Supreme Court of India
State Of Rajasthan And Anr vs Surendra Mohnot And Ors on 30 June, 1947
Bench: Anil R. Dave, Dipak Misra

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5860-5861 OF 2014
(Arising out of S.L.P. (C) Nos. 36116-36117 of 2011)

State of Rajasthan and anr. … Appellants

Versus

Surendra Mohnot and others …Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

Respondent Nos. 1 to 6 were appointed on ad hoc basis as Lower Division Clerks either directly or from amongst the class IV employees for a fixed tenure for smooth functioning of administrative work. The nature of appointments are clear from the appointment orders dated 26.6.1986, 5.7.1986 and 25.10.1986. Respondent No. 7 was appointed on similar conditions in January, 1998. On 28.4.1993, the respondents appeared in the requisite test and, accordingly, were regularized on the posts of Lower Division Clerk by order dated 28.4.1993.

On 25.1.1992, the State of Rajasthan issued a circular which pertained to prescription of Selection Grades for employees in Class IV, Ministerial and subordinate services and those holding isolated posts and fixation of pay in Selection Grades. The circular was made applicable to certain categories of employees and it also prescribed the period. Paragraph 2 of the circular stipulated that (i) the first Selection Grade shall be granted from the day following the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre; (ii) the second Selection Grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employees has not got two promotions earlier as might be available in his existing cadre and the first Selection Grade granted to him was lower than the pay scale of Rs.2200-4000; and

(iii) the third Selection Grade shall be granted from the day following the day on which one completes services of twenty seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the second Selection Grade granted to him as the case may be was lower than the pay scale of Rs.2200-4000. Paragraph 3 provided that the service of 9, 18 and 27 years, as the case may be, would be counted from the date of first appointment in the existing cadre/service in accordance with the provisions contained in the Recruitment Rules. It is apt to note here that the circular postulated certain other conditions which

are as follows: -

"7. Selection Grades in terms of this order shall be granted only to these employees whose record for service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to the satisfactory for the purpose of grant of the selection.

Notwithstanding anything contained in the foregoing paragraphs, if an employee forgoes promotion on issue of order to this effect he shall not be granted second or third selection grade under this order.

Grant of selection Grade shall not effect the seniority in the cadre not the sanctioned strength of each category of posts in the cadre.

If an eligible employee becomes entitled to second or third selection grade straightway in terms of this order, his pay would be fixed directly in the second or third selection grade as the case may be with reference to pay being drawn immediately before grant of the second or third selection grade." The aforesaid circular was issued to avoid stagnation in certain categories of service with the objective that a stagnated employee should get the next pay-scale available for the promotional post without availing the promotion because of lack of vacancies after completion of 9, 18 and 27 years of service.

The respondents, along with some others, preferred certain writ petitions challenging the action of the State Government refusing to grant increments to them for the period before their regularization in service. The learned single Judge dismissed the writ petitions, and on being challenged in D.B. Civil Special Appeal No. 377 of 1996 (Chandra Shekhar v. State of Rajasthan and others), the Division Bench opined thus: -

"The appellants continued in the service from 1986 to 1993 as temporary employees in the Pay Scale given in their letters of appointment. The Pay Scale indicated the increment they would earn periodically. Thus, on the basis of contract or employment, itself, the appellants were entitled to grant of increments during the period they were arriving in temporary capacity before the regularization of their service. Therefore, even de hors the rules, they were entitled to grant of increments on the basis of contract of service.

We would therefore, allow these appeals, set aside the impugned judgment and order of the learned single Judge and direct the respondent, the State, to pay arrears of increments on the basis of the pay scales mentioned in the appointment letters of the appellants. This is to be done within six months from today. As a consequence of this order, the necessary re-fixation in the pay scales granted to the appellants after regularization will also be effected within the aforesaid period." The said order was assailed before this Court in Civil Appeal No. 3441 of 1998 and other connected appeals. This Court, vide order dated 27.9.2001, dismissed the appeals by passing the following order:-

"The question raised in these appeals is as to whether the respondents would not entitled to grant of increments during the period of their temporary service. Answer to this question would certainly depend on the terms of service upon which they were employed.

The High Court has examined this aspect of the matter and has found that they had been appointed to a particular post which carries a time scale and pay. It that is so, if the benefits arising therein in granting the increments had been given, we do not think there is any infirmity in the order made by the High Court. These appeals are therefore, dismissed. " After the civil appeals were dismissed, the State Government issued a circular on 17.4.2002 granting annual grade increments. On 29.6.2009, the Government of Rajasthan issued a clarificatory circular prescribing the method for grant of Selection Grades as well as the manner of computation of 9, 18 and 27 years. It referred to the earlier circular dated 25.1.1992 and the Finance Department Order No. F.20(1)FD(Gr.2)/92 dated 03.04.1993 whereby it was clarified that for the purpose of grant of Selection Grades service was to be counted from the date the employee had regularly been appointed in the existing cadre/service as per the provisions contained in the relevant recruitment rules. Referring to the earlier Government order it was stated that it had been clarified therein that the period of service rendered before regular appointment in accordance with the recruitment rules to the post would not be counted for grant of Selection Grade. In 2009 circular the claim of the employees for grant of Selection Grade from the date of ad hoc appointment and the action of the State Government were referred to. It was also stated therein how the State Government had come to this Court in State of Rajasthan and others v. Jagdish Narain Chaturvedi[1]. Eventually, certain directions were issued to the competent authorities which are seemly to be reproduced here: -

"It is, therefore, enjoined upon all the authorities competent to sanction selection grade that in case where selection grades have been granted to the State Employees by counting the service rendered before regular appointment in the cadre/service in accordance with the provisions contained in the relevant recruitment rules i.e. ad hoc service/work- charged service/daily wages etc. may be reviewed. Such employees may be granted selection grades by counting the service rendered by them only after regular appointment in the cadre/service in accordance with the provisions contained in the relevant recruitment rules. A copy of the judgment dated 08.05.2009 of the Hon'ble Supreme Court is enclosed.

All such cases may be reviewed and decided by 31st of July, 2009 positively and compliance report should be conveyed to the Administrative Department latest by 10th of August, 2009. The Administrative Department shall ensure that compliance of the aforesaid orders is made in time by all the appointing authorities under them. In case of non compliance of these orders, Administrative Department may take action against the defaulting authorities.

The excess payment drawn by the concerned employees due to grant of selection grades to them by counting the service rendered before regular appointment in the cadre/service in accordance with the provisions contained in the relevant recruitment rules shall, however, to be recovered for the period upto 30.06.2009 only. From 01.07.2009, the payment of pay and allowance shall be made on the basis of revised rates of pay as per this order." As the factual score would demonstrate the respondents submitted a representation for grant of selection grade on completion of 18 years on

the foundation that they had been granted first selection pay scale from the date of their initial appointment vide order dated 20.7.2000 but had not been extended the benefit of the second selection grade in 2009. The said representation came to be rejected vide order dated 10.3.2010 for which the respondents preferred S.B. Civil Writ Petition No. 4185 of 2010 before the High Court for issue of a writ of mandamus for grant of selection grade from the date of their initial appointment or from the date when the juniors to some of the petitioners were granted. A counter affidavit was filed by the State Government stating, inter alia, that the controversy was no more res integra in view of the legal position enunciated in Jagdish Narain Chaturvedi (supra) and other connected matters. Denying the averments that the case would not be covered in the litigation pertaining to grant of increments in the case of Chandra Shekhar (supra) it was asseverated that the said controversy squarely pertained to whether the employees were entitled for increments during the period of temporary service which is different than grant of selection grade, which is governed by the prescriptions enumerated in the circulars. It was categorically asserted that the temporary service was not to be included while counting the years of service for the purpose of grant of selection grade.

Be it noted, after the decision of this Court in Jagdish Narain Chaturvedi (supra) the State Government had issued a circular on 20.8.2010 which prescribed selection grade for employees in Class-IV, Ministerial and Subordinate Services and those holding isolated pots and fixation of pay in Selection Grades issued in accordance with the decision in Jagdish Narain Chaturvedi's case. Clarifying the postulates in the earlier circulars it was laid down as follows: -

"As per this judgment dated 8.5.2009 of the Hon'ble Supreme Court the period of ad-hoc service is not countable for the purpose of grant of selection grades. In compliance State Government issued an order No. F.16(2) FD/ Rules/98 dated 29.6.2009 prescribing the method of fixation of pay in Selection Grade w.e.f. 1.7.2009.

Representations have been received that order dated 29.6.2009 has resulted in substantial drop in emoluments of lowly paid employees causing financial hardship.

Accordingly, the State Government has reconsidered the matter and in partial modification of order of even number dated 29.6.2009, the Governor is pleased to order that in cases where Government servants have been granted selection grade prior to order dated 29.6.2009 by counting period of ad-hoc service, such case may not be reviewed. However, where additional selection grades become admissible to such employees after 29.6.2009 under the rules, this shall be granted by excluding the period of ad-hoc service as per the orders of Hon'ble Supreme Court. For example, if any employees got the advantage of first selection grade prior to 29.6.2009, on completion of service of 9 years (after inclusion of say, three years, ad- hoc service), his next selection grade on completion of service of 18 years, on or after 29.6.2009 shall be granted only after three years of ad- hoc service is added to 18 years, i.e., 18+3=21 years.

All pending cases would be decided as per these orders.

The cases of grant of selection grade decided subsequent to order of even number dated 29.6.2009, may be reviewed and revised in accordance with the provisions of this order. Similarly pension cases

of Government servants finalized after re-fixation of pay under order dated 29.6.2009 may also be reviewed and revised. However, cases of persons who retired prior to 29.6.2009 would not be re-opened." When the position stood thus, the writ petition prepared by the respondents came for hearing before the writ court on 11.11.2010. The learned single Judge passed the following order: -

"Counsel for the parties are in agreement that the controversy involved in this petition for writ is not more res integra in view of Division Bench judgment of this Court passed in D.B. Civil Special Appeal (Writ) No. 377/1996 (Chandra Shekhar vs. State of Rajasthan & ors.) decided on 06.01.1998 as affirmed by Hon'ble Supreme Court on rejection of Civil Appeal No.3443/1998 (State of Rajasthan & Anr. vs. Chandra Shekhar & Anr.) on 27.9.2001.

I have also examined the record of case and also gone through the judgment of this Court in the case of Chandra Shekhar (Supra).

The controversy involved in this petition for writ as a matter of fact stands covered by the judgment aforesaid. Accordingly, this petition for writ is also allowed in the terms of Division Bench judgment of this Court in D.B. Civil Appeal (Writ) No. 377/1996 (Chandra Shekhar vs. State of Rajasthan & ors.)." An application for review was filed averring that the controversy was not covered by the decision in Chandra Shekhar (supra) but by Jagdish Narain Chaturvedi (supra). However, the said petition for review was rejected by the learned single Judge vide order dated 7.2.2011.

Being dissatisfied, the State Government preferred D.B. Civil Special Appeal (Writ) No. 835 of 2011 and the Division Bench on 6.7.2011, after reproducing the order of the learned single Judge, opined that as the same was a consent order, no appeal could be filed. Being of this view the Division Bench dismissed the appeal. An application for review did not meet with success.

Questioning the pregnability of the decision of the writ court it is submitted by Dr. Singhvi that whe it was brought to the notice of learned Single Judge by way of review that the decision that had been referred to in the order did not pertain to the lis in question but was covered by the binding precedent of this Court in Jagdish Narain Chaturvedi (supra) he should have allowed the review application and proceeded to pass a decision to record a verdict in accordance with law. It is also urged by him that the Division Bench while dealing with the intra-court appeal did not bear in mind that the State had preferred the review application which had already been dismissed on the ground that it was not open to the State to say that the controversy was not covered by the decision in Chandra Shekhar's case, and it could only be raised in appeal. Learned counsel for the State would submit that the Division Bench while dealing with appeal only recorded that the order had been passed with the agreement of the parties and, therefore, it did not call for any interference and it was open to the appellants to approach the writ court first and then invoke the jurisdiction in intra-court appeal, which graphically exposits the erroneous approach. It is further urged by him that when on the face of a binding precedent that squarely pertains to the issue between the State and similarly situated employees the writ court should not have cryptically rejected the same that the order was passed on consent.

Ms. Aishwarya Bhati, learned counsel appearing for the respondents submitted that the State having conceded the position cannot turn around and argue something different to deprive the respondents the benefits of the decision of the High Court as it does not behove on the part of a model employer. It is canvassed by her that when the first selection grade was granted after completion of 9 years from the date of initial appointment there is no justification not to accept the said date and fix the date of commencement from the date of regularization i.e., 28.04.1993 as that would cause immense hardship and some of the respondents, though deserving, would be deprived of the benefit of selection grade on completion of 27 years which would affect their pensionary benefits.

At the very outset, we may clearly state that the decision in the case of Chandra Shekhar (supra) pertains to grant of increments for the period prior to regularization. It has nothing to do with the grant of selection grade. The circulars which we have reproduced hereinbefore relate to grant of selection grade. In this backdrop, it is to be seen what has been laid down by this Court in the case of Jagdish Narain Chaturvedi (supra). In the said case, a two-Judge Bench was dealing with the issue whether ad hoc appointments or appointments on daily wages or work-charge basis could be treated as appointments made to the cadre/service in accordance with the provisions contained in the recruitment rules as contemplated by the Government orders dated 25.1.1992 and 17.2.1998. It was contended on behalf of the State that stagnation benefits were given from the date of regularization and for the said purpose reliance was placed on the authority in State of Haryana v. Haryana Veterinary & AHTS Association and another[2]. Reference was made to the language used in the circulars which uses the words “appointments relatable to the existing cadre/service”. The Court referred to the provisions of Rajasthan Absorption of Surplus Personnel Rules, 1969 and various paragraphs from the Haryana case and the decision in Ram Ganesh Tripathi v. State of U.P.[3] and came to hold as follows: -

“18. In order to become “a member of service” a candidate must satisfy four conditions, namely,

(i) the appointment must be in a substantive capacity;

(ii) to a post in the service i.e. in a substantive vacancy;

(iii) made according to rules;

(iv) within the quota prescribed for the source.

Ad hoc appointment is always to a post but not to the cadre/service and is also not made in accordance with the provisions contained in the recruitment rules for regular appointment. Although the adjective “regular” was not used [pic]before the words “appointment in the existing cadre/service” in Para 3 of the G.O. dated 25-1-1992 which provided for selection pay scale the appointment mentioned there is obviously a need for regular appointment made in accordance with the Recruitment Rules. What was implicit in the said paragraph of the G.O. when it refers to appointment to a cadre/service has been made explicit by the clarification dated 3-4-1993 given in respect of Point 2. The same has been incorporated in Para 3 of the G.O. dated 17-2-1998.” Proceeding further, the Court ultimately held thus: -

"Apart from Haryana Veterinary case the position in law as stated in State of Punjab v. Ishar Singh[4] and State of Punjab v. Gurdeep Kumar Uppal[5] clearly lays down that while reckoning the required length of service the period of ad hoc service has to be excluded." From the aforesaid enunciation of law it is quite vivid that the period for grant of selection grade has to be reckoned from the date of regularization in service and not prior to that. Thus, the aforesaid judgment of this Court pertains to the same circular and is a binding precedent from all spectrums.

It is well settled in law that there can be no estoppel against law. Consent given in a court that a controversy is covered by a judgment which has no applicability whatsoever and pertains to a different field, cannot estopp the party from raising the point that the same was erroneously cited.

In Union of India vs. Hira Lal and Others[6], it has been held that the concession made by the government advocate on the question of law could not be said to be binding upon the Government.

In B.S. Bajwa and Another vs. State of Punjab and Others[7], a Division Bench of the High Court of Punjab and Haryana had granted the relief on the basis of concession given by the learned Additional Advocate General without considering the effect of the same or of taking into account the inconsistency with its earlier finding. This Court held that the concession on the point, being one of law, could not bind the State and, therefore, it was open to the State to withdraw and it had been so done by filing a review petition in the High Court itself.

Having stated so, we shall presently proceed to address whether the writ court was justified in rejecting the application for review. The order of rejection only notices that the order was passed on agreement and, therefore, it could not be the subject-matter of review. The learned single Judge, as it appears, did not think it appropriate to appreciate the stand of the State and passed an absolutely laconic order.

While dealing with the inherent powers of the High Court to review its order under Article 226 of the Constitution in Shivdeo Singh and others v. State of Punjab and others[8] the Constitution Bench observed that nothing in Article 226 of the Constitution precludes a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave palpable errors committed by it.

In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and others[9], the two- Judge Bench speaking through Chinappa Reddy, J. observed thus:-

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised o the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be

exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate Court to correct all manner of errors committed by the subordinate Court." In M/s Thungabhadra Industries Ltd. v The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes[10], while dealing with the concept of review the court opined thus:-

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out." In M/s Northern India Caterers (India) Ltd., v. Lt. Governor of Delhi[11], R.S. Pathak, J (as His Lordship then was) while speaking about jurisdiction of review observed that:-

".....that it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility'." To appreciate what constitutes an error apparent on the face of the record the observations of the Court in Satyanarayan Laxminarayan Hegde v. mallikarjun Bhavanappa Tirumale[12] are useful:-

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ." In the case at hand, as the factual score has uncurtained, the application for review did not require a long drawn process of reasoning. It did not require any advertence on merits which is in the province of the appellate court. Frankly speaking, it was a manifest and palpable error. A wrong authority which had nothing to do with the lis was cited and that was conceded to. An already existing binding precedent was ignored. At a mere glance it would have been clear to the writ court that the decision was rendered on the basis of a wrong authority. The error was self-evident. When such self-evident errors come to the notice of the court and they are not rectified in exercise of review jurisdiction or jurisdiction of recall which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs. In appeal the Division Bench, we assume, did not think even necessary to look at the judgments and did not apprise itself the fact that an application for review had already been preferred before the learned Single Judge and faced rejection. As it seems, it has transiently and laconically addressed itself to the principle enshrined in Section 96 (3) of the Code of Civil Procedure, as a consequence of which the decision rendered by it has carried the weight of legal vulnerability.

Another aspect is required to be taken note of especially regard being had to the facts of the case. The learned single Judge allowed the writ petition accepting the submission that the controversy was covered by the decision in Chandra Shekhar (supra). The order of the learned single Judge has been recorded on the basis of concession given by learned counsel for the State. The counter affidavit filed by the State was absolutely contrary to the said statement. It is further perceivable that the learned single Judge has also recorded that he had perused the records. It does not appear to be so, for the counter affidavit and the documents annexed thereto clearly reveal that the stand of the State was that the controversy in Chandra Shekhar's case pertained to the grant of increment for the period when an employee had not been regularized in the cadre and did not relate to the grant of selection grade which only gets ripened for the purpose of computation of period from the date of regularization. In such a case, we are disposed to think, it was obligatory on the part of the court at least to see whether the controversy was covered by the decision referred to. We are absolutely certain, had the learned single Judge perused the judgment by the Division Bench rendered in Chandra Shekhar (supra) and the order passed by this Court in Civil Appeal No. 3443 of 1998, he would have addressed the lis in a different manner. We have already stated the legal position with regard to legal impact as regards the concession pertaining to the position in law. That apart, we think that an act of the Court should not prejudice anyone and the maxim actus curiae neminem gravabit gets squarely applicable. It is the duty of the Court to see that the process of the court is not abused and if the court's process has been abused by making a statement and the same court is made aware of it, especially the writ court, it can always recall its own order, for the concession which forms the base is erroneous. Similarly, the Division Bench in the intra-court appeal instead of adverting to the concept of consent decree as stipulated under Section 96(3) of the Code of Civil Procedure, should have been guided by the established principles to test whether the concession in law was correct or not. In this context, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala and others[13], wherein this Court, while delineating on the power of jurisdiction under Article 226, has expressed thus:-

"The Court while exercising its jurisdiction under Article 226 is duty- bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the

consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of [pic]Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law." The above quoted passage speaks eloquently and we respectfully reiterate. And we add, non-acceptance of a mistake is not a heroic deed. On the contrary, it reflects flawed devotion to obstinancy. The 'pink of perfection' really blossoms in acceptance.

Our preceding analysis would clearly show that the dictum in Jagdish Narain Chaturvedi (supra) covers the controversy. The respondents prior to regularization were not members of service or a part of the cadre and hence, the benefit of the circular pertaining to selection grade was not applicable to them. Therefore, the irresistible conclusion is that they are only entitled to the benefit of selection grade from the date of regularization. The period of nine years, eighteen years and twenty seven years has to be computed from that date. True it is, they may have been given the first benefit on an erroneous understanding of the circular and also prior to the decision in Jagdish Narain Chaturvedi's case. But that would not entitle them to assert their claim on that basis, for that would be contrary to the law of the land as stated in Jagdish Narain Chaturvedi's case. Be it noted, the State, as the latter circular would indicate, has decided not to take any steps for recovery of the benefit. Therefore, we conclude and hold that the writ petition preferred by the respondents before the High Court deserves dismissal and, accordingly, the order passed by the writ court and the decision in intra-court appeal are set aside and the writ petition stands dismissed.

Before parting with the case, we are constrained to state oft-stated principles relating to the sacred role of the members of the Bar. A lawyer is a responsible officer of the court. It is his duty as the officer of the court to assist the court in a properly prepared manner. That is the sacrosanct role assigned to an advocate. In O.P. Sharma and others v. High Court of Punjab and Haryana[14], dealing with the ethical standard of an advocate, though in a different context, a two-Judge Bench has observed thus:-

"An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system." In Re: 1. Sanjiv Datta, Deputy Secretary, Ministry of information and Broadcasting, New Delhi, 2. Kailash Vasdev, Advocate, 3. Kitty Kumarmangalam (Smt.), Advocate[15] the court observed that it is in the hands of the members of the profession to improve the quality of the service they render both to the litigants and public and to the courts and to brighten their image in the society. The perceptible casual approach to the practice of profession was not appreciated by the Court.

As far as the counsel for the State is concerned, it can be decidedly stated that he has a higher responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say "things fall apart". He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones. We hope, hopefully, there would be apposite response towards duty; the hollowed and honoured duty.

Consequently, the appeals are allowed without any order as to costs.

.....J.

[Anil R. Dave] .....J.

[Dipak Misra] New Delhi;

June 30, 2014.

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[1]

(2009) 12 SCC 49
[2] (2000) 8 SCC 4
[3] (1997) 1 SCC 621
[4] (2002) 10 SCC 674
[5] (2003) 11 SCC 732
[6] (1996) 10 SCC 574
[7] (1998) 2 SCC 523
[8] AIR 1963 SC 1909
[9] (1979) 4 SCC 389
[10] AIR 1964 SC 1372
[11] (1980) 2 SCC 167

[12] AIR 1960 SC 137
[13] (2009) 1 SCC 168

[14] (2011) 6 SCC 86

[15] (1995) 3 SCC 619
