief Judicial Magistrate, Sukma for unnecessarily engaging him as counsel for the accused persons and making him write application on their behalf.

25. On 04.02.2016, the Registrar (I & E) of High Court of CG, issued an order thereby withholding one annual increment of the appellant without cumulative effect for making complaint/FIR

against Shri Ramlal Chouhan, MLA, Saraipali and others without prior intimation/permission to/of the High Court and considering his reply dated 05.10.2015 to the show cause notice dated 15.09.2015.

26. On 05.02.2016, the appellant submitted a detailed reply to the show cause notice dated 23rd and 25th January, 2016 to the Registrar (Vigilance) and also annexed the list of witnesses therewith. On 08.02.2016, the appellant submitted a request letter to the then District & Sessions Judge, Dantewada thereby informing that Shri Kailash Jain, Advocate of Sukma in hatching criminal conspiracy against him, assisting the naxals clandestinely and doing illegal activities in connivance with the higher police and administrative authorities.

27. On 08.02.2016, the appellant also wrote a request letter to District & Sessions Judge, Dantewada thereby informing that Kailash Jain, Advocate of Sukma, is hatching criminal conspiracy, assisting the naxalites in their activities clandestinely and implicating the innocent ones as naxalites. On 08.02.2016 itself the Superintendent of Police, Sukma addressed a letter to the District & Sessions Judge, Dantewada thereby informing that the appellant is passing arbitrary and illegal orders in respect of the accused persons arrested in naxal activities which is encouraging them and creating law & order problems in the district. Therefore, necessary action was sought against the appellant. On the same day i.e. 08.02.2016 the Superintendent of Police, Sukma also wrote a letter to the District & Sessions Judge, Dantewada against

the appellant for mentally harassing the investigating officers, and annexed with the said complaint certain relevant documents.

28. On 09.02.2016, the appellant submitted an application to the Registrar General of High Court of CG through the District & Sessions Judge, Dantewada and thereby requested for cancellation of the order dated 04.02.2016 after reconsideration whereby his one annual increment was withhold without cumulative effect.

29. On 12.02.2016, the appellant submitted application/representation to Hon'ble the Chief Justice of India and the Registrar General of Supreme Court of India through District & Sessions Judge, Dantewada and Registrar General of the High Court of CG. By the said application, the appellant requested for grant of justice by taking effective action against certain Hon'ble Judges of the High Court of CG alleging them to be involved in a political and criminal conspiracy to terminate his services and are wrongly protecting judicial officers who are indulging in wrong conduct.

30. On 12.02.2016, the appellant also submitted an application to the Registrar General of the Supreme Court of India through District & Sessions Judge, Dantewada and the Registrar General of the High Court of CG and thereby requested for calling for the entire material pertaining to him from the High Court of CG for disposal of his original application and permitting him to appear in person before the Supreme Court in this regard. On the same day i.e. 12.02.2016 the appellant made an application to the Director

General of Police and Additional Police (Confidential), Police Headquarters, Raipur for giving him police protection. On 12.02.2016 itself the Registrar (Vigilance) of High Court of CG issued another show cause notice to the appellant for making complaint against the then Additional District & Sessions Judge, Sakti and sought his explanation within seven days from its receipt or else face disciplinary action. The said notice was replied to by the appellant on 27.02.2016.

31. On 14.03.2016 (received after dismissal), the Registrar (Vigilance) again sent a show cause notice to the appellant for making representation dated 12.02.2016 directly to Hon'ble the Chief Justice of India and the Registrar General of the Supreme Court and sought his explanation within seven days of its receipt or face disciplinary action. On the same day i.e. 14.3.2016 (received after dismissal), the Registrar (Vigilance) also issued a show cause notice to the appellant for making complaint dated 23.09.2015 against some of the Hon'ble Judges of the High Court of CG and the then District & Sessions Judge, Bilaspur and sought his explanation within seven days from its receipt or else face disciplinary action.

32. On 15.3.2016 (received after dismissal) the Registrar General of the High Court of CG issued a Memo to the District & Sessions Judge, Dantewada thereby requesting him to inform the appellant to meet the portfolio Judge first regarding his application dated 02.03.2016 for grant of permission to represent before the Hon'ble Chief Justice of India.

33. On 16.03.2016, the Registrar (Vigilance) of High Court of CG issued a Memorandum to the appellant informing him about rejection of his representation dated 09.02.2016 for reconsideration of the order dated 04.02.2016 issued by the High Court withholding his one annual increment without cumulative effect.

34. On 20.3.2016, appellant wrote an application to the Registrar General of High Court of CG and the District & Sessions Judge, Dantewada thereby informing them about the criminal conspiracy being hatched against him and harassing him in the name of enquiry at the instance of some higher police and administrative officials named therein.

35. On 22.03.2016, the wife of the appellant Pratibha Gwal made a complaint to the Superintendent of Police (Rural), Raipur for taking action against the persons named therein for hatching conspiracy against her and her family.

36. On 23.03.2016, appellant filed a criminal revision under Section 397 read with Section 399 of CrPC before the District & Sessions Judge, Raipur against the order dated 08.03.2016 passed by the ACJM, Raipur in Criminal Case No.595/2016 (Amit Dubey Vs. Prabhakar Gwal) thereby directing for registration of offence under Sections 294 and 506 Part-II of IPC against the appellant which is still pending.

37. Thereafter, on 26.03.2016, Pratibha Gwal, wife of the appellant filed a complaint case under Section 200 of CrPC with an affidavit

for registration and criminal prosecution under Sections 120B, 294, 323, 506, 186, 353, 511/34 of IPC against Shri Amit Dubey and 18 others (as detailed in para 40 of the memo of appeal).

38. On 28.03.2016, the District & Sessions Judge, Dantewada issued a Memo to the appellant thereby informing him that after considering his application dated 02.03.2016 seeking permission to meet Hon'ble the Chief Justice of India for submission of representation, he is directed to first meet his Hon'ble Portfolio Judge of CG High Court.

39. Finally, in a meeting of the Full Court of the High Court of Chhattisgarh held on 29.03.2016 on the basis of a report submitted by the Registrar General in respect of a criminal complaint case for the offence under Sections 120B, 294, 323, 186, 506, 353 &511/34 of the Indian Penal Code filed by the wife of the appellant Smt. Pratibha Gwal before the Court of the Additional Chief Judicial Magistrate, Raipur against Shri Amit Dubey and 18 others, which included the then Chief Justice of the High Court and also another senior most judge of the High Court as an accused, it was resolved that it was not reasonably practicable to hold a departmental enquiry against the appellant and dispensing the same invoking the provisions of Article 311 (2)(b) of the Constitution of India, it was recommended to the State Government to dismiss the appellant from service in public interest. Accepting the said recommendation, the State of Chhattisgarh vide order dated 01.04.2016 dismissed the appellant from service in public interest with immediate effect and the said

order dated 01.04.2016 was communicated to the appellant through the concerned District and Sessions Judge on 04.04.2016.

40. Challenging the impugned order of dismissal from service dated 01.04.2016, the writ petitioner / appellant has preferred a writ petition registered as Writ Petition (S) No. 2795 of 2016, which was dismissed by the learned Single Judge vide impugned order dated 17.08.2020. Being aggrieved by the same, the instant appeal has been filed by the appellant.

41. Mr. Shailendra Kumar Bajpai, learned counsel for the appellant vehemently argued that the learned Single Judge has passed the impugned judgment by misinterpreting Article 311 of the Constitution of India and against the settled principles of law. Learned Single Judge has failed to appreciate the fact that dismissal order of the appellant/petitioner has been passed by the Additional Secretary of the Department who is subordinate to Principal Secretary, the appointing authority of the appellant. It is a well settled principal of administrative law that when State Government provides any power to a particular authority/public servant, the authority of withdrawal of such power exclusively rests with the other authority through amendment in the particular section and without proper amendment in the related laws or court business rules, the Additional Secretary cannot exercise the jurisdiction of the Principal Secretary. However, in the case in hand, the dismissal order of the petitioner is under the signature of the Additional Secretary. Section 16 of the MP & CG General

Clauses Act, 1957 deals with power to appoint, and also include power to suspend or dismiss, where, by any enactment, a power to make any appointment is conferred, then unless a different intention appears, the authority for the time being having power to make the appointment shall also have power to suspend or dismiss any person (public servant) appointed by it in exercise of that power. But, surprisingly, in the case of the appellant/petitioner, the impugned dismissal order has been passed by an authority not having *prima facie* jurisdiction i.e. Additional Secretary, rendering the dismissal order per se illegal, invalid and bad in the eye of law. As such, there is also violation of principles of delegation of powers.

42. Mr. Bajpai further submitted that the learned Single Judge did not call for the entire record in the open court as per daily order sheets, but mentioned about the same in para 47 of the impugned order. The concerned relevant documents were not given to the appellant for perusal and no opportunity was given to him for rebuttal. Thus, the entire judicial proceedings have been nothing but travesty of justice and grave illegality committed by the learned Single Judge. The respondent No.1 did not file reply with documents and affidavit and the learned Single Judge neither waited for it nor did proceed to pass order against the State ex parte. The learned Single Judge even did not consider it expedient to call for the entire records concerning the case of the appellant from respondent No.1. He also submitted that while passing the impugned order, the learned Single Judge did not

comply with the guidelines/format prescribed by the Hon'ble Supreme Court of India for passing the order/judgment in its order dated 26.07.2018 passed in Civil Appeal No.7240/2018 and as per the prescribed principles under Order 41 Rule 31 of CPC, 1908. The learned Single Judge did not point wise dealt with all the grounds urged by the appellant in his writ petition and no reason whatsoever was recorded in support of the findings arrived at by the learned Single Judge.

43. Mr. Bajpai contended that the learned Single Judge did not frame important issues involved in this case for adjudication. The learned Single Judge did not read, peruse and analyze all the documents filed in this case and also did not record about the same in the order sheets. The learned Single Judge neither even considered the case of the appellant *prima facie* nor granted interim relief or refused to grant any relief by recording any reason and just kept on the matter pending for long. The learned Single Judge neither read, analyze the documents and the case-law being ***Union of India v. Tulsiram Patel and others,*** reported in ***1985 (3) SCC 398*** mentioned and filed by the appellant nor did peruse the same or expressed its agreement or disagreement with the same. The written argument submitted by counsel for the petitioner on 19.09.2019 as well as all the oral arguments and final argument were not discussed in the final impugned order, not analyzed or accepted or rejected.

44. Mr. Bajpai further contended that learned Single Judge has passed the impugned order in sheer violation of the mandatory

provisions of Rules 187(1), 158(1) (i) of the CG High Court Rules, 2007 and Order 20 Rule 1 and Order 41 Rule 31 of C.P.C., 1908 as also CCA Rules, 1966. On many occasions, the learned Single Judge has adjourned the matter of its own and wrongly mentioned that the same was done at the request of the petitioner. The learned Single Judge did not consider the principles of judicial notice of various facts appearing in the matter. The learned Single Judge has not even taken note of the important dates of events nor did mention the same or recorded any finding in respect thereof. The learned Single Judge has not mentioned in the impugned order various important facts and its sequence which came to the fore during the course of hearing. He also contended that in this case, respondent No.2 has suppressed various facts and misguided the Hon'ble Court which was ignored by the learned Single Judge. In absence of the counsel for the petitioner on 19.09.2019, the learned Single Judge dismissed the petition but despite the respondents being absent on number of occasions, the learned Single Judge did not proceed against them ex parte at any point of time.

45. Mr. Bajpai submitted that it is surprising as to how the learned Single Judge in the impugned order recorded a finding that criminal case is false and frivolous without conducting any trial whereas neither any police enquiry was conducted on the concerned complaint nor any trial was held by the Court. The concerned WPCR No. 88/2016 is still pending and there is an interim order passed by this Court staying the proceedings. No

prior opinion from the Public Service Commission was obtained as per rules before issuing dismissal order of the appellant/petitioner. In the process of issuance of dismissal order against the appellant, there has been violation of government business rules as well as the mandatory provisions of CG Civil Services (Classification, Control & Appeal) Rules, 1966. This apart, there has also been violation of Articles 14, 16, 21, 309, 310 & 311 and others of the Constitution of India and other Articles, relevant mandatory provisions, according to which no authority below the appointing authority can affect the lien. The learned Single Judge has mentioned certain illegal, concocted facts and conclusions in the impugned order which are not in existence and as such, have no relevance. As per the impugned order, if the appellant/petitioner or his wife has made false allegations, then why no action under Section 182 of the IPC was taken against them. As per the impugned order, if the appellant/petitioner wanted to tarnish the image of judiciary or used or attempted to use unparliamentary or derogatory language or mentioned irrelevant facts, then why contempt proceedings were not initiated against him.

46. Mr. Bajpai further submitted that on 10.08.2020 the learned Single Judge fixed the matter for re-hearing but did not rehear the matter. The learned Single Judge passed the impugned order with a view to please the present 12th senior most Judge of the Hon'ble Supreme Court namely, ‘A’ (Ex. Chief Justice of High Court of CG), against whom a complaint case was filed by wife of the

appellant/petitioner, and to display his over-allegiance to Justice 'A' and with an intent to secure promotion through him because in para 44 of the impugned order, without mentioning the details of the referred case being Rammurty Yadav, Diary No.29290/2018, its excerpts have been mentioned, which is mere moral education and nothing more.

47. It has been further submitted by Mr. Bajpai that the learned Single Judge has ignored this important fact that when complaint case was filed against the appellant/petitioner, no action was taken by respondent No.2 but when Pratibha Gwal, wife of the petitioner, filed a complaint case, then stay order was obtained by instantly moving WPCR No.88/2016. This is clearly against the principles of equality and as such, is contrary to the basic provision of the Constitution of India. The learned Single Judge has played two roles in this matter, *i.e.* first became the prosecutor by being a member of the Full Court Meeting dated 29.03.2016 and then by sitting as a Judge acted to be doing justice and by writing the impugned order like a charge-sheet, summarily dismissed the writ petition. The behaviour of the learned Single Judge in this matter was like an officer or boss of the appellant, not as an impartial Judge. The learned Single Judge even did not ask the respondents as to why departmental enquiry in this matter was not possible and why all the relevant documents cannot be given to the petitioner, and by doing so, as to how the law and order situation would be affected adversely?

48. It has been also submitted by Mr. Bajpai that the learned Single Judge has committed a grave error in recording a finding that for each individual act of the wife, the husband would not be liable. Whether in this matter the wife had consented, gave any statement or filed any affidavit before the Court that the said act was got done by the petitioner. In the course of consideration of the case the learned Single Judge has committed grave illegality by giving preference to the disciplinary matters over the criminal matters. Even if the petitioner had allegedly committed any heinous offence, enquiry/investigation was a must, charge sheet mandatorily required to be issued, trial must begin, opportunity of defence was available and then eventually being found guilty, punishment was to be imposed. The learned Single Judge ignored the established fundamental and principle of law that when there is charge, enquiry is must. To the utter surprise of the appellant/petitioner, in the present service matter, without going through the documents, without conducting enquiry and obtaining comments/reports, the appellant/petitioner has been dismissed from service abruptly which is wholly illegal. The learned Single Judge has not mentioned as to what are the facts on record justifying the dismissal of the appellant from services dispensing with service. The learned Single Judge ought to have considered whether the aggrieved public servant cannot file criminal complaint against the higher authorities of his institution on facts as per Code of Criminal Procedure, 1973. The learned Single Judge has to see whether prior permission is mandatory in the

event of an aggrieved public servant making criminal complaint against his higher authorities on facts as per provisions of Code of Criminal Procedure, 1973. The learned Single Judge should have seen that there is nothing on record to form an opinion that the appellant in order to gain publicity and tarnish the image of the officers, the Judges and the judiciary, made various complaints to the police and judicial authorities.

49. Mr. Bajpai also submitted that learned Single Judge has not recorded any finding as to how the alleged complaints made by the appellant or his wife were verified and whether any enquiry being conducted to examine its contents, they were found false and frivolous. If the complaint case filed by the appellant's wife was bogus and without any substance as per law, then why no action was taken against the said Magistrate for committing a grave legal error. No enquiry into the authenticity and genuineness of the allegations in the complaints was made by the State Government or the Governor which clearly shows that the then Chief Justice of the High Court of CG by misusing his power and positing, got the appellant dismissed from service under pressure. In the impugned order, the contentions raised by the counsel for the respondents was discussed in detail whereas the arguments/contentions of the appellant were dealt with in short which suggests that the learned Single Judge was highly prejudiced.

50. Mr. Bajpai lastly submitted that whether wife of any public servant cannot make complaint against the higher authorities of the

institution of the public servant for enquiry into their corrupt practices as per Anti Corruption Law, 1988. The right to appeal available to the public servant against the punishment awarded in service matters, is a statutory and constitutional right, which has been violated in the present case as per CCA Rules, 1966 and Article 235 of the Constitution of India and other relevant service rules.

51. In support of his contention, Mr. Bajpai placed reliance on the various judicial precedents passed by the Honble Apex Court and different High Courts, which are as follows :

(i) Mohammad Ilyas Alvi vs. State of Maharashtra, reported in AIR 1965 Bom 156, (1965) 67 BOMLR 170;

(ii) The State of West Bengal vs. Nripendra Nath Bagchi, reported in 1966 AIR 447, 1966 SCR (1) 771

(iii) Anadilal Verma vs. State of Rajasthan, reported in (1967) IILLJ 343 Raj;

(iv) Baradakanta Mishra vs. The Registrar of Orissa High Court, reported in 1974 AIR 710, 1974 SCR (2) 282;

(v) Union of India & Another vs. Tulsiram Patel and Others, reported in 1985 AIR 1416, 1985 SCR (Suppl) (2) 131;

(vi) Ishwar Chand Jain vs. High Court of Punjab & Haryana & Another, reported in 1988 AIR 1395, 1988 SCR Supp. (1) 396;

(vii) K. Veeraswami vs. Union of India & Others, reported in 1991 SCR (3) 189, 1991 SCC (3) 655;

(viii) State of Rajasthan & Ors. vs. Prakash Chandra & Others, reported in 1996 (3) WLC 585, 1996(1) WLN 212;

(ix) T. Nagappa, Mysore vs. State of Karnataka [Writ Petition No. 30016 of 2009 (S-Dis) decided on 03.01.2012;

(x) Registrar General, High Court of Gujarat vs. Jayshree Chamanlal Buddhbhatti [Civil Appeal No. 9346 of 2013 @ out of

Special Leave Petition (Civil) No. 17215/2009];

(xi) Ghanshyam Giri vs. State of Rajasthan (DB Civil Writ Petition No. 637/2012];

(xii) Mrs. Mamoni Rajkumari & Others vs. State of Asam [WPC No. 4476/2017];

(xiii) Central Boards of Trustees vs. M/s Indore Composite Pvt. Ltd. [Civil Appeal No. 7240/2018 arising out of SLP (C) No. 16841/2018];

(xiv) P.S. Malik vs. High Court of Delhi & Another [Writ Petition (Civil) No. 705/2018;

(xv) Samsul Haque vs. The State of Assam [Criminal Appeal No. 1905/2009];

(xvi) Shrirang Yadavrao Waghmare vs. The State of Maharashtra & Ors. [Civil Appeal No. 7306/2019];

(xvii) Hari Niwas Gupta vs. State of Bihar & Another [Civil Appeal No. 3105/2017];

(xviii) The Hon'ble High Court at Calcutta vs. Mintu Mallick & Another [Special Leave Petition (Civil) No. 24840/2019];

(xix) Ram Murti Yadav vs. State of Uttar Pradesh & Another [Civil Appeal No. 8875/2019];

(xx) Sadhna Choudhary vs. state of Uttarpradesh Pradesh & Another [Civil Appeal No. 2077/2020 arising out of SLP(C) No. 8550/2019];

(xxi) P. Narsimha Chary vs. State of Telangana [Writ Appeal No. 339 of 2020 order dated 16.09.2020];

(xxii) The State of Madhya Pradesh vs. Kesar Iqbal and Another [Special Leave to Appeal (C) No. 21596-21597/2019];

(xxiii) State of Gujarat vs. Kishanbhai etc. [Criminal Appeal No. 1485 of 2008 order dated 07.01.2014];

(xxiv) Sri M. Narasimha Prasad vs. The Registrar General [High Court of Karnataka, Writ Appeal No. 14 & 1040-2042/2012 decided on 02.08.2019];

(xxv) Alka Rani Vs. Former Chief Justice of India Justice Ranjan

Gogoi [19th April 2019 letter to the Hon'ble Judges of Supreme Court];

(xxvi) P.K. Gupta vs. State of Chhattisgarh & Others [CrMP No. 366 of 2015];

(xxvii) Kuldip Singh vs. State of Punjab & Ors. [Supreme Court of India judgment dated 16.09.1996];

(xxviii) Punjab National Bank & Others Vs. Kunj Bihari Mishra, Sh. Shanti Prasad Goel (Supreme Court of India, judgment dated 19.08.1998];

(xxix) Yoginath D. Bagde vs. State of Maharashtra & Another (Supreme Court of India, judgment dated 16.09.1999];

(xxx) Suresh Sharma and Kuddush Ansari vs. State of Madhya Pradesh [Writ Petition No. 22257/2021];

(xxxi) Hiren Dahyabhai Rathod vs. State of Gujarat [Special Civil Application No. 15471 of 2020 order dated 13.04.2022]

(xxxii) Miss Akanksha Bhardwaj vs. State of Chhattisgarh & Others [WPS No. 2206 of 2017 decided on 01.05.2024 by SB]

52. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State/respondent No.1 opposed the aforesaid submission and submitted that the grounds raised by the appellant in the instant appeal were considered threadbare by the learned Single Judge while passing the impugned order dated 17.08.2020. The instant appeal is a continuity of the said proceeding, wherein the appellant has raised the same grounds yet over again without being able to demonstrate as to how and in what matter the findings recorded by the learned Single Judge stand contrary to law or by any stretch be demonstrated to be perverse. He further submitted that the insistence made by appellant for prior consultation with the Chhattisgarh Public

Service Commission is absolutely misconceived and wholly misplaced as the said issues had fallen for consideration before the Hon'ble Division Bench of this Court in **Sajjanlal Chakradhari Vs. State of Chhattisgarh & Another, W.A. No. 419/2020**, decided on 06.01.2021, wherein this Court had made categoric observation holding that where there is a resolution passed by the Full Court in exercise of its power under Article 235 of the Constitution of India, then there is absolutely no requirement for appointing authority to re-consult the Public Service Commission. He further submitted so far as the allegation that the impugned order has been passed by an authority, who is incompetent, is absolutely misconceived, since the decision to dismiss the appellant from service was taken by the State Government on the recommendation made by the Hon'ble High Court, the same was signed and communicated by the Additional Secretary while the decision was taken by the State Government and it was in the name of His Excellency The Governor, who is the appointing authority.

53. Mr. Prafull N. Bharat, learned Senior Advocate assisted by Mr. Amrito Das, learned counsel, appearing for respondent No.2/High Court of CG submitted that unfortunately, the appellant in the instant writ appeal has made serious allegations of bias against the Hon'ble Single Judge, despite having participated in the entire proceeding of writ petition without demur before the learned Single Judge. The submissions have been made on affidavit and is nothing but an effort to scandalise the entire proceeding. The

said submissions are therefore, wholly outraging and highly contemptuous.

54. Mr. Bharat further submitted that in the writ petition, the petitioner has sought quashment of the order dated 01.04.2016 whereby he has been dismissed from service. The petitioner has further claimed to quash the order dated 04.02.2016 and thereafter to grant all consequential benefits. It is the case of the petitioner that during his service tenure he was served with five show cause notices. The fourth and fifth show cause notice was issued when he was on leave, before expiry of the period for reply he was issued with the termination order. According to the petitioner, he was acting within well judicial discretion and show cause notices have been issued with predetermined mind. His services has been terminated without holding any enquiry and the case of the petitioner does not fall within the proviso of Article 311(2)(b) of the Constitution of India. The petitioner further contends that his services are governed by C.G. Lower Judicial Services Conduct Rule 2006, therefore, the High Court cannot take a decision to dispense with a departmental enquiry. The petitioner further contends that the impugned order has been passed by a sub-ordinate to the appointing authority and thus, the impugned order of termination is bad in law and is liable to be set aside. The said writ petition was dismissed vide order dated 17.08.2020.

55. Mr. Bharat also submitted that the contentions advanced by the appellant are without any substance. It is respectfully submitted that when the appellant was working as ACJM Raipur, he

registered a complaint against Shri Ram Lal Chouhan, MLA Saraipali, and Shri Deepanshu Kabra, the then Superintendent of Police, Raipur and others in P.S. Civil Lines, Raipur without prior intimation / permission of the respondent No.2 for which a show cause notice was issued to him. On the basis of reply submitted by the appellant, he was inflicted with punishment of withholding one annual increment with cumulative effect. Different show cause notices were issued to the appellant for different acts. The appellant made complaint against some of the judicial officer which were rejected by the competent authority and show cause notices were issued to the appellant. The Superintendent of Police Sukma submitted a memo to the District Judge, Dantewada regarding irregularities committed by the appellant which was forwarded to the High Court. A distinct enquiry as directed by the Hon'ble Portfolio Judge, Dantewada was conducted. The appellant made a representation directly to Hon'ble the Chief Justice of India for which the appellant was issued a show cause notice as to why action be not taken under Rule 3 and 3A of C.G. Civil Services (Conduct) Rules, 1965 (hereinafter referred as "Rules of 1965') for use of intemperate language of insubordination in his representation. Similarly he made communications through his wife containing intemperate language for which also a show cause notice was issued to him under the Rules of 1965. Subsequently, the appellant was dismissed from services in public interest on the recommendation of the High Court of Chhattisgarh under sub clause (b) of Proviso

to clause (2) of Article 311 of the Constitution of India Read with Sub Rule (3) of rule 14 of C.G. Lower Judicial Service (Recruitment and Conditions of Services) Rules, 2006 (hereinafter referred as "Rules of 2006").

56. Mr. Bharat contended that the instant appeal has been preferred by the appellant making serious allegations against the learned Single Judge. The legal issues raised by the appellant are mainly three fold, (a) that the order of dismissal has been passed by the Additional Secretary who is subordinate to the appointing authority being the Principal Secretary; and (b) that no prior opinion was taken from the Chhattisgarh Public Service Commission before issuance of the order of dismissal; and (c) that the learned Single Judge who decided the writ petition played two role, first as a prosecutor being in the Full Court Meeting on 29.03.2016 and second as a Judge deciding the writ petition.

57. Mr. Bharat also contended that the provision given under Article 235 of the Constitution of India clearly demonstrate that the 'control' vested with the High Court over subordinate judiciary is exclusive in nature, comprehensive in extent and effective in operation. The said provision has been engrafted in the Constitution of India in order to subserve the basic feature of the Constitution i.e. independency of judiciary, and to ensure that malady is rectified. The purport and extent of Article 235 was considered extenso in ***Baldev Raj Guliani v. Punjab & Haryana High Court, reported in AIR 1976 SC 2490***.

58. Mr. Bharat argued that a perusal of the discussion made by the Hon'ble Supreme Court in ***Baldev Raj Guliani*** (supra) would clearly show that it is the High Court alone which is competent when it comes to matter of control and discipline of subordinate judiciary. Similar arguments were considered by the Hon'ble Division Bench in W.A. No. 419/2020, ***Sajjanlal Chakradhari v. State of Chhattisgarh***, decided on 06.01.2021, reported in ***2021 SCC OnLine Chh 16.***

59. Mr. Bharat further argued that in light of the submissions made above, it is evident that the grounds raised by the appellant with regard to the incompetency of the authority passing the impugned order and the ground regarding opinion with the Chhattisgarh PSC stands refuted.

60. Mr. Bharat also argued that so far as the contention of the appellant that the impugned dismissal order has been passed by the Additional Secretary who is subordinate to the appointing authority is sans merit. The order of dismissal was passed by His Excellency, the Governor of Chhattisgarh, who is the appointing authority, and has been issued under the signature of the Additional Secretary, Government of Chhattisgarh, Law and Legislative Affairs Department, Mantralaya, Naya Raipur.

61. The State Government on the basis of recommendation of the High Court of Chhattisgarh under sub clause (b) of proviso to clause (2) of Article 311 and Article 235 of the Constitution of India read with sub rule (3) of Rule 14 of the Rules of 2006 dismissed

the petitioner from services. He lastly submitted that thus, in the light of above submissions, it is evident that the instant writ appeal does not have any merit, and it is for the said reason the same deserves to be dismissed.

62. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove, perused the impugned order and other documents appended with writ appeal and also went through the records with utmost circumspection.

63. From perusal of the impugned order and materials available on record, it transpires that challenging the impugned order of dismissal from service dated 01.04.2016, the writ petitioner / appellant has preferred a writ petition registered as Writ Petition (S) No. 2795 of 2016 before the learned Single Judge of this Court, mainly on three grounds; firstly that the impugned order of dismissal has been passed by an authority inferior to the appointing authority, hence the impugned order is *per se* illegal. The second ground of challenge was that the entire action of dismissal of the petitioner was with malafides and the petitioner has been victimized at the hands of some of the higher ranking officials in the State, so also in the police as well as some of the influential persons in the society and a few senior Judges of this High Court. The third and last ground of challenge was that the impugned order is not sustainable on the ground of lack of reasons in the impugned order which necessitates invoking of

Article 311(2)(b) of the Constitution of India and dismissing the appellant from service without inquiry.

64. As regard to the first ground, it was the contention of the petitioner that he was appointed by an order of the Principal Secretary, Law and Legislative Affairs Department in the State of Chhattisgarh vide Annexure P/2 dated 27.12.2005, whereas the order of dismissal (Annexure P/1) dated 01.04.2016 is by an officer to the rank of Additional Secretary. Since the Additional Secretary is an officer, who is subordinate to the Principal Secretary and is also an officer lower in rank in the judicial hierarchy also. According to the petitioner, as it is a settled position of law that an order of termination/dismissal from service cannot be issued by an officer lower in rank, than to appointing officer, the order of dismissal in the case of the petitioner is liable to be set-aside/quashed with consequential reliefs.

65. So far as the second ground of malafide and victimization is concerned, the counsel for the petitioner submitted that he was issued with a show cause notice (Annexure P/5) dated 15.09.2015 in respect of a complaint/report lodged by the petitioner in the Civil Lines Police Station, Raipur against a sitting MLA as also against a senior IPS Officer without prior intimation or permission to or from the High Court. To this show cause notice, the petitioner had given a detailed reply on 05.10.2015 (Annexure P/6). Dissatisfied with the reply given by the petitioner, the High Court had vide order dated 04.02.2016 imposed a

punishment of withholding of one annual increment without cumulative effect. According to the petitioner, right from this stage, the authorities in the State Government, the senior level Police Officials and also some of the Judicial Officers of the Lower as well as Higher Judicial Service and some Judges of the High Court were having malafide against the petitioner and were bent upon in implicating the petitioner in some case or other and were looking for an occasion to dismiss him from service. According to the petitioner, these facts could be ascertained from various replies that the petitioner had given to the different show cause notices that were issued to him and which finally resulted in his dismissal in an illegal arbitrary malafide and vindictive manner. According to the petitioner, these are not grounds sufficient enough to dispense the departmental enquiry and impose a punishment of dismissal without inquiry invoking Article 311(2)(b) of the Constitution of India.

66. The third ground, on which the petitioner harped more was that the impugned order does not reflect reasons for his dismissal. This according to the petitioner was mandatorily required, particularly when he has not been issued with either a show cause notice or a charge-sheet to even know for what reason he has been dismissed from service. According to the petitioner, in the absence of any reason assigned in the impugned order, it is also difficult to reach to a conclusion, whether it was reasonably impracticable for holding a departmental enquiry. In the absence of reasons in the impugned order, according to the petitioner, it is

difficult to ascertain the situations, which made things impracticable to hold an inquiry. It was also the contention of the petitioner that the reasons are all the more required in the impugned order as in the absence of any reasons, the petitioner does not have any sufficient ground available with him to challenge the same effectively.

67. It would be relevant, at this juncture, to reproduce the Article 311(2) of the Constitution of India and its proviso :

> ***"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-***
>
> *(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.*
>
> *(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;*
>
> *Provided that where it is proposed after such inquiry,to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*
>
> *Provided further that this clause shall not apply-*
>
> > *(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which*

has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

68. The learned Single Judge while deciding the writ petition has observed that the aforesaid proviso (b) to clause (2) of Article 311 provides for that, if the employer is satisfied for some reason to be recorded by that authority in writing that it is not reasonably practicable to hold such enquiry, then under the circumstances an employee can be dismissed from services. Further from reading of the aforesaid proviso, what is reflected is that there should be three things available with the authority before invoking the said proviso clause of Article 311 (2). Those are: (a) That the authorities should be satisfied for some reasons, (b) That those reasons must be recorded in writing, (c) It is not reasonably practical to hold an enquiry and hence, it is to be seen as to

whether the facts and circumstances of the case would attract clause-b of the second proviso to Article 311(2) of the Constitution of India.

69. The learned Single Judge has taken note of the various complaints and replies submitted by the appellant in response to the various show-cause notices that were issued to him by the respondent No.2.

70. On 07.08.2015, while serving as an Additional Chief Judicial Magistrate at Raipur, the appellant lodged a report against sitting MLA Shri Ram Lal Chauhan and also lodged a complaint against the then Superintendent of Police, Raipur, Shri Dipanshu Kabra, an IPS Officer. Since the said lodging of report by the appellant, being a Judicial Officer, was without any sort of intimation/ permission to/of the High Court, therefore, a show cause notice in this regard for lodging complaint without intimation and permission to/of the High Court was issued to him on 15.09.2015.

71. On 23.09.2015 Pratibha Gwal, wife of the appellant, made a complaint to the Hon'ble Chief Justice of India, making certain derogatory and obnoxious complaints and for taking appropriate action in the matter of corruption in the construction work of Court buildings at Raipur and Bilaspur against the concerned contractors, PWD Engineers, the then Chief Justice of this High Court and one of the then sitting Judge, the then District & Sessions Judge, Bilaspur. For ready reference, the relevant portion of the said complaint is reproduced hereinunder :

'' ..... उपरोक्त विषयांतर्गत निवेदन है कि उक्त भवनों हेतु करोड़ो रूपये का आबंटन किया गया है । जितनी राशि की आवश्यकता है, उससे कई गुना राशि स्वीकृत किया गया है । मुझे सूचना मिली है कि अतिश्योक्ती पूर्व खर्च बता कर शेष राशि को ठेकेदार, संबंधीत पी. डबलू इंजीनीयर, चीफ जस्टीस गगग गगग एवं जस्टीस xxx xxx, महादेव कातुलकर, जिला एवं सत्र न्यायाधीश बिलासपुर गबन को अंजाम दे रहे हैं । ..... रायपुर के निर्माणाधीन भवन को श्री xxx xxx बार–बार अवलोकन करने आ रहे हैं, क्या श्री दिवाकर साहब भवन निर्माण विशेषज्ञ हैं ।

इनके घरों में या परिवार के मध्य छापे माने जाने से अरबों रूपये अघोषित संपत्ति मिल सकता है । .....''

72. The appellant gave reply to the show cause notice issued to him on 15.09.205 on 05.10.2015. In the reply some of the contentions that the appellant has made would be relevant to be quoted at this juncture which are as under:

'' ..... माननीय उच्च न्यायालय बिलासपुर, मैं पिड़ित पक्ष होकर मुझे समर्थन करने के बजाय परोक्ष रूप से अपराध करने वालों का, बचाव पक्ष को समर्थन किया जा रहा है । .....

.....रामलाल चौहान, विधायक, दिपांशु काबरा पूर्व एस.पी., पी.एम.टी. परीक्षा घोटाले में फंसे नेता माननीय उच्च न्यायालय के कुछ न्यायाधीशों को किस किस चिज से एवं कितने में खरीदे हैं । .....

..... हे ईश्वर यह कितनी बड़ी बिडंबना है कि अपराध करने वाले चैन से रह रहे हैं और हम न्यायाधीशगण आपस में लड़ रहे हैं ।''

73. For the said irresponsible and contemptuous language that the appellant has used in his reply to the show cause, he was inflicted with punishment on 04.02.2016 that of stoppage of one annual increment without cumulative effect. Further, the appellant had this habit of filing complaint against fellow judicial officers, criticizing their judgments and further alleging that some of the judicial officers do not have any knowledge of law and they are not fit for judicial work and therefore they should be removed from service.

74. For this act on the part of the appellant for filing repeated complaints against fellow judicial officers, he was again issued with show cause on 25.01.2016. In reply to the said show cause notice vide Annexure P/14, he again makes following outrageous and careless comments in his reply:

> '' ..... यदि मैं गलत हूॅ तो अनुशासनात्मक कार्यवाही या विभागीय जांच की आवश्यकता नहीं है, सीधा सेवा समाप्त कर सकते हैं, मुझे किसी प्रकार की आपत्ति नहीं होगी, क्योंकि मैं किसी भी अनुशासनात्मक कार्यवाही या विभागीय जांच का सामना करने के लिए आर्थिक व आवागमन व अन्य व्यय वहन करने हेतु अक्षम हूॅ ।
>
> .... अतः आप मेरी गलती मानते हें तो मेरी सेवा समाप्त कर दी जाय, ताकि मैं माननीय सुप्रीम कोर्ट में न्याय हेतु एक बार आवेदन प्रस्तुत कर सकूं या अपने घर में जाकर अच्छे से अपने परिवार को पालने का प्रयास कर सकूॅ ।''

75. Inspite of notices being issued to the appellant, the appellant again made a complaint against one of the senior officer in the

judicial service for which again the appellant was issued with a show cause notice and in his response to the said notice, he again makes the following reckless statement in his reply.

> ''.....शिकायत करना मेरा संवैधानिक मान्यता प्राप्त अधिकार है।.....
>
> ..... बिना कारण माननीय उच्चन्यायालय बिलासपुर व्यक्तिगत रूचि लेकर राजनीतिक षड़यंत्र के तहत मेरे पीछे नहा धोकर, मेरे सद्भावनापूर्ण सामान्य विधिक समझ के आधार पर की गयी शिकायत पर उल्टा मेरे विरूद्ध कारण बताओ नोटिस जारी किया जा रहा है।.....''

76. On 08.02.2016, the Superintendent of Police, Sukma made compliant to the District & Sessions Judge, Dantewada, District - Dantewada referring to the indecent, rough and outrageous behavior made by the appellant towards the police personnel who would produce accused/naxalite for remand and for appearance in the Court, supported with various complaints from various police personnel.

77. It further revealed that the appellant again on 12.02.2016, while serving as a Civil Judge Class-I and also discharging the duties of Chief Judicial Magistrate, Sukma, filed a complaint before Hon'ble the Chief Justice of India making all sorts of false, frivolous and obnoxious complaints without any basis whatsoever.

78. For making complaint directly to the Chief Justice of India, the appellant was again issued with a show cause notice on 14.03.2016 and with regard to the letter written by his wife Smt.

Pratibha Gwal, the appellant was again issued a show cause notice on 14.03.2016.

79. In addition to the conduct and attitude of the petitioner in making false and obnoxious complaints and baseless allegations against the Judges of the High Court, senior level police officers in the State so also against some of the judicial officers working along with the petitioner, there was yet another incident that took place on 31.10.2015 that is when the appellant was travelling with his family, he entered into a fight with the employees working at a Toll Plaza, to which, again the appellant lodged a complaint at Police Station, Arang. However, when the police authorities did not register the case, the wife of the appellant thereafter lodged a complaint case under Section 200 CrPC against the then Chief Justice of High Court of Chhattisgarh xxx xxx and also a sitting Judge of the High Court xxx xxx, against the employees of Toll Plaza and Station House Officer of Police Station, Arang, District Raipur, the Superintendent of Police, Raipur, Two of the Inspector Generals of Police, Raipur, ADPO, sitting MLA, Chief Judicial Magistrate, Raipur, District & Sessions Judge, Ambikapur, Additional District & Sessions Judge, Raipur, Additional District & Sessions Judge, CBI Court, Raipur, Additional District & Sessions Judge, Mahasamund, Additional Sessions Judge, FTC, Raipur, Civil Judge,Class-I Mahasamund, for the offence under Sections, 294, 323, 506,183, 353 and 511/34 read with Section 120-B IPC.

80. In the said criminal complaint case the Additional Chief Judicial Magistrate, Raipur, before whom the case was presented, by its

order dated 26.03.2016 fixed the case for preliminary evidence of the complainant on 18.04.2016 and intimated the same to the higher authorities in the department. Challenging the said criminal complainant filed by Smt. Pratibha Gwal, wife of the appellant under Section 200 CrPC, the High Court of Chhattisgarh, through the Registrar General filed a petition being WPCR No. 88 of 2016, in which vide order dated 31.03.2016, the effect, operation and execution of order dated 26.03.2016 passed by the Additional Chief Judicial Magistrate, Raipur in Criminal Complaint Case No. (unregistered)/2016 filed on 26.03.2016 titled as Pratibha Gwal v. Amit Dubey and others was directed to remain stayed until further orders.

81. Considering the aforesaid facts and circumstances and dealing with the aforementioned issues involved for consideration, the learned Single Judge has observed as follows :

> "25. What is to be appreciated is the fact that, in addition to the charge of the petitioner being in habit of making all sorts of false, frivolous, fabricated and obnoxious complaints against his colleagues in the judicial service, is also casting aspersion against the Judges of the High Court, further lodging criminal complaint case against sitting MLA and also against an IPS officers without prior intimation or permission from the High Court, cannot be treated as prudent act on the part of an officer in the judicial service.
>
> 26. What cannot be ignored is also the fact that once when the petitioner being appointed as a member of judicial service unlike other employment or

profession, judicial service is in itself a class apart. Judges in the judicial service is not merely in employment, nor are the judges mere employees, they are the holders of a post by which they exercise judicial powers. Their office is one with great trust and responsibility. Any act of injustice or misdeed by a judicial officer would lead to a disastrous and deleterious situation having grave adverse consequence.

27. It is always expected that a judicial officer discharges his work and duties in tranquillity and he has to behave and conduct in a manner as if he is a hermit.

28. So far as the conduct part is concerned, the Judges should always maintain and enforce a high standard of conduct which he should personally observe. It is always expected that a judicial officer shall apart from maintaining high level of integrity, should have great judicial discipline and should always try to avoid impropriety. Judge should always be sensitive to the situation around him and should avoid being overactive or over-reactive. It is always expected from a Judge to perform himself most diligently and should not get himself engaged in behavior that is harassing, abusive, prejudiced or biased.

29. Talking on the elements of judicial behaviour it has always been said that Judges shall remain accountable for their actions and decisions. A Judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behaviour, not only upon the Bench and in the performance of

judicial duties, but also in his everyday life, should be beyond reproach. Accordingly an act of the Judge whether in official or on personal capacity which erodes the credibility of the judicial institution has to be avoided.

30. Judges play a pivotal part in the administration of justice and further the trial Judge has a greater role to play in the dispensation ofjustice. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, comprehensive, courteous, patient, punctual, just, impartial, indifferent to private, political or partisan influences; he should administer justice according to law and deal with his appointment as a public trust; he should neither allow other affairs or his private interest to interfere with the prompt and proper performance of his judicial duties nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. The nature of the judicial office and the independence of the judiciary, personal conduct and official conduct of men who preside over this the most important branch of state has to be approached with care and caution.

31. One must understand that Judges are not employees of anybody. As member of the judiciary a Judge exercises sovereign judicial functions while exercising the judicial powers conferred upon him. It is therefore essential that the personality of the Judge, which in the ultimate analysis, his behaviour and attitude, is developed to optimise the efficiency of the justice delivery system. At the same time what is paramount is that the image of the establishment or the institution in particular and the judiciary in general should not to be tarnished in any manner at any point

of time while discharging and displaying his conduct as a Judge both inside the courtroom as well as when he's in public.

32. In one of the most recent decisions reported in 2020 SCC online SC307 in the case of ***Sadhna Chaudhary Vs. State of UP and Another***, the Hon'ble Supreme Court has dealt with decisions dealing on the topic of the behaviour of a Judge and the standard of discipline which he has to maintain. It would be relevant at this juncture to refer to a couple of citations referred to in the said judgment. The Supreme Court referring to the case of Shrirang Yadavrao Waghmare vs State of Maharashtra 2019 (9) SCC 144, had laid down the principles often reiterated so far as the conduct of a judicial officer is concerned. In the said case of Sadhna Chaudhary the Supreme Court quoting certain citations referred to in the case of Shriranga Yadavrao (Supra), had quoted paragraph 5,6,7 & 8 which are relevant for the facts of the present case also and which for ready reference is being reproduced here in under:

> "5. The first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is,therefore, necessary that judicial officers should possess the sterling quality of integrity. This Court in Tarak Singh v. Jyoti Basu [Tarak Singh v. Jyoti Basu, MANU/SC/0975/2004MANU/SC/0975/2004 :
>
> Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside,which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside

pose a larger threat than the storm outside.

6. The behaviour of a Judge has to be of an exacting standard, both inside and outside the court. This Court in Daya Shankar v. High Court of Allahabad [Daya Shankar v.High Court of Allahabad, MANU/SC/0620/1987 MANU/SC/0620/1987 : (1987) 3 SCC 1 : 1987 SCC (L & S) 132]held thus:

> Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy.

7. Judges are also public servants. A Judge should always remember that he is there to serve the public. A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges.

8. Judges must remember that they are not merely employees but hold high public office. In R.C. Chandel v. High Court of M.P. [R.C. Chandel v. High Court of M.P.MANU/ SC/0639/2012 MANU/ SC/0639/ 2012 : (2012) 8 SCC 58 :(2012) 4 SCC (Civ) 343 : (2012) 3 SCC (Cri.) 782 : (2012) 2 SCC(L & S) 469], this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinaryperson. The following observations of this Court are relevant:

> > “29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties,the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with

> high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the Rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty. ”

33. After referring to the various judicial pronouncements as referred to above dealing on the issue of the conduct and behaviour of a judicial officer it would be relevant now to look into the allegations levelled against the petitioner and for which the punishment of dismissal was imposed. Foremost of all what is revealed is the act on the part of the petitioner in getting a criminal case filed in the court of the additional judicial magistrate Raipur through his wife without any intimation or permission or sanction from the High Court in this regard. To make things worse what also has to be seen is that he had made large number of persons as accused in the said case among whom were the then Chief Justice of the High Court of Chhattisgarh (Justice ‘A’) and also a senior most puisne Judge of the High Court. (Justice ‘B’). In addition there were also large number of senior ranking officers of the state government including 2

IPS officers, a sitting MLA and also many judicial officers both of the subordinate judiciary as also of the higher judiciary who were made accused persons in the said criminal case.

34. Moreover the plane perusal of the criminal case which has been filedby the petitioner through his wife would show that there was no direct nexus or allegations or averments against any of these persons who have been mentioned above, except for bald and vague allegations of they being part of a larger conspiracy involving all the persons in the criminal case, accusing them of deliberately with malafide intention trying to victimise the petitioner ensuring that he is removed from the judicial service.

35. Such an act on the part of a judicial officer that too from a person who has put in more than 10 years of service in the judiciary is never expected off. One cannot imagine of filing criminal cases against the Chief Justice and a sitting Judge with wild allegations with no substantial materials and that too without any intimation, sanction or permission from the High Court. From his conduct itself it clearly reveals that the petitioner has done it with the specific intention of gaining cheap publicity and also with an intention to malign the image of Judges and the officers who have been made an accused so also tarnish the image of the judiciary as a whole.

36. In the case of **Sadhna Chaudhary** (supra) the supreme court further held in paragraph 19 as under :-

> “19. Even furthermore, there are no two ways with the proposition that Judges, like Caesar's wife, must be above suspicion. Judicial officers do discharge a very sensitive and

> important constitutional role. They not only keep in check excesses of the executive, safeguard citizens' rights and maintain law and order. Instead, they support the very framework of civilised society. It is courts, which uphold the law and ensure its enforcement. They instil trust of the constitutional order in people, and ensure the majesty of law and adherence to its principles. Courts hence prevent people from resorting to their animalistic instincts, and instead provide them with a gentler and more-civilised alternative of resolving disputes. In getting people to obey their dicta, Courts do not make use of guns or other (dis) incentives, but instead rely on the strength of their reasoning and a certain trust and respect in the minds of the general populace. Hence, it is necessary that any corruption or deviation from judicial propriety by the guardians of law themselves, be dealt with sternly and swiftly."

37. From the above itself it is evidently clear as reiterated by the Honourable Supreme Court that judicial officer must aspire and adhere to a higher standard of honesty, integrity and probity. In the given situation if apart from the criminal case that the petitioner got filed, if we read the replies that the petitioner would submit to the show cause notices issued by the High Court, we can see that the petitioner was in the habit of using atrocious and contemptuous language and more often making weird submissions and allegations and would cast insinuations against the top authorities in the state administration as also the Judges of the High Court, the Chief Justice and other senior judicial officers of the subordinate judiciary as well as the higher judiciary. The petitioner has been show caused for the language that he would use in his reply to the earlier show causes and in spite of being reprimanded and being punished the petitioner as an incorrigible officer would again repeat his act of making obnoxious reply

castigating allegations against the Judges of the High Court as well as the higher authorities in the state administration.

38. Thus, the judicial officer/the petitioner did not live up to the expectation of his behaviors and probity expected from him and which is totally unbecoming of a judicial officer.

39. A judicial officer who does not respect the institution or the authorities who run the institution and who also tries to malign the image of the institution and the persons higher in the hierarchy can be pardoned for once considering it to be a folly on the part of the officer concerned. However in spite of repeated warnings if the officer does not correct himself, further even after being reprimanded and punished he does not stop from behaving in similar manner it can be clearly held that the officer was acting in a manner totally unbecoming of a judicial officer. It can never be expected of a judicial officer that too from a person who has put in about more than 10 years of service to behave in such a manner.

40. Next what is to be seen is whether it was a case which would attract 311 to be for terminating the services of the petitioner. Article 311(2) particularly the second proviso to the said article clearly envisages that in a case where it is not reasonably practicable to hold an enquiry, the services of an employee can be dispensed with. As is understood by all of us an enquiry is to be conducted in a case where there are certain allegations or charges of misconduct allegedly to have been committed by the delinquent officer and which can be established or proved by leading evidences before the enquiry

officer and where the delinquent also gets an opportunity to defend himself and to rebut the evidence which is brought by the prosecution or the department.

41. In the instant case the allegation against the petitioner is just not that of having committed a misconduct rather it is a case where it is the behaviour of the judicial officer particularly his conduct and the manner in which he conducted himself more, which has forced the High Court to reach to the conclusion that the petitioner is a person not fit to remain in judicial service.

42. An officer of the subordinate judiciary if he shows the courage to file a criminal case against the Chief Justice of the High Court along with another senior Judge of the High Court and a host of senior high ranking officers of the state government making all of them as accused persons, it does not need any imagination that continuing the officer in the judicial service with his magisterial and judicial powers he would have created havoc and would have brought much embarrassment to the institution. If we look into the various correspondences that the petitioner has made to the High Court and on certain occasions correspondences directly made to the Chief Justice of India and the language of all would itself clearly show that the officer was never submissive in his approach and at the same time he was also using foul language and most of the time the averments in his reply to the show cause notices was out of context.

43. The Judicial officers cannot have two standards, one in the Court and another outside the Court. They are supposed to have only one standard of rectitude,

honesty and integrity. They cannot even remotely act in a manner unworthy of the judicial officer and the office that they occupied.

44. The Hon'ble Supreme Court in one of the recent judgments held that **“a judge is a pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing judicial functions.”** The question of whether it is reasonably practicable to hold an inquiry as is envisaged under proviso (B) to Article 311(2) is a matter of assessment to be made by the Disciplinary Authority. This aspect has been discussed by the Hon'ble Supreme Court elaborately in AIR 1997 SC 79. When the Disciplinary Authority finds that the act on the part of the petitioner orthe delinquent employee is one which is an act of gross indiscipline and also an act, which has put the entire judiciary itself at an embarrassing position particularly when the delinquent himself is a person, who is part of it the power so envisaged can be enforced.

45. In the instant case from the series of correspondences and finally the filing of a criminal case against the Chief Justice and the senior Judge of the High Court, clearly reflects that the contents of those correspondences as also the filing of the criminal case was neither out of ignorance, rather it is a case where the same has been done deliberately intentionally knowing fully the repercussions and with wide open eyes. The first requirement under Article 311(2) thus gets attracted and it stands justified if the Disciplinary Authority takes a decision to punish the delinquent with the penalty of dismissal or removal from service. As has been narrated in the preceding paragraphs, it is not one act on the part of the

petitioner which has forced the Full Court of the High Court to recommend dismissal of the petitioner invoking Article 311(2), rather it is a case where there are a series of correspondences repeatedly casting serious insinuations, making unscrupulous allegations and obnoxious comments all of which are false, scurrilous and malicious against the Chief Justice of the High Court, as also the senior Judges of the High Court, so also against the senior Judicial Officers in the Higher Judicial Service, as also against the colleagues in the Lower Judicial service, which has compelled the High Court to take such a stand. In addition, the petitioner also has filed a criminal case against sitting MLAs, senior IPS officers of the State and to make things worst he lastly also got a criminal case filed, through his wife making the Chief Justice of the High Court and also one of the senior most Judges of the High Court and also various other high ranking officials in the State as accused persons.

46. It is the conduct of a delinquent which is the criteria for a disciplinary action under Article 311(2). What is also required to be appreciated is the fact that there could be no explanation which the petitioner could have provided on the act of his getting a criminal case filed making the aforementioned persons as accused. It is a fact on record as the said criminal case is still pending and the proceedings of which have been stayed by the High Court. There was nothing by which the petitioner could have disowned or disputed the filing of a criminal case.

47. This Court had called for the original records in respect of the decision taken against the petitioner and in the entire records, the narration of of the facts, which are discussed in the preceding paragraphs are

> reflected in the records and based upon which the matter was placed before the Full Court of the High Court, which had recommended to punish the petitioner invoking Article 311(2) and the reasons why holding of an inquiry is impracticable. As such the reasons have been verified by this Court by calling upon the original records. From the aforementioned facts this Court has no hesitation in reaching to the conclusion that there were reasons germane available in the records, which led to the Full Court recommending the dismissal of the petitioner invoking under Article 311(2).
>
> 48. Given the said facts the dispensing of the inquiry is justified and proper. The impugned order of dismissal from service also therefore is proper, legal and justified and does not warrant any interference.
>
> 49. The writ petition thus stands dismissed. No order as to costs."

82. The core question which arises for consideration would be as to whether it was a case which would attract Article 311(2) of the Constitution of India for terminating the services of the appellant. Article 311(2) particularly the second proviso to the said Article clearly envisages that in a case where it is not reasonably practicable to hold an enquiry, the services of an employee can be dispensed with. As is understood by all of us that an enquiry is to be conducted in a case where there are certain allegations or charges of misconduct allegedly to have been committed by the delinquent officer and which can be established or proved by leading evidences before the enquiry officer and where the

delinquent also gets an opportunity to defend himself and to rebut the evidence which is brought by the prosecution or the department.

83. From perusal of the materials available on record, it transpires that right from the time the appellant was appointed as a Judicial Officer, he had a habit of making adverse comments about his colleagues as also of his superiors. He used to make adverse comments casting serious aspersions, allegations and insinuations against his colleagues and higher officials in the State Government. The appellant before being dismissed from service was issued with various show cause notices and in between he was also inflicted with a punishment of stoppage of one annual increment without cumulative effect. There are also times when the appellant has made direct representation to the Chief Justice of India without any sanction, permission or approval from the superior authorities. Finally, the appellant got a criminal complaint case lodged through his wife in the Court of A.C.J.M., Raipur for the offences punishable under Section 120B, 294, 323, 506, 186, 353 and 511 read with 34 of the I.P.C. The said complaint case was lodged against the then Chief Justice of the High Court and also against another senior Judge of the High Court and also against many senior level officials in the State administration, which included two I.P.S officers of the rank of Inspector General of Police, one ADPO, a sitting M.L.A and many judicial officers of the Sub-ordinate Judicial Service as also of the Higher Judicial service. It is then that the High Court convened a

Full Court meeting on the 29.03.2016 and the Full Court recommended for dismissal of the appellant from service, invoking the provisions of Article 311 (2)(b) of the Constitution of India. Thus, it is evidently clear that he was not fit to be a judicial officer.

84. In the instant case, the allegation against the appellant is just not that of having committed a misconduct rather it is a case where it is the behaviour of the judicial officer particularly his conduct and the manner in which he conducted himself more, which has forced the High Court to reach to the conclusion that the appellant is a person not fit to remain in judicial service. An officer of the subordinate judiciary if he shows the courage to file a criminal case against the Chief Justice of the High Court along with another senior Judge of the High Court and a host of senior high ranking officers of the State Government making all of them as accused persons, it does not need any imagination that continuing the officer in the judicial service with his magisterial and judicial powers he would have created havoc and would have brought much embarrassment to the institution. If we look into the various correspondences that the appellant has made to the High Court and on certain occasions correspondences directly made to the Chief Justice of India and the language of all would itself clearly show that the officer was never submissive in his approach and at the same time, he was also using foul language and most of the time the averments in his reply to the show cause notices was out of context. The Judicial officers cannot have two standards, one in the Court and another outside the Court. They are supposed to

have only one standard of rectitude, honesty and integrity. They cannot even remotely act in a manner unworthy of the judicial officer and the office that they occupied.

85. While upholding the punishment of compulsory retirement imposed on a judicial officer, the Hon'ble Supreme Court in one of the recent judgments observed that the standard or yardstick for judging the conduct of the judicial officer has necessarily to be strict and held that **"a judge is a pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing judicial functions."** The question whether it is reasonably practicable to hold an inquiry as is envisaged under proviso (b) to Article 311(2) is a matter of assessment to be made by the Disciplinary Authority. This aspect has been discussed by the Hon'ble Supreme Court elaborately in ***Kuldip Singh vs State Of Punjab & Ors***, reported in ***AIR 1997 SC 79***. When the Disciplinary Authority finds that the act on the part of the delinquent employee is one which is an act of gross indiscipline and also an act, which has put the entire judiciary itself at an embarrassing position particularly when the delinquent himself is a person, who is part of it the power so envisaged can be enforced.

86. Considering the aforesaid facts and circumstances of the case, the learned Single Judge observed that in the instant case from the series of correspondences and finally the filing of a criminal case against the Chief Justice and the senior Judge of the High Court, clearly reflects that the contents of those correspondences

as also the filing of the criminal case was neither out of ignorance, rather it is a case where the same has been done deliberately intentionally knowing fully the repercussions and with wide open eyes. The first requirement under Article 311(2) thus gets attracted and it stands justified if the Disciplinary Authority takes a decision to punish the delinquent with the penalty of dismissal or removal from service. As has been narrated in the preceding paragraphs, it is not one act on the part of the petitioner which has forced the Full Court of the High Court to recommend dismissal of the petitioner invoking Article 311(2), rather it is a case where there are a series of correspondences repeatedly casting serious insinuations, making unscrupulous allegations and obnoxious comments all of which are false, scurrilous and malicious against the Chief Justice of the High Court, as also the senior Judges of the High Court, so also against the senior Judicial Officers in the Higher Judicial Service, as also against the colleagues in the Lower Judicial service, which has compelled the High Court to take such a stand. In addition, the petitioner also has filed a criminal case against sitting MLAs, senior IPS officers of the State and to make things worst he lastly also got a criminal case filed, through his wife making the Chief Justice of the High Court and also one of the senior most Judges of the High Court and also various other high ranking officials in the State as accused persons.

87. For the aforementioned facts and circumstances of the case, the Court is of the considered opinion that there were sufficient

germane reasons available on records, which led to the Full Court recommending the dismissal of the appellant invoking under Article 311(2)(b) of the Constitution of India, dispensing with the departmental enquiry and further, the learned Single Judge has not committed any illegality, irregularity or jurisdictional error in the impugned order warranting interference by this Court.

88. The entire appeal have been preferred by the appellant making serious allegations against the learned Single Judge. The legal issues raised by the appellant are mainly four fold, (a) that the order of dismissal has been passed by the Additional Secretary who is subordinate to the appointing authority being the Principal Secretary; and (b) that no prior opinion was taken from the Chhattisgarh Public Service Commission before issuance of the order of dismissal; (c) that whether wife of any public servant cannot make complaint against the higher authorities in institution of the public servant for enquiry into their corrupt practices and (d) that the Hon'ble Single Judge who decided the writ petition played two role, first as a prosecutor being in the Full Court Meeting on 29.03.2016 and second as a Judge deciding the writ petition.

89. In order to address the said issues raised by the appellant, it is imperative to refer to the various provisions under the Constitution of India which provides for control and superintendence of lower judiciary with the High Court. Article 235 provides for the control over subordinate courts. It reads as under:

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

90. Perusal of the said provision clearly demonstrate that the 'control' vested with the High Court over subordinate judiciary is exclusive in nature, comprehensive in extent and effective in operation. The said provision have been engrafted in the Constitution of India in order to subserve the basic feature of the Constitution i.e. independency of judiciary, and to ensure that malady is rectified. The purport and extant of Article 235 was considered extenso in ***Baldev Raj Guliani v. Punjab & Haryana High Court, reported in AIR 1976 SC 2490***. It was held as under:

> *"31. It is true that under Article 235 as well as under the Appointment and Punishment Rules the Governor is the appointing and punishing authority. But under Article 235 the High Court is the sole custodian over the discipline of the judicial officers. There is no warrant for introducing another extraneous body between the Governor and the High Court in the matter of disposal of a disciplinary proceeding against a judicial officer. It is submitted on behalf of the appellants that Article 320(3)(c)*

provides that the Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity. Judicial Officers although holding posts in civil capacity are not serving under the Government of a State. They hold posts in connection with the affairs of the State but are entirely under the jurisdiction of the High Court for the purpose of control and discipline. There is, therefore, no constitutional justification or sanction for the Governor, even if he wishes, to consult the Public Service Commission under Article 320(3) (c) in respect of judicial officers. Consultation with the Public Service Commission in this case and preference accorded to its advice ignoring the recommendation of the High Court have introduced a serious constitutional infirmity in the final order of reinstatement passed by the Governor.

35. The matter should not be considered from the angle of supremacy of one organ over the other. That will be an entirely erroneous approach. The Constitution reposes certain power in the Governor even under Article 235. He is the authority to pass the order of removal, albeit, on the recommendation of the High Court. That is the constitutional scheme. The Governor, however, cannot pass any order, as has been done in this case, without reference to the High Court and except on its recommendation. Solution must be found in harmony and not in cold war between the two organs.

36. The Governor could not have passed any order on the advice of the Public Service Commission in this case. The advice should be of no other authority than the High Court in the matter of judicial officers.

> *This is the plain implication of Article 235. Article 320(3)(c) is entirely out of place so far as the High Court is concerned dealing with judicial officers. To give any other interpretation to Article 320(3)(c) will be to defeat the supreme object underlying Article 235 of the Constitution specially intended for protection of the judicial officers and necessarily the independence of the subordinate judiciary. It is absolutely clear that the Governor cannot consult the Public Service Commission in the case of judicial officers and accept its advice and act accordingly to it. There is no room for any outside body between the Governor and the High Court.*

91. Perusal of the above discussion by the Hon'ble Supreme Court would clearly show that it is the High Court alone which is competent when it comes to matter of control and discipline of subordinate judiciary. Similar arguments were considered by the co-ordinate Bench of this Court in W.A. No. 419/2020, ***Sajjanlal Chakradhari v. State of Chhattisgarh***, decided on 06.01.2021, reported in ***2021 SCC OnLine Chh 16***, wherein the co-ordinate Bench repelled identical arguments after referring to the judgment of the Hon'ble Supreme Court in ***Baldev Raj Guliani*** (supra). It was observed as under:

> *"6. So far as the ground raised by the learned counsel for the appellant with regard to the authority of Principal Secretary in issuing Annexure P-1 ie. order of dismissal from services, perusal of order Annexure P-1 would clearly show that it is not the Principal Secretary who passed the order but he has signed the order to be and in the name of his excellency Governor who is the appointing authority.*

In view of the above, the first ground raised by the learned counsel for the appellant that the impugned order Annexure P-1 is passed by the authority subordinate to appointing authority is not correct and is misconceived. The first ground raised by the learned counsel for the appellant for the reasons mentioned therein is hereby repelled. The second ground raised by the learned counsel for the appellant that the committee of Three-judge has not taken any decision but it is the Full Court, resolved for dismissal of the appellant is contrary to law. Article 235 of the Constitution of India envisages for control of subordinate Court wherein the entire control including posting, promotion etc. belonging to the Judicial Services of a State is vested in the High Court.

7. In this case, as per Annexure R-2/8 and R-2/9 placed on record shows that the Full Court resolved for dismissal of the appellant from services and that order is in consonance with Article 235 of Constitution of India. So far as the other ground raised by the learned counsel for the appellant with regard to Rule 15(3) of CCS Rule 1966 that before passing an order of dismissal, Public Service Commission was not consulted. When there is resolution passed by the Full Court in exercise of its power under Article 235, then there is absolutely no requirement for the appointing authority to re-consult with the PSC.

92. In light of the aforesaid discussions, it is evident that the ground (a) raised by the appellant with regard to the competency of the authority passing the impugned order and the ground (b) regarding opinion with the Chhattisgarh PSC stands refuted. The

contention of the appellant that the impugned dismissal of order has been passed by the Additional Secretary who is sub-ordinate to the appointing authority is misconceived. The order of dismissal was passed by His Excellency, the Governor of Chhattisgarh, who is the appointing authority and has been issued under the signature of Additional Secretary, Government of Chhattisgarh, Law and Legislative Affairs Department, Mantralaya, Naya Raipur. Before passing the impugned order of dismissal the matter was placed by the Registrar General before the full court on 29.03.2016 where it was resolved that:

> *(i) from the material it does not appear reasonably practicable to hold a departmental enquiry against Shri Prabhakar Gwal*
>
> *(ii) the departmental enquiry is dispensed with and Shri Prabhakar Gwal is recommended to be dismissed from service in public interest under Article 311 (2) (b) of the Constitution of India.*
>
> *(iii) all administrative and judicial powers of Shri Prabhakar Gwal, presently posted as Civil Judge, Class-1 and Chief Judicial Magistrate, Sukma are seized with immediate effect.*

93. The State Government on the basis of recommendation of the High Court of Chhattisgarh under sub clause (b) of proviso to clause (2) of Article 311 and Article 235 of the Constitution of India read with sub rule (3) of Rule 14 of the Rules of 2006 dismissed the petitioner from services. It was specifically mentioned in the order of dismissal that:

"Whereas, the Hon'ble High Court of Chhattisgarh, on the basis of material available on record, has resolved that it does not appear reasonably practicable to hold a departmental enquiry against Shri Prabhakar Gwal, therefore, the departmental enquiry is dispensed with and Shri Prabhakar Gwal is recommended to be dismissed from service in public interest under sub-clause (b) of proviso to clause (2) of Article 311 of the Constitution of India.

Now therefore, in exercise of the powers conferred by sub-clause (b) of proviso to clause (2) of Article 311 and Article 235 of the Constitution of India read with sub-rule (3) of Rule 14 of the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 and on recommendation of the High Court of Chhattisgarh, State Government, hereby, dismisses Shri Prabhakar Gwal, Member of Lower Judicial service, Civil Judge, Class-I and Chief Judicial Magistrate, Sukma, from service in public interest with immediate effect."

94. With regard to ground (c) raised by the learned counsel for the appellant that whether wife of any public servant cannot make complaint against the higher authorities in institution of the public servant for enquiry into their corrupt practices is concerned, the same is impermissible in view of the reasons mentioned hereinbelow.

95. In the matter of ***K. Veeraswami v. Union of India and others***, reported in ***(1991) 3 SCC 655***, Their Lordships have clearly held that without prior approval/consultation of Hon’ble the Chief Justice of India no criminal case shall be registered against a

Hon'ble Judge of the High Court and Hon'ble the Chief Justice of the High Court by directing as under:-

> "*We therefore, direct that no criminal case shall be registered under Section 154 Cr.P.C. against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter. Due regard must be given by the government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act,the case shall not be registered.*"

96. Similar is the law laid down by the Supreme Court in the matter of ***State of Rajasthan v. Prakash Chandra***, reported in (1998) 1 SCC 1 in which it has been held as under:-

> *"34. Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice....."*

97. In the matter of ***Baradakanta Mishra v. The Registrar of Orissa High Court and others***, reported in ***(1974) 1 SCC 374,*** the Supreme Court has held in no uncertain terms that the disciplinary

control exercised by the High Court over the subordinate judiciary in their judicial administration is essentially exercised for furtherance of administration of justice. Their Lordships held as under:-

> *"46. .....In the State of West Bengal v. Nripendra Nath Bagchi4, this Court has pointed out that control under Article 235 is control over the conduct and discipline of the Judges. That is a function which, as we have already seen, is undoubtedly connected with administration of justice. The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore,when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice."*

98. The complaint filed by the wife of the appellant is statutorily barred by provision contained in Section 195(1)(a)(i) of the CrPC which clearly provides that no court shall take cognizance of any offence punishable under Section 186 of the IPC except on the complaint in writing of the public servant concerned as admittedly the complainant is not a public servant. Since disciplinary action(s) and other proceedings have been taken against the appellant and in one proceeding, punishment has also been imposed against the appellant, therefore as a counter-blast such a criminal complaint has been filed on behalf of his wife.

99. In the light of judgment passed by the Hon'ble Supreme Court Supreme Court in the matter of ***K.Veeraswami*** (supra) with regard to registration of criminal case qua the Hon'ble Judge of the High Court, further following the law laid down in the Supreme Court in the matter of ***Baradakanta Mishra*** (supra) with respect to nature of disciplinary jurisdiction exercised by the High Court under Article 235 of the Constitution of India, taking note of law laid down by the Supreme Court in the matter of ***Prakash Chandra*** (supra) indicating the immunity from criminal and civil action available to Hon'ble Judge of the High Court and taking into consideration the specific provision contained in Section 195(1)(a)(i) of the CrPC for filing complaint except by public servant for offence under Section 186 of the IPC, we are of the considered opinion that such complaints which have been filed by Smt. Pratibha Gwal, wife of the appellant, who is not a public servant and has no locus and authority to file such a criminal complaint and it has been filed at the instance of his husband, the appellant, who is an in disciplined judicial officer, only to scandalize the entire judicial institution and designed to malign and lower the image of state judiciary in public view which is wholly illegal, without jurisdiction and without authority of law.

100. Appellant in this writ appeal has also raised a ground that learned Single Judge has played two roles, one of a prosecutor being a member in the meeting of Full Court dated 29.03.2016 in which recommendation was made for termination of service of appellant (judicial officer) and, another as a Judge while hearing writ petition

filed by appellant against the order of termination. To advert this ground, we have called for the record of proceedings of the Full Court and perusal of which revealed that meeting of Full Court was held on 29.03.2016, on the said date there were total nine sitting Judges in the High Court, out of which eight participated in the meeting and one learned Judge, who could not participate in the meeting, stood retire and demitted the office on 31.05.2016. Writ petition filed by petitioner/appellant is dated 28.06.2016, however, from the endorsement appearing in writ petition with respect to receipt of advance copy in the office of the Advocate General would show that copy of writ petition was served on 30.06.2016 and thereafter writ petition was filed. Petition was listed on 11.07.2016 for the first time before the Court having the roster of service matters. The order sheets of petition would show that learned Single Judge having roster made exception of the case and thereafter the matter was listed before the concerned learned Single Judge having roster of service matter. No specific ground is raised before this Court during the course of arguments that case was heard by the learned Judge even upon raising objection, oral or by way of filing an application, that the case ought not to be heard by learned Single Judge, who was having roster of service matter. Perusal of the proceedings would show that decision of termination of service of petitioner/appellant was unanimous based on the proceedings and documents before the Full Court. This ground is being raised for the first time in the appeal.

101. Considering the nature of ground raised in appeal and the pleadings made as also making allegation of biasness against learned Single Judge, who decided writ petition, we have minutely gone through the impugned order as also documents placed along with writ petition and available in the proceeding before the Full Court. True it is that one of the facet of principles of natural justice is that 'one man should not be judge of his own cause'. As the petitioner/ appellant has not raised any such ground at the initial stage when his writ petition was heard by learned Single Judge as per roster, in the facts of the case, the impugned order cannot be set aside only on making bald allegations. This Court looking into the seriousness of issue find it appropriate to examine the grounds raised, minutely, taking into consideration the entire facts and circumstances of the case.

102. Hon'ble Supreme Court in the case of ***Chairman, Board of Mining Examination and Chief Inspector of Mines vs. Ramjee***, reported in ***AIR 1970 SC 965*** has observed that "natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can the, fit

into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with gelverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures".

103. In the case of ***State Bank of Patiala vs. S.K. Sharma***, reported in ***(1996) 3 SCC 364***, Hon'ble Supreme Court has observed that "Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

104. In the case of ***Satyavir vs. Union of India and others***, reported in ***AIR 1986 SC 555***, the Hon'ble Supreme Court has observed that "The principles of natural Justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificient thoroughbred on which this nation gallops forwards towards its proclaimed and destined goal of JUSTICE, social, economic and political. This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign no pasaran is put up."

105. In the light of above rulings of Hon'ble Supreme Court on the principle of natural justice and considering the facts of the case in hand, we have again thoroughly perused the order passed by the learned Single Judge and perusal of impugned order would show that learned Single Judge has considered the facts and circumstances on which the Full Court took decision, the grounds raised by petitioner/appellant herein and also decisions relied upon, discussed the facts and circumstances of case elaborately and also extracted the portion of correspondences made by petitioner/ appellant at different point of times. Upon going through the impugned order, in view of the grounds raised before this Court, we found that the decision rendered by learned Single Judge is upon application of judicious mind taking into consideration the law applicable to the facts of present case and also relying upon the precedents on the subject.

106. For the foregoing discussions, the ground raised by learned counsel for appellant, which is for the first time raised in the appeal proceeding that learned Single Judge being one of the members of Full Court, ought not to have heard writ petition, is not sustainable.

107. From perusal of the record, it further appears that the appellant has also preferred a transfer petition before the Hon'ble Supreme Court for transferring the instant appeal to any Court of competent jurisdiction, particularly in High Court of Judicature at Madras, but the said fact has not been pointed out by the learned counsel for

the appellant when the matter was being finally heard. However, from perusal of the website of the Hon'ble Supreme Court about the status of the case, as per the details given in the said transfer petition, it is found to be dismissed vide order dated 24.07.2023. The operative portion of the said order, reads as follows :

"SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Transfer Petition (Civil) No. 1279/2023

PRABHAKAR GWAL
Petitioner(s)

VERSUS

THE STATE OF CHHATTISGARH & ANR.
Respondent(s)

(FOR ADMISSION and IA No. 98796/2023 – EXEMPTION FROM FILING O.T.)

Date : 24-07-2023 This matter was called on for hearing today.

CORAM :

xxx xxx xxx
xxx xxx xxx

For Petitioner (s)

xxx xxx xxx
xxx xxx xxx

For Respondent(s)

UPON hearing the counsel the Court made the following

ORDER

The transfer petition is dismissed.
Pending application stands disposed of.

Sd/- Sd/-"

108. There is no quarrel with regard to the ratio laid down in the judgments cited by the learned counsel for the appellant referred in para 51 of the present judgment, however, the same may not be applicable to the present case as they are distinguishable on facts.

109. In view of above facts and circumstances of the case, we do not find any merit in the appeal and none of the grounds raised in support of the same could be held as tenable. The appeal stands **dismissed** accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Judgment Date : 07/08/2024

Chandra

Head-Note

Where it is reasonably not practical to hold the departmental inquiry, the employer is empowered to dismiss or remove a person under clause (2)(b) of Article 311 of the Constitution of India.