



**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition (S) No. 2795 of 2016**

**Reserved on 14.08.2020**

**Delivered on 17.08.2020**

Prabhakar Gwal, S/o Shri Mukti Gwal, Aged About 45 Years, R/o Village Nanakpali, Post Office Chatti Girhola, Tehsil Saraipaali, District Mahasamund, Chhattisgarh.

**---Petitioner**

**Versus**

1. State of Chhattisgarh Through Secretary, Department of Law and Legislative Affairs, Mahanadi Khand, Naya Raipur, Chhattisgarh.
2. High Court of Chhattisgarh Through Registrar, High Court, Bodri, N.H. 200, District Bilaspur Chhattisgarh.

**---Respondents**

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For Petitioner	:	Ms. Usha Menon, Advocate.
For State	:	Shri Somkant Verma, Panel Lawyer.
For Respondent No.2	:	Shri Prafull N. Bharat, Advocate.

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**Hon'ble Shri Justice P. Sam Koshy**

**C.A.V. ORDER**

1. The allegation in the present writ petition is primarily the order dated 01.04.2016 by which the petitioner has been dismissed from service.
2. The brief facts relevant for the adjudication of the present writ petition is that the petitioner was a member of the Lower Judicial Service in the State of Chhattisgarh. He was appointed as a Civil Judge Class-2 vide order dated 27.12.2005. The petitioner served the State of Chhattisgarh as Lower Judicial Officer from 2005 to



April, 2016 and in between the petitioner had a checkered history of being issued with various show cause notices in respect of his conduct, particularly the language that the petitioner used while making correspondences with the higher authorities and his other acts of misconduct. 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 petitioner 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 petitioner 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 petitioner from service in public interest. Accepting the said recommendation, the State of Chhattisgarh vide order dated 01.04.2016 dismissed the petitioner from service in public interest with immediate effect and the said order dated 01.04.2016 was communicated to the petitioner through the concerned District and Sessions Judge on 04.04.2016. It is this order which is under challenge in the present writ petition.

3. The primary contention of the petitioner is that the impugned order of dismissal has been passed by an authority inferior to the appointing



authority, hence the impugned order **per se** is 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.

4. 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 petitioner from service without inquiry.
5. As regard to the first ground, it was the contention of the petitioner that he was vide Annexure P/2 dated 27.12.2005 appointed by an order of the Principal Secretary, Law and Legislative Affairs Department in the State of Chhattisgarh, 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 the appointing officer, the order of dismissal in the case of the petitioner is liable to be set-aside/quashed with consequential reliefs.



6. So far as the second ground of malafide and victimization is concerned, the counsel for the petitioner submits 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 imposed a punishment of dismissal without inquiry invoking Article 311(2-b) of the Constitution of India.



7. The third ground, which the petitioner banked 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.

8. For all these reasons, the counsel for the petitioner relying upon the judgment passed in the case of "**Union of India & Another v. Tulsi Ram Patel [1985(3) SCC 398]**" and "**Registrar General, High Court of Gujarat & Another v. Jayshree Chamanlal Buddhbhatti [2013 (16) SCC 59]**" prayed for setting aside and quashment of the impugned order of dismissal and be granted all consequential benefits including that of promotions at par with his immediate juniors.



9. Opposing the petition, the counsel for the respondents submits that right from the time, the petitioner 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 petitioner 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 petitioner has made direct representation to the Chief Justice of India without any sanction, permission or approval from the superior authorities. Finally, the petitioner got a criminal complaint case lodged through his wife in the Court of A.C.J.M.- Raipur for the offences punishable under Section 120 B, 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 the dismissal of the petitioner from service, invoking the provisions of Article 311 (2)(b) of the Constitution of India. Thus, the



counsel for the respondents submits that from the conduct of the petitioner itself, it is evidently clear that he was not fit to be a judicial officer.

10. It was further contended that given the nature of reply that were being received on the show cause notices in-respect of his conduct that were issued on various occasions and also considering the offensive and contemptuous language always used by the petitioner in reply to each of the show-cause notices. The High Court was justified in recommending the case of the petitioner for dismissal, invoking Article 311 (2)(b). **That the State Government having accepted the same, the same cannot be said to be in any manner illegal, arbitrary or bad-in-law.** To further substantiate the contention, the counsel for the High Court referred to the proviso (b) of Article 311 of the Constitution of India.

11. It would be relevant at this juncture to reproduce the Article 311(2) 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.”

12. Now what is reflected from the aforesaid proviso (b) is that, in the event if the employer 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 the 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



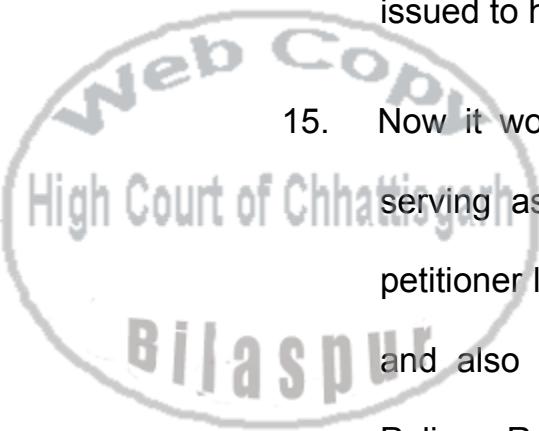


writing, (c) It is not reasonably practical to hold an enquiry.

13. In the aforesaid context, now it has to be seen as to whether the termination of the services of the petitioner was one which would attract clause-b of the second proviso to Article 311(2) of the Constitution of India.

14. Stressing on the ground that it was not reasonably practicable to hold an enquiry in case of the petitioner, the counsel for the respondents had referred to various reply that the petitioner had submitted in response to the various show cause notices that were issued to him.

15. Now it would be first relevant to take note of the fact that while serving as an Additional Chief Judicial Magistrate at Raipur, the petitioner 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. The said lodging of report by the petitioner, a Judicial Officer, was without any sort of intimation/permission to/of the High Court. A show cause notice in this regard for lodging complaint without intimation and permission of the High Court was issued to him on 15.09.2015, to which, the petitioner gave reply on 05.10.2015. In the reply some of the contentions that the petitioner has made would be relevant to be quoted at this juncture which are as under:





“.....माननीय उच्च न्यायालय बिलासपुर, मैं पीड़ित 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 उपोष्टाले में फसे नेता माननीय उच्च न्यायालय के कुछ न्यायधीशों को किस चिज से एवं कितने में खरीदे हैं। .....

.....हे ईश्वर यह कितनी बड़ी विडंबना है कि अपराध करने वाले चैन से रह रहे हैं और हम न्यायधीशगण आपस में लड़ रहे हैं।”

16. For the said irresponsible and contemptuous language that the petitioner 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 petitioner 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.

17. For this act on the part of the petitioner 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:

“.....अतः आप भेरी गलती मानते हैं तो भेरी सेवा समाप्त कर दी जाय, ताकि मैं माननीय सुप्रीम कोर्ट में न्याय हेतु एक बार आवेदन प्रस्तुत कर सकूँ या अपने घर में जाकर अच्छे से अपने परिवार को पालने का प्रयास कर सकूँ।”

18. Inspite of notices being issued to the petitioner, the petitioner again made a complaint against one of the senior officer in the judicial service for which again the petitioner 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 उच्च न्यायालय बिलासपुर व्यक्तिगत रूचि लेकर राजनीतिक षड्यंत्र के तहत मेरे पीछे नहा धोकर, मेरे सद्भावना पूर्ण सामान्य विधिक समझ के आधार पर की गयी शिकायत पर उल्टा मेरे विरुद्ध कारण बताओ नोटिस जारी किया जा रहा है। .....

19. Then, there is a complaint issued by the Superintendent of Police, Sukma dated 08.02.2016 referring to the indecent, rough and outrageous behavior towards the police personnels who would produce accused/naxalite for remand and for appearance in the court, supported with various complaints from various police personnels.

20. Thereafter, it is further revealed that the petitioner again while serving as a Civil Judge Class-I and also discharging the duties of Chief Judicial Magistrate, Sukma, filed a complaint before the Chief Justice of India making all sorts of false, frivolous and obnoxious complaints without any basis whatsoever.

21. For directly making a complaint before the Chief Justice of India, the petitioner was again issued with a show cause notice on 04.03.2016. Immediately thereafter, the wife of the petitioner Smt. Pratibha Gwal wrote a letter to the Chief Justice of India on 23.09.2015 wherein again she has made certain derogatory and obnoxious complaints. For ready reference, the relevant portion of the said complaint is reproduced hereinunder :

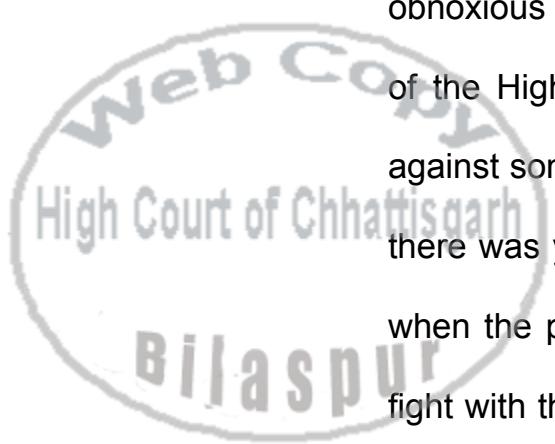


“.....उपरोक्त विषयांतर्गत निवेदन है कि उक्त भवनों हेतु करोड़ों रुपये का आबंटन किया गया है। जितनी राशि की आवश्यकता है, उससे कई गुना राशि स्वीकृत किया गया है। मुझे सूचना मिली है कि अतिशयाकृती पूर्वक खर्च बताकर शेष राशि को ठेकेदार, संबंधित पी.डब्ल्यू. इंजीनियर, चीफ जस्टिस नवीन सिन्हा एवं जस्टिस प्रीतिंकर दिवाकर, महादेव कातुलकर, जिला एवं सत्र न्यायाधीश बिलासपुर गबन को अंजाम दे रहे हैं। .....रायपुर के निर्माणाधीन न्यायालय भवन को श्री प्रीतिंकर दिवाकर बार-बार अवलोकन करने आ रहे हैं, क्या श्री दिवाकर साहब भवन निर्माण विशेषज्ञ है।

इनके घरों में या परिवार के मध्य छापे मारे जाने से अरबों रुपये अघोषित संपत्ति मिल सकता है।.....”

22. For this letter written by the wife of the petitioner, the petitioner was again issued with a show cause notice on 14.03.2016. 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 petitioner was travelling with his family, he entered into a fight with the employees working at a Toll Plaza, to which, again the petitioner lodged a complaint at Police Station, Arang.

23. However, when the police authorities did not register the case, the wife of the petitioner thereafter lodged a complaint case under Section 200 CrPC against the then Chief Justice of High Court of Chhattisgarh Shri Navin Sinha and also a sitting Judge of the High Court Hon'ble Justice Shri P. Diwaker, 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.

24. In the said criminal complaint case the Additional Chief Judicial Magistrate, Raipur, before whom the case was presented, simply adjourned the case after two weeks for recording statement of the complainant and intimated the same to the higher authorities in the department. It is this filing of criminal complaint case by the wife of the petitioner in the court of Additional Chief Judicial Magistrate, Raipur, what forced the respondent-High Court to take the strong action against such officer who was bent upon maligning the image of the judiciary.

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 of justice. 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 SC 307 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/0975/2004 MANU/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 ordinary person. 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 Navin Sinha) and also a senior most puisne Judge of the High Court. (Justice Pritinkar Diwaker). 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 filed by 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 or 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

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 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



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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.

Sd/-  
(P. Sam Koshy)  
Judge

