Supreme Court of India
High Court Of Judicature At ... vs Shirishkumar Rangrao Patil & Anr on 30 April, 1997
Author: K.Ramaswamy
Bench: K. Ramaswamy

PETITIONER:
HIGH COURT OF JUDICATURE AT BOMBAYTHROUGH ITS REGISTRAR

Vs.

RESPONDENT:
SHIRISHKUMAR RANGRAO PATIL & ANR.

DATE OF JUDGMENT: 30/04/1997

BENCH:
K. RAMASWAMY

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K.RAMASWAMY, J.

This is an appeal by certificate granted by the Bombay High Court, Nagpur Bench on July 11, 1996 in writ Petition No. 3095 of 1995 certifying that it is a fit case to file appeal against the judgment dated April 26, 1996 passed by that Division Bench.

The admitted facts are that the first respondent was working as a Probationer Civil Judge, Junior Division and Judicial Magistrate, First Classed at Pathri in District Parbani, Maharashtra between December 12, 1990 and March 5, 1991. He was charged with the imputation that he had demanded illegal gratification from an Advocate, Ashok S. Kharkar of the District Bar for deciding in his favour an injunction application filed by the plaintiff in R.C.S. No. 150/90 titled Uttam Depale V/s. Sardarkhan Hasankhan and thereby he indulged in corrupt practice which amounted to gross misconduct. It was further alleged that did not pass orders in the said injunction application manipulated there judicial records by getting the roznama written through a court clerk showing that the matter was fixed on five occasions after the arguments were concluded with a view to achieve his ulterior motive, viz. , demand of illegal gratification and, thereby, committed gross misconduct. He was also charged with other allegations details of which are not material for the purpose of disposal of this appeal. Yet another charge against him was that after hearing the

arguments in RCS NO. 138/90 titled Arjun V/s. Gangubai, he did not pass orders for nearly seven months and left the charge of the court without passing the final orders.

After giving reasonable opportunity to the respondent- officer, the Enquiry officer held that the aforesaid charge Nos. 1 and 2 and part of charge No.3 were proved but the other part of charge No.3 and charges 4 and 5 were not proved. On receipt of the enquiry report and consideration thereof, on July 29, 1983, show cause notice was issued to the delinquent officer together with copy of the enquiry report, calling upon him to show cause as to why findings could not be accepted and penalty of dismissal imposed. On submission of his representation in response to the said show cause notice, on 18th September, 1993, the Committee of five Judges of which four met on January 12, 1994, accepted the findings of guilt recorded by the Enquiry officer and recommended to the Government imposition of the penalty of dismissal from service . The Government by order dated March 2, 1994 recorded as under:

> "AND WHEREAS, thereupon the chief Justice and the Judges of the High Court Disciplinary Authority had served a show cause notice on the said Shri S.R. Patil calling upon him to show cause why the findings recorded by the Enquiry officer should not be confirmed and why the punishment of dismissal from service should not be imposed upon him.
>
> AND WHEREAS, after considering the cause shown by the said Shri Patil, the Disciplinary Authority has recommended to the Government to impose the Punishment of dismissal from service on said Shri Patil.
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> AND WHEREAS, on considering the report and the findings of the Enquiry officer and the cause shown by the said Shri Patil and the recommendation of the Chief Justice and the Judges of the High court of Judges of the High court of Judicature at Bombay, being the Disciplinary Authority the Government of Maharashtra has decided to accept the said recommendation."

Accordingly, the State Government directed the respondent's dismissal from service from the date of receipt of the said order by him. Feeling aggrieved, he filed a writ petition in the High court Challenging the order of his dismissal and the recommendation made by the Committee of the High Court and the findings of the Enquiry Office. The High Court set aside the order of dismissal on two grounds, viz., that a resolution was passed by the Full Court on behalf of the High court's "recommendation by way of disciplinary action against any Judge or Magistrate". Subsequently, on December 15, 1984, it was respect of punishment of judicial officers would be exercised by a Committee of five Judges to be appointed by the Chief Justice. On the basis thereof, the recommendation of dismissal of the respondent from service was made without the concurrence of the Full Court. Therefore, the ultimate order passed by the Government dismissing the respondent on the foot of the above recommendation is illegal . The Division Bench also observed that on consideration of the evidence on recorded, no reasonable man would reach the conclusion that the respondent had demanded illegal gratification for rendering judgment in an injunction petition in favour of the Plaintiff. Accordingly, it set aside the order of dismissal.

Shri Harish Salve, senior counsel for the appellant has contended that the view taken by the High Court is not correct in law. The decision of the Committee is the decision on behalf of the Full Court, pursuant to the aforestated Resolutions. The expression "delegation of the power of the High court in respect of punishment of judicial officers" is wide enough to include appointment of enquiry officer, consideration of his report by the committee constituted by the chief Justice under the aforesaid Resolutions of his report, show cause notice, reply thereto and to reach the decision is the function of the High Court. The committee discharges the said functions on behalf of the High Court. Therefore, the view taken by the Division Bench that the decision should have taken by the Full court is not correct in law. He also highlighted the administrative inconvenience of all the Judges to sit and deal with disciplinary matters, since they transact judicial business while sitting at different places, viz., Aurangabad, Nagpur and Goa, apart from Bombay; hence they cannot the expected to come over every time to Bombay and decide the routine administrative matters in the Full court. The Full Court having authorised the Committee of five Judges to perform those functions, it would be competent for the said five Judge committee to take decision in that behalf. Such a decision is by and on behalf of the High court. The Division Bench is also not right in reaching the conclusion that the evidence is not sufficient and on the foot of it no reasonable man would reach the conclusion that misconduct on the part of the respondent has been proved. It is a fact to be deduced on consideration of the evidence on record. The High Court after perusal of the enquiry report agreed with the Enquiry officer that charge Nos. 1 and 2 and part of charge No.3 were proved and issued the show cause notice as to why the same could not be accepted. On receipt of the representation from the respondent, it considered the same and advised the Governor that the delinquent officer committed misconduct and is liable to be dismissed from service. The Government accepted the same and dismissed the respondent from service. thus, it is contended by Shri Salve that the ultimate decision of the dismissal of the respondent from service is of the Government not of the High court. All procedural formalities in that behalf are incidental and ancillary to reach the decision. The High Court, therefore, was in error in its conclusion that the Committee of five Judges could not decide the matter by itself. On merits of the case, he contended that the evidence of the Plaintiff's Advocate was found sufficient by the Committee to be accepted. Accordingly, it reached the conclusion that dismissal from service could meet the desired discipline among the members of the subordinate judicial officers. The judicial review is not meant to re-appreciate the evidence charge by charge and witness after witness; court cannot substitute its own decision in place of that of the disciplinary authority and the Government, The High court, therefore, was clearly in error to treat the report of the committee as non est. Shri Batra, learned Senior Counsel for the respondent, relying on the aforesaid Resolution of the Full court and the action taken by the Committee, highlighted that the later Resolution is only to impose a penalty of dismissal from service. It has no power to appoint the Enquiry officer, framing of the charges, consideration of the report and the decision taken to recommend respondent's dismissal from service. All these steps are illegal and are without authority of law. He also contended that the Enquiry officer was biased against the respondent for the reason that the charges framed by the Enquiry officer do not reflect on the charges framed by the High Court; thereby, the power to impose punishment was in derogation of the recommendation of the committee of five Judges. As a fact, the recommendation was made only by four Judges, Therefore, it is a quorum non juridicus. The finding of the High court in that behalf is well justified. He also contended on merits that the Enquiry officer was biased against the respondent. He had specifically pleaded, in the reply to the

show cause notice issued by the High court, the bias on the part of the Enquiry officer. The evidence was not properly considered by the Disciplinary Authority. The Resolution of the Full Court was only to give power to the committee to impose punishment and to complete all other procedural formalities which are otherwise required to be done by the Full Court. Even the recommendation was not of five Judges; only four Judges made of dismissal per se is illegal. Shri Batra contended that the Division Bench, therefore, is right in its conclusion that the recommendation for dismissal is not in accordance with law. The manner in which the evidence was recorded, The question posed for consideration and the charges framed, all would indicate the pre-disposition of the bias of the Enquiry officer. Earlier, there was no allegation in the complaint made by the plaintiff's advocate of any demand of illegal gratification. His only grievance was that judgment was not quickly being delivered. In the absence of any demand and acceptance of the illegal gratification, the charges were not proved. Putting signature at different proceedings was a routine matter and is adopted by every judicial officer in discharge of his duties. The evidence is not sufficient to support the conclusion that the charges have been proved against the respondent. The Division Bench of the High court, therefore, is right in holding that the Enquiry officer was very much biased against the respondent and that no reasonable man would reach the conclusion on the basis of there evidence on record, that the respondent had committed misconduct entailing his dismissal from service.

In view of the respective contentions, the primary question for consideration is; whether the Disciplinary committee was committee was competent to recommend to the Government, imposition of penalty of dismissal of the respondent from service? Article 235 of the constitution envisages "Control over subordinate courts" and postulates as under:

> "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 shall be vested in the High court, but nothing in this article shall be construed as taking away from any person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High court to deal with him otherwise than in accordance with the condition of his service Prescribed under such law."

In Shamsher Singh V/s Punjab & Anr. [(1974) 2 SCC 831], a Bench of seven Judges of this court, considering the scope of Article 235, had that the High court is invested with , under the said Article, control of subordinate judiciary. The members of the subordinate judiciary are not only under the control but also under care and custody of the High court. The enquiry should be got conducted through a District Judge. In The Registrar, High court of madras V/s R. Rajiah [(1988) 3 SCC 211], this court had held thus:

> "The test of control is not the passing of an order against a member of the subordinate judicial service, but the decision to take such action. It may be that so far as the members of the subordinate judicial service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of punishment against such a member.

> But passing or signing of such orders by the Government will not necessarily take away the control of the High court vested in it under article 235 of the constitution. An action against any Government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the Government servant. Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High court judicial service. Such a decision is arrived at by holding an enquiry by the High court against the member concerned. After the High court comes to the conclusion that some action either in the nature of compulsory retirement or by the imposition of a punishment, as the case may be, has to be taken against the member concerned, the High court by passing an order in accordance with the decision of the High court. The Government cannot tame any action against any member of a subordinate judicial service without, and contrary to , the recommendation of the High court."

The decision of this in High court of M.P. V/s. Mahesh Prakash & ors. [AIR 1994 SC 2595] relied upon by Shri Batra is of little assistance i n the facts of this case. Therein , the question was whether the view of the chief Justice could be considered by the Full court and whether expression of his view prevented independent consideration by the full court. In that behalf, this Court had held that Chief Justice being head of the judiciary in the state and in overall control of the administration, knows better about the subordinate judicial officers. His views are entitled to greater weightage. The discussion at the Full court meeting takes place after consideration of the view of the chief justice and the material. The court concluded that in every case the Full court is not required to constitute committee to decide all disciplinary actions against the subordinate judiciary. Far from helping the respondent, it goes in favour of the appellant insofar as the chief justice has overall control and, therefore, he exercises control of subordinate judiciary as head of the High court and the control under Article 235 is of the High court as head of the judiciary in the state, subject to the resolutions by the Full court and further delegation in that behalf.

It would thus be settled law that the control of the subordinate judiciary under Article 235 is vested in the High court. After the appointment of the judicial officers by the Governor, the e power to transfer. maintain discipline and keep control over them vests in the High Court is first among the judges of the High court . The taken is by the High court and not by the Chief Justice in his individual capacity , nor by the Committee of Judges. For the convenient transaction of administrative business in the court, the Full Court of the Judges of the High Court generally passes a resolution authorising the Chief Justice to constitute various committees including the committee to deal with disciplinary matters pertaining to the subordinate judiciary or the ministerial staff working therein . Article 235, therefore, relates to the power of laking a decision by the High court against a member of the subordinate judiciary. Such a decisions either to hold enquiry into conduct of a judicial officer, subordinate or higher judiciary, or to have the enquiry conducted through a District or Additional district Judge etc. and to consider the reported of the Enquiry officer for taking further action is of the High court. Equally, the decision to consider the report of the enquiry officer and to take follow up action and to make appropriate recommendation to the Disciplinary Committee or to the Governor , is entirely of the High Court which acts through the Committee of

the Judges authorised by the Full Court. Once a resolution is Passed by the Full Court of the High court, there is no further necessity to refer the matter again to the Full Court while taking such procedural steps relating to control of the subordinate judiciary.

It is true that a resolution came to be passed authorising the Committee off five Judges to deal with imposition of punishment on judicial officers. The question of punishment on judicial officers. The question, therefore, is : whether it requires the Chief Justice and the Committee to initiate disciplinary proceedings? The "delegation of the function of the High Court in respect of punishment of judicial officers" is an expression of width and of wide amplitude to cover within its ambit the power to take a decision by the Committee from the stage of initiation of disciplinary proceedings, if necessary, till its logical and , viz., recommendation to the Government to impose a penalty proposed by the Committee. The recommendation is by the High court, the controlling authority under Article 235 of the constitution. Therefore, it is difficult to accept the contention of Shri Barta that the delegation is only for imposition of punishment on judicial officers. In fact, the High Court has no power to impose any punishment by itself. The appointing authority under the Constitution to impose punishment in accordance with the rules framed for the purpose. Therefore, the entire gamut of procedural steps of disciplinary action is by the High court which is the controlling authority through the committee constituted in that behalf by the Chief justice of the high court.

It is true, as contended stated Shri Batra, that power of disciplinary action was delegated to a committee of five Judges. The recommendation came to be made only by a committee of four Judges. Though his contention that the decision to dismiss the respondent is of the committee of four Judges is prima facie plausible to be accepted, we find no force for diverse reasons. we called upon Shri Harish Salve to produce the original record. Pursuant thereto, the records are placed before us. We find from the record that after the receipt of the re ply of the respondent to the show cause notice, the copies of the record were circulated to all the five Judges. The file was circulated to all the judges. One of the learned Judges, however, due to unavoidable reasons, was absent on the day of the meeting; the fact, viz., that four out of five Judges assembled to transact the business as per the agenda including the item relating to acceptance of the recommendation of the Enquiry officer and proposed to punish the respondent with dismissal from service. it is true that there is no further resolution passed to constitute quorum for taking a decision. It is common experience that in some of the High Courts there is no express resolution constituting quorum. Ex abundanti cautela some High courts pass such resolution as to the quorum. However, the practice has grown that generally majority of the Committee, when assembled, would transact the administrative business and take decisions. In the light of the settled legal position that the decision taken is that of the High Court and the Committee acted for and on behalf of the High court, the majority of four Judges of the Committee, even in the absence of such express resolution, does constitute the quorum and is competent to transact the administrative business of the Court, Out of five, three members always constitute a quorum so as to be competent to take decision since even if it is assumed that all the five members were present and they decided against the respondent, the opinion of four Judges would constitute majority decision. It may be expedient that all the Judges sit or the record is circulated to all of them and they take decision. Unless someone of the members express their his dissent from the decision taken per majority, the fifth member also must be deemed to have agreed to the

decision of the majority, though no formal concurrence in that behalf was recorded. It is seen that all the four learned Judges unanimously decided recommending to the learned Judges unanimously decided recommending to the Governor to impose the punishment of dismissal of the respondent from service. It constitutes the quorum. The Governor acted upon the same and issued order of dismissal of the respondent. a resume of the contents of dismissal order by the Government, does indicate that the Government did in fact understood the recommendation is of the High court, i.e., Chief Justice and companion Judges. The Governor being the competent authority, validly and legally passed the order dismissing the respondent from service. Even if there is any irregularity in the procedure, i.e., absence of a Judge, it does not vitiate the order of dismissal by any error of law. considered from this perspective also, we hold that the order of the Governor acting upon the recommendation made by the High Court is not vitiated by any manifest error of law. The order of dismissal does indicate that the Governor independently considered the record and came to the conclusion that the proposed punishment of respondent's dismissal from service was warranted on the proved facts. We, accordingly, hold that the Division Bench committed an error of law in holding that the order of respondent's dismissal from service is beset with illegality, warranting interference by the Division Bench on judicial side.

The question then is: whether the High court is justified in recommending to the Governor the respondents' dismissal from service on the basis of the material on record and whether the evidence on record was not sufficient to conclude the misconduct of having demanded illegal gratification ? In a democracy governed by rule of law, under a written constitution, judiciary is the sentinel on the qui vive to protect the fundamental rights and posed to keep even scales of justice between there citizens and the States or States inter se. Rule of law and judicial review are basic feature of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. Judiciary must, therefore, be free from pressure or influence from any quarter. The constitution has secured to him, the independence. The concept of "judicial independence" is a wider concept taking within its sweep independence from any other pressure or prejudice. It has many dimensions , namely, fearlessness of other power centers, economic or political, and freedom from prejudices, acquired and nourished, by the class to which the Judge belongs. Independent Judiciary, therefore, is most essential to protect the liberty of citizens. In times of grave danger, it is the constitutional duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived), undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. {vide C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & ors. [(1995) 5 SCC 457]}. The constitution of India has delineated distribution of sovereign power between the legislature, executive and judiciary. The judicial service is not service in the since of employees. As members of the judiciary, They exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the Council of Ministers and the Members of the Legislature. It is an office of public trust and in a democracy, such as ours , the Executive, the Legislature and the Judiciary constitute the three pillars of the State. What is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of there state and each one of them in turn represents the authority of the State. The Judges, at what ever level they may be, represent the state and its authority, unlike the beaurocracy or the members of the others service. {vide All India

Judges' Association & ors. vs. union of India & Ors. [(1993) 4 SCC 288 paras 7 and 9] (second case)}. The Judges do not do an easy job. They repeatedly do what the rest of us seek to avoid, i.e., make decisions. Judges, though are mortals, they are called upon to perform a function that is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the day do day proceedings in the Court. On him lies the responsibility to build solemn atmosphere in dispensation of justice, the personality, knowledge, judicial restraint, capacity to maintain dignity character, conduct, official as well as personal, and integrity are the additional aspects which make the functioning of the court successful and acceptable. Law is a means to an end and justice is that end. But in actuality, Law and Justice are distant neighbours; sometimes even strange hostiles. If law shoots down justice, the people shoot down law and lawlessness paralyses development, disrupts order and retards progress. {vide All India Judges Association vs. Union of India & Ors. (1992) 1 SCC 119] quoted with approval, and the statement of law, by Krishna Iyer} Fourteenth Report of the Law, commission , extracted and approved by this court in the above judgment, postulates thus:

> " If the public is to give profound respect to the judges the judges should by their conduct try and observe it; not by word or deed should they give cause for the people that they do not deserve the pedestal on which we expect the public to place them. It appears to us that not only for the performance of his duties but outside the court as aloofness amounting almost to self- imposed isolation."

There in also, it was further observed that what is required of a Judge is " a form of life and conduct far more server and restricted than that of ordinary people" and through unwritten, it has been most strictly observed. The Judicial officers are at once privilege and restricted; they have to present a continuous aspect of dignity and conduct. If the rule of law is to efficiently function under the aegis of our democratic society, Judges are expected to nurture an efficient, strong and enlightened judiciary. To have it that way, the nation has to pay the price, i.e., to keep them above wants, provide infrastructural facilities and services. There was a time when a Judge enjoyed a high status in society. A government founded on anything except liberty and justice cannot stand and no nation founded on injustice can permanently stand. Therefore, dispensation of justice is an essential and inevitable feature in the civilized democratic society. Maintenance of law and order requires the presence of an efficient system of administration on criminal justice. A scene of confidence in the court is essential to maintain the fabric of ordered liberty for free people and it is for the subordinate judiciary by its action and the high court by its appropriate control of subordinate juridicay and its own self imposed judicial conduct, on and off the bench, to ensure it. If one forfeits the confidence in the judiciary of its people, it can never regain its lost respect and esteem. The conduct of every judicial officer, therefore, should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and 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 not allow other affairs or his private interests 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. If he tipps the scales of justice, its nippling effect would be disastrous and deleterious. Obviously, therefore, this court in All India Judges' Association case attempted to

ensure better uniform conditions of service for subordinate judiciary throughout the coutry, it recommended that the superannuation of the subordinate judicial officer at the age of 60 years; and ensured amelioration of their service conditions by giving diverse direction. In 2nd All India Judges' Association case , this court dealt with the status of he judicial officer as a class and held that they are above the personnel working in other constitutional functionaries, viz., the Executive and the Legislative. Directions were issued by this court for ensuring due implementation for their better service conditions. Three years' minimum service at the bar was recommended to be eligible to be a judicial officer in All India Judges' Assn. Ors. v. Union of India & ors. [(1994) 6 SCC 314] (third case). In All India Judges' Association V. Union of India & Ors. [(1994) 4 SCC 727(4th case)], direction was issued to ensure accommodation.

In Chapter V of the Constitution, by operation of Article 235, total and absolute control over the subordinate judiciary, of the District Courts and courts subordinate thereto is entrusted and is being exercised by the High court concerned. All the High Court judges collectively and individually share that responsibility. The service conditions are regulated under the statutory rules made under proviso to Article 309 of the Constitution, they relate to the recruitment and appointment of the judicial officers. Their tenure is ensured by Article 311 of the Constitution subject to the pleasure of the president or the Governor , as the case may be, Under article 310 of the constitution . Thereby, they are insulated from any pressure of whatsoever to adjudicate disputes between the citizens and the state, without any fear or favor, prejudice or predilections.

Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stinck of corruption. Corruption, thy name is depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph-nodes, cancerous cells in human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and semification in the society as whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root of corruption is nepotism and apathy in control on narrow considerations which often extends passive protection to the corrupt officers. The source and succour for acceptability of the judgment to be correct, is the upright conduct, character, absolute integrity and displayed on and off the Bench becomes centre stage of the judicial officer. Fallen standard of rectitude is the bane for lost faith of the people , tending to defeat the constitutional scheme of conferment of the powers of judicial review or decision according to law unless checks and corrective measures are applied and enforced. The conferment of exclusive power of judicial review on the judiciary may become means to personal gain or advantage. The Tymph-nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of judiciary and the need to stem it out by judicial surgery lies on judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235,124(6) of the constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection. What is most necessary is to stem out the proclivity of the corrupt conduct rather than to catch when the corrupt demands made and acceptance of illegal gratification. Corruption in judiciary cannot be committed without some members of the Bar become privy to the corrupt. The vigilant watch by the High court, and many a time by the members of the Bar, is the sustaining stream to catch the corrupt and to deal

with the situation appropriately. At the same time the High Court is the protector of the subordinate judiciary. Often some members of the bar, in particular, in Muffasil courts, attempt to take undue advantage of their long standing at the bar and attempt to abuse their standing by bringing or attempting to bring about diverse form of pressures and pin-pricks on junior judicial officers or stubborn and stern and unbendable officers. If they remain unsuccessful, to achieve their nefarious purpose, some members of the Bar indulge in mudslinging without any base, by sending repeated anonymous letters against the judicial officer questioning their performance/ capacity/integrity. The High Court should, therefore, take care of the judicial officers and protect them from such unseeming attempts or pressures so as to maintain their morale and independence or the judicial officer and support the honest and upright officers.

It would , therefore, be necessary to see whether the respondent has committed misconduct by demanding illegal gratification. The fallen standard in morality and rectitude in the general public finds its transmission into the judiciary as well. Since the respondent was a probationer , he was more prone to tread the path of corrupt practice of demanding illegal gratification to do judicial work, namely, to grant or refuse to grant and order of injunction in the suit. The tendency to corrupt activity is more serious and deleterious than actual catch of a corrupt judicial officer while demanding and accepting illegal gratification. Therefore, if the evidence adduced during the departmental enquiry proves the proclivity of corrupt conduct on the part of there judicial officer and enquiry into his conduct is fair and germane, the imposition of punishment should be appropriate to the magnitude of the misconduct. The question, therefore, is whether there respondent has committed misconduct?

It is seen that at the inception the advocate of the plaintiff had not alleged that the respondent had demanded illegal gratification for rendering judgment in favor of his client to grant ad interim injunction. Indisputably, the advocate had no axe to grind against the delinquent officer nor could he gain from any unfair advantage. In the absence of any demand of illegal gratification, a different view might be possible. Yet, it being in the realm of appreciation of evidence, this court cannot embark upon appreciation of evidence and reach its own conclusion on the sufficiency of evidence or on the correctness of the conclusion which is based on same evidence. Apart from this, during cross-examination, the omission was put to the advocate and he explained the reasons for the omission, i.e., he was not interested to have the respondent punished and was not interested to have the respondent punished and was interested only in early orders. That explanation was accepted by the Enquiry officer and he gave reasons in support thereof. the High Court also examination this contention an d accepted the explanation. Under these circumstances, being in the realm of appreciate evidence, this court cannot by itself, appreciate evidence, and reach a conclusion different from that of the Disciplinary Authority. Allegation of bias also is not warranted on the facts. When we asked the counsel whether any allegation of bias was made at the inception of the enquiry against the Enquiry officer, he candidly admitted that no such allegations were made. The allegations came to be made for the first time in the reply to the show cause notice issued by the High court. It would , therefore, be obvious that it is an afterthought attempt to get over the report of the Enquiry officer. The charges were framed by the High Court and communicated to the Enquiry officer. In the enquiry report, he merely posed questions that arose for decision, in a manner different from the wording used in the charges but it is a way of expression in considering

the issue. It is not a sign to show that the enquiry officer was biased or that he was prejudiced against the respondent. Thus we hold that the charge No.1 stands established from the evidence on record. In that view of the matter, it is not necessary go into other charges.

The appeal is accordingly allowed. the order of respondent's dismissal stands confirmed and the writ petition stands dismissed. No costs.