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HIGH COURT OF M.P.

v.

MAHESH PRAKASH AND ORS.

SEPTEMBER 6, 1994

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[S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

C

Service law—Respondent confirmed as Civil Judge later than batchmates—First representation rejected by Full Court of the High Court on consideration of record—Second representation accepted by two judges of Grievance Committee on a comparative assessment—Third Judge disagreeing and placing matter before Full Court—Held, the Full Court was right in rejecting the recommendation of the two judges and the second representation—Held, further, each civil judge to be judged individually on his own record.

D

Constitution of India, Article 235—Decisions of Full Court of the High Court in the matter of confirmation of subordinate judges—Held, unless there has been misrepresentation of a legal position, it is undesirable for one Full Court to revise decision taken by earlier Full Court.

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Constitution of India, Article 235—Representation by subordinate judge to Full Court of the High Court—Comments of the Chief Justice recorded on file—Held, would not prevent independent consideration by Full Court—Held, further, every High Court Judge of same stature, the Chief Justice being first among equals.

F

Service Law—High Court by judicial order directing placement of civil judge in subsequent cadres—Held, the court could only order consideration of the case for promotion—Constitution of India, Article 226—Judicial Review.

G

Constitution of India, Article 136—High Court on the judicial side setting aside Full Court decision on administrative side—Held, High Court could appeal to the Supreme Court to support its administrative order.

Costs—Held, ordinarily not made in a matter between a High Court and a judge subordinate to it—Practice and procedure.

H

The District Judge in whose district the first Respondent was ap-

pointed Civil Judge Class II made certain remarks in the confidential report. The Chief Justice of the High Court made the following endorsement thereon : "Unsatisfactory. To be watched for 6 months". The first respondent who was not found fit for confirmation at the Full Court meeting held in February was later confirmed, at the Full Court meeting held in July, 1974.

The Grievance Committee of the High Court to which the first representation made by the first respondent for earlier confirmation along with his batchmates was referred, examined his record in March, 1976 and recommended rejection of the representation. This was accepted by the Full Court and its decision communicated to the first respondent in May, 1976.

Suppressing this fact, the first respondent made a second representation which was again referred to another Grievance Committee. Two of the High Court judges on this committee recommended earlier confirmation of the first respondent on a comparative assessment of the records of all others in his batch. The third judge while disagreeing doubted whether comparative assessment of records could be undertaken in the case of the first respondent alone and accordingly left the decision to the Full Court. In its meeting in 1985 the Full Court rejected the recommendation of the two judges consequently the representation of the first respondent.

The Writ Petition filed by the first respondent was allowed by a Division Bench of the High Court on the Judicial side setting aside the order of the High Court on the administrative side. Although the petition itself did not impute *malafides* to either the Chief Justice or the Full Court, the Division Bench found the decision not to confirm the first respondent earlier smacked of "extraneous considerations". It found that there was no material for the Chief Justice to have made the remarks and that the resolutions of the Full Court in the matter could not be said "to be the outcome of a dispassionate approach". Ordering the first respondent's confirmation from February 1973, the Division Bench directed his further promotion to the next three higher cadres.

Opposing the High Court's appeal in the Supreme Court, the first respondent contended, *inter alia*, that the High Court could not appeal against its own order and in any event could not take the plea that the writ

A petition in the High Court ought to have been dismissed for laches.

Allowing the appeal, this Court

B HELD : 1.1 The Full Court cannot be faulted for not having confirmed the first respondent on February 1, 1973 based upon his own record. Each civil judge up for confirmation in Class II was liable to be judged individually on his own record. [141-H-G]

C 1.2 There was material on record to suggest that the first respondent was not found suitable for confirmation. There was justification for the comment of the learned Chief Justice. *B.L. Goal v. State of Uttar Pradesh*, [1979] 2 SCC 378, distinguished. [141-A, 140-G]

D 2.1 Every High Court is of the same stature, the learned Chief Justice being the first among equals. The view of the learned Chief Justice would be heard with due respect, but it would not hold away. It certainly cannot be said that the expression of his view by the learned Chief Justice would prevent independent consideration by the High Court. [142-B-C]

E 2.2 Unless there is clear indication that there has been a misrepresentation of a legal position, it is undesirable and unsafe for one Full Court to revise the decision taken by an earlier Full Court, particularly in cases of promotion, confirmation, supersession and the like. [143-B]

F 3.1 The Division Bench could not have directed the placement of the first respondent in the subsequent cadres. Where the promotional post is a selection post, the most that a court can do is to order the constitution of a committee to consider the case of the candidate for promotion as on the date on which his immediate junior had been promoted thereto.

[143-C, D]

3.2 The remarks made by the Division Bench were harsh, wholly uncalled for and ought not to have been made. The learned judges were unmindful of judicial restraint and decorum. [143-F]

G 4.1 It was permissible for the High Court to appeal to the Supreme Court against the order passed on its judicial side. *Syed Yakoob v. K.S. Radhakrishnan and Ors.*, [1964] 5 SCR 654, distinguished. [138-B; 137-E]

H 4.2 The first respondent's writ petition ought to have been dismissed on the ground of delay and laches. It was open to the High Court to agitate

this ground. *M/s Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur & Ors.*, [1992] 2 SCC 598, referred to. [140-E; 139-D] A

5. Ordinarily costs ought not to be made between a High Court and a Judge subordinate to it. [143-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3938 of 1994. B

From the Judgment and Order dated 11.3.93 of the Madhya Pradesh High Court in M.P. No. 1733 of 1985.

P.P. Rao, S.K. Agnihotri and Ashok Kumar Singh for the Appellant. C

K.K. Venugopal, K. Vishwakanatha Rao and Vivek Gambhir for the Respondents.

The Judgment of the Court was delivered by D

BHARUCHA, J. This is an appeal by special leave which was filed by the High Court of Madhya Pradesh against the Judgment and order of a Division Bench of the Madhya Pradesh High Court on a writ petition filed by the first respondent. By reason of the order dated 17th August, 1994 the Secretary to the Government of Madhya Pradesh, Law and Legislative Affairs Department, Ministry of Law, was impleaded, upon his own application, as the second appellant. E

The order under challenge states that the first respondent shall be deemed to have been confirmed in the post of Civil Judge, Class-II with affect from 5th February, 1973 and, in that behalf, quashes the resolutions or decisions of the Full Court of 5th February 1973, 27th July, 1974, 26th April, 1976 and 5th May, 1985. F

The first respondent was appointed Civil Judge Class-II having been selected by the M.P. Public Service Commission along with 43 others (who, along with the appellants, were respondents to the writ petition). He was the first in the Commission's merit list. On 23rd November, 1971, the High Court informed the Ist respondent that he needed to be prompt in disposing of applications for temporary injunctions and in the matter of delivery of judgments. He also had to be firm in the matter of adjournments of Civil suits at the stage of evidence. On 30th September, 1976, the District Judge H

A in whose district the first respondent was posted made the following remarks in the first respondent's confidential report for the period ending 30th September, 1972 :

B "1. He is Civil Judge Class II and Magistrate First Class without summary powers.

2. I have not heard anything against his honesty and integrity although inquiries in this benefit made by me at the time of annual inspection of his Court on 17.11.1972 from some senior members of the Bar at Mahidpur.

C 3. When I visited Mahidpur for annual inspection of his Court on 17.11.1972, it was reported to me by some of the members of the Bar at the station that he did not begin his judicial work punctually at 11 A.M. and used to remain in his chamber for more than sufficient time during the Court-hours. Suitable instructions in this D behalf were immediately given by me to him orally. A surprises visit was paid by me to his Court on 17.5.1972 at 11.33 A.M. when he was found examining an accused in his chamber.

E 4. He has adequate knowledge of the procedural and substantive law, both civil and criminal, and he endeavours to follow the same correctly. His judgments, both civil and criminal, are in proper form the fairly well written. At the stage of evidence in civil suits, he was found to have filed to record the hours between which evidence was recorded and to have deviated from Rule 133 of the Civil Courts Rules. The provision regarding opening of cases at F that stage was also found to have been ignored by him. His order-sheets were found to have been written mostly by the Court-clerks. His judicial diary was not judiciously arranged. More then sufficient work was found to have been fixed. Periodical inspections were not thoroughly done by him.

G 5. His disposal during the period under report was below the prescribed standard in every month, except the disposal for the months of May and June.

H 6. His relations with the members of the Bar remained cordial and his behaviour towards the litigants polite.

7. It has yet to be seen whether he follows the advise and directions given by me to him at the time of annual inspection of his Court." A

At the foot thereof, the then learned Chief Justice endorsed the following, "Unsatisfactory. To be watched for 6 months."

The case of the first respondents and his batchmates was considered for the purpose of confirmation as Civil Judges, Class-II at the meaning of the Full Bench held between 5th and 9th February, 1972. The Full Court did not find the first respondent and three others fit for confirmation. The Full Court directed that the first respondent and these others be informed that if they did not improve their services were likely to be terminated. B C

On 27th July, 1974, the Full Court found the first respondent fit for confirmation in Class-II with effect from the date and he was confirmed accordingly.

On 21st November, 1975, the first respondent wrote to the Registrar of the High Court making a grievance about the fact that he had not been confirmed along with his batchmates. The confirmation of his batchmates from a date earlier to the date upon which he was confirmed, he stated, had the effect of causing a change in their *inter se* seniority. The 1st respondent's representation was considered by the Grievances Committee of the High Court. On 30th March, 1976, the Grievances Committee, consisting of three learned Judges, resolved : D E

"We have seen the confidential reports of Shri Mahesh Prakash. We are satisfied that there was ample justification for not confirming him from an earlier date. F

We, therefore, recommend that the representation of Shri Mahesh Prakash be rejected."

The recommendation of the Grievances Committee was accepted by the Full Court at its meeting held between 26th April and 1st May, 1976, and, accordingly, the first respondent's representation was rejected. On 14th May, 1976, the Registrar of the High Court wrote to the first respondent informing him that the recommendation of the Grievances Committee had been accepted and, accordingly his representation had been rejected. G H

A On 20th September, 1980, the first respondent made a second representation regarding the date of his confirmation and the protection of *inter se* seniority in accordance with the merit list made by the M.P. Public Service Commission. He did not, in the second representation, state that he made an earlier representation and that it had been rejected. The second representation was considered by the Grievances Committee of three learned Judges of the High Court before whom the first respondent appeared. Two of the learned Judges took the view, after a comparative appraisal of the confidential reports of the 39 Civil Judges who were junior to the first respondent in the merit list and had been confirmed on 5th February, 1973, that the first respondent had deserved to be confirmed in the Full Court meeting of 5th February, 1973. They recommended to the Full Court that the resolution or the date be modified and the 1st respondent be deemed to be confirmed and placed in the seniority list on that basis, not only in the cadre of Civil Judge Class-II but also in the cadre of Civil Judge Class-I, in which cadre he was then placed. The two learned Judges stated that the confidential reports of very many of the said 39 Civil Judges were similar to those of the first respondent and, in some cases, even worse. The third learned Judge who constituted the Grievances Committee disagreed. He stated that though an evaluation of merit by comparing the record of a candidate with the record of others was a legal method, the Grievances Committee had not undertaken such an exercise in any other case and there appeared to be no special reason why such an exercise needed to be undertaken in the case of the first respondent. Giving the first respondent seniority from 1973 would mean considering an old and stale grievance and reversing the decisions of the Full Court taken in 1974 and 1976. While it was his opinion that there was no merit in the case, it was for the Full Court to decide whether such an exercise should be undertaken in all cases of supersession and non-confirmation inspite of a final view taken earlier. The report of the Grievances Committee was considered by the Full Court at its meeting held between 27th April and 5th May, 1985. It was resolved that the recommendation of the two members of the Grievances Committee be rejected and, consequently, the first respondent's representation be rejected.

H On 18th June, 1985, the first respondent filed the writ petition upon which the order under challenge was passed. It was his case that his representation made in the year 1975 "remained undecided although the petitioner submitted several remainders by way of sending copies of the

representation for consideration. The petitioner continued to write to the High Court for redressal of his grievances time and again, claiming for restoration of his original seniority at Sr. No. 1 amongst his batchmates". The 1st respondent alleged that at the Full Court meeting held between 5th and 9th February, 1973, his case was not put up for independent consideration for confirmation because the learned Chief Justice had observed upon the relevant papers that his work was unsatisfactory and he was required to be watched for six months. These remarks, it was alleged, "had adversely influenced the decision of the High Court.....". It was alleged that "the direction to watch the petitioner for six months was a decision taken by the Hon'ble the then Chief Justice in his administrative capacity and was without jurisdiction and in contravention of the provisions of Article 235 of Constitution of India". The first respondent alleged that he had been discriminated against while assessing his fitness for confirmation as Civil Judge Class-II.

The return filed on behalf of High Court in reply to the writ petition denied the allegations made therein. The return stated that the rejection of the 1st respondent's first representation by the Full Court had been communicated to him by the letter dated 14th May 1976.

In the order under appeal, the Division Bench of the High Court referred to the report of the two learned Judges of the Grievances Committee that considered the second representation of the first respondent and observed that no record had been placed before the Division Bench to indicate that the position was other than that found by them. The High Court, the Division Bench stated, had failed to controvert by sufficient material the allegation of discrimination against the first respondent and could not justify its action. Even the third member of the Grievances Committee had not disputed the correctness of the finding arrived at in favour of the first respondent on the comparative study of his confidential report and those of the confirmed Civil Judges. The earlier Grievances Committee, which had recommended the rejection of the first respondent's first representation, had not comparatively examined the grievance of the petitioner nor was it so stated. According to the Division Bench, this "by itself demonstrates its discrimination". The Division Bench, commenting on the return filed by the High Court, observed that it was nowhere stated that any comparative examination of the reports was made before confirming the other Civil Judges and finding the first respondent unfit for confir-

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A mation. The statement that, on the basis of his entire record and poor
performance, the first respondent was not found fit for confirmation did
not satisfy legal requirements. According to the Division Bench, "on a
comparative appraisal of merits when number of persons are said to be
considered for confirmation it could be found whether a particular person
was found unfit". The Division Bench proceeded upon the basis that the
first respondent had been superseded and stated that such action must be
supported by reasons. "*Malafides*", it stated, may not be imputed but the
situations have to be considered in a just and equitable manner and
justifiable in the assessment of merit based on reasoning to overcome the
allegation of discrimination and arbitrariness of the decision." In regard to
the remarks made by the learned Chief Justice in regard to the first
respondent, it was stated, "..... nor there was material for making such
remarks." There appeared, therefore to be some substance in the conten-
tion that the Full Bench had been influenced by the Chief Justice's remarks,
which the first respondent had no opportunity to explain. The dissent of
the learned Judge who was a member of the Grievances Committee that
considered the first respondent's second representation, in the view of the
Division Bench, "supports the contention of the petitioner that the resolu-
tion was passed without a comparative study of the records. The view was
expressed in the note that the comparative appraisal was the legal way of
assessment and findings therefrom were admitted but the objection was
that the granting of the desired relief to the petitioner required the reversal
of earlier decisions of 1973, 1974 and 1976 of Full Court and that the
petitioner's grievance in that regard had become old and stale". All this led
the Division Bench to the conclusion that the Full Court resolutions
"cannot be said to be the outcome of a dispassionate approach." Adverting
to the ground of laches, the Division Bench stated that the High Court had
not established that the rejection of the Ist respondent's first representation
had been communicated to him. In view of his denial on oath of any
communication to him of the rejection of his first representation, his
grievance could not be said to be either stale or delayed and the petition
was, therefore, not bad on the ground of laches. The High Court con-
cluded that "the very ground of not finding the petitioner fit for confirma-
tion is wholly baseless and misconceived It also smacks of
extraneous considerations for such decision of 5.2.1973". Accordingly, the
Division Bench ordered :

H "The petitioner shall, therefore, be deemed to have been confirmed

from 5.2.73 and in that regard, the Resolution/decision (Annexure R-I) and the subsequent Resolutions/ decisions (Annex. R-2, R-5 & R-6) to that extent are quashed. Respondents 1 and 2 are directed, accordingly, to place the petitioner with Annexure, P-I, in Civil Judge Class-II cadre and, consequently, in subsequent cadres of Civil Judge Class-I, Chief Judicial Magistrate and Additional District Judge.

Respondents 1 and 2 shall bear their own costs and shall bear the costs of the petitioner. Counsel's fee Rs. 1,000 if certified.

It is convenient to consider at the outset the submission of Mr. Venugopal, learned counsel for the first respondent, that it was not open to the first appellant, the High Court, to have preferred this appeal. This submission is, it appears, based upon the impression that the High Court is the only appellant. As we have pointed out, the State Government is impleaded as the second appellant.

In any event, we shall examine the submission for it is of some importance, Mr. Venugopal submitted that the High Court had rendered the decision under appeal and the High Court could not, therefore, have preferred the appeal against its own order.

Reliance in this behalf upon *Syed Yakooob v. K.S. Radhakrishnan & Ors.*, [1964] 5 S.C.R. 64, is misplaced. Orders passed by the State Transport Authority and the State Transport Appellant Tribunal has been impugned in a writ petition, to which they were made parties. In appeals to the Division Bench and this Court arising upon the order in the writ petition they were impleaded. They appeared before this Court and counsel on their behalf claimed costs. Except where allegations were made which needed a reply, this Court said, their position was like that of courts or other tribunals against whose decisions writ petitions were filed : they were not interested in the merits of the dispute in any sense and their representation by counsel was inappropriate and unnecessary.

The order that the first respondent challenged in the writ petition filed by him before the High Court was an order passed by the High Court on its administrative side. By reason of Article 226 of the Constitution it was permissible for the appellant to move the High Court on its judicial side to consider the validity of the order passed by the High Court on the

A administrative side and issue a writ in that behalf. In the writ petition the first respondent was obliged to implead the High Court for it was the order of the High Court that was under challenge. It was, therefore, permissible for the High Court to prefer a petition for special leave to appeal to this Court against the order on the writ petition passed on its judicial side. The High Court is not here to support the judicial order its Division Bench passed but to support its administrative order which its Division Bench set aside. We find, therefore, no merit in what may be termed the preliminary objection to the maintainability of the appeal.

C Mr. Venugopal next submitted that it was, in any event, not open to the High Court to argue, as its learned counsel, Mr. P.P. Rao, had done, that the writ petition of the first respondent ought to have been dismissed by the High Court on the ground to delay and laches. In Mr. Venugopal's submission, such an argument could only have raised by a party aggrieved or, in other words, adversely affected by the order under appeal. Mr. Venugopal submitted that only the 39 Civil Judges in whose favour rights D had been created by the non-confirmation of the 1st respondent as of 5th February, 1973, were adversely affected by the order under appeal and aggrieved thereby. They, not having preferred an appeal, must be deemed to have accepted the order under appeal. In support of this submission our attention was drawn by Mr. Venugopal to the Judgment of this Court in E *M/s. Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur and Ors.*, [1992] 2 S.C.C. 598. At paragraph 13, this Court said :

F "The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own fact. It will depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that G the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which H is manifest cannot be sustained on the sole ground of laches."

In our view, there can be no doubt that when the administrative order is set aside the High Court is adversely affected. It is, therefore, a party aggrieved. In the instant case, even assuming that we ignore the observations of the Division Bench in regard to malafides, lack of a dispassionate approach and extraneous considerations on the ground that these had not been urged by the first respondent and the High Court could have sought expunction thereof, as suggested by Mr. Venugopal, the order under appeal found that the first respondent had been discriminated against by the Full Court. It is impossible to accede to the submission, in these circumstances, that the High Court was not aggrieved by the order under appeal. Apart therefrom, the 1st respondent's delay in approaching the writ court had resulted in that creation of a long settled position as to seniority in the subordinate judiciary; disturbing the long settled position adversely affected not only the 39 civil judges whose seniority was displaced but also the functioning of the subordinate judiciary, responsibility for which lay with the High Court. It is, therefore, as open to the High Court to agitate the ground of delay and laches as it would have been open for the 39 Civil Judges had they preferred an appeal.

Mr. Rao, learned counsel for the appellant, laid great stress on the fact that the seniority of Civil Judges determined in 1973 was sought to be unsettled by the writ petition which was filed by the first respondent in 1985, i.e., 12 years later, Mr. Venugopal, learned counsel for the first respondent, submitted that there had been no laches because the High Court had entertained the second representation made by the first respondent and decided thereon only in 1985.

The first representation made by the first respondent against his non-confirmation with effect from 5th February, 1973, was rejected by the High Court in May 1976 and, according to the High Court, he was informed of such rejection by the letter dated 14th May, 1976. If this be so, the period of the delay and laches in filing the writ petition must be reckoned from around June 1976. The Division Bench, in the order under appeal, took the view that this letter of rejection had not been received by the first respondent in view of his denial in that behalf on oath. The High Court failed to take note of the affidavit of the Additional Registrar of the High Court in support of its return; though based upon the record, it was entitled to some consideration. The averment of the first respondent in his writ petition in regard to his first representation was that it "remained

A undecided although the petitioner submitted several reminders by way of sending copies of the representation for consideration. The petitioner continued to write to the High Court for redressal of his grievances time and again, claiming for restoration of his original seniority at Sr. No. 1 amongst his batchmates". The averment is significantly silent about the dates of his communications to the High Court. Most telling of all is the fact that the first respondent's second representation did not state that the first representation had remained undisposed of or that he had sent copies of it time and again or that he had written letters repeatedly for redressal of his grievance; in fact, the second representation does not so much as mention the first representation. The Division Bench, as we think, has been very credulous. It should have known the ground reality : that when some matter concerning a subordinate Judge is up before the Full Court for consideration, the subordinate Judge comes to know what the Full Court has decided within days, if not hours. And there is nothing wrong with this, for the Full Court's decisions are, ordinarily, not confidential. We are in no doubt whatsoever that the first respondent's denial of knowledge that his first representation had been rejected by the Full Court in May 1976 is false. That being so, his approach to the writ court was grossly delayed and his writ petition ought to have been dismissed on the ground of delay and laches.

E Mr. Venugopal submitted that the Division Bench has been justified in coming to the conclusion that the first respondent had been discriminated against inasmuch as the Grievances Committee that considered the first respondent's second representation had found on comparative assessment of reports concerning the first respondent on the one hand and the 39 Civil judges who were confirmed on 5th February, 1973, on the other hand, that the reports of the 39 Civil Judges were of the same standard as those of the first respondent and, in some cases, poorer. In support of the submission that there has to be a comparative assessment of the merits of officers to be considered for confirmation, Mr. Venugopal cited the decision of his Court in *B.L. Goel v. State of Uttar Pradesh & Ors.*, [1979] 2 S.C.C. 378. This was a case of promoted officers who were to be confirmed as Civil and Sessions Judges. It was held that in the case of promoted officers, the main criteria to be considered for their confirmation were the availability of a substantive vacancy or post, and suitability therefor. In the case before the court, a substantive vacancy was available on 1st April, 1966. By that date the appellant had put in service as an officiating

Civil and Sessions judge for a period of about 5 years and 9 months. There was nothing on the record to suggest that by that date he had not been found suitable for confirmation. Counsel for the State Government was unable to satisfy the court that in not allowing that date to the appellant as the date of his confirmation, the State Government was acting according to any intelligible differentia or reasonable principle, nor were these discernible from the impugned notification.

The first thing that requires to be noted is that in the case before us the first respondent was not a promoted officer whose case was being considered for confirmation in the promoted post. He was recruited as a Civil Judge, Class-II and was being considered for confirmation in that class. Secondly, it would not be correct to say that there was nothing on the record to suggest that he was not found suitable for confirmation. It would be remembered that he had been informed by the High Court on 23rd November, 1971, that he needed to be prompt in disposing of applications for temporary injunctions and in the matter of delivery of judgments; also, that he had to be firm in the matter of adjournments of civil suits at the stage of evidence. For the period ending 30th September, 1972, his District Judge reported that he did not begin his judicial work punctually at 11 A.M. and remained in his chamber for too long during court hours. The District Judge stated that the first respondent had been found to have failed to record the hours between which evidence was recorded and to have deviated from the provisions of the Civil Court Rules. The provision regarding opening of cases had been found to have been ignored by him. His order-sheets had been written by his court clerks. His judicial diary was not judiciously arranged. Periodical inspections had not been thoroughly carried out by him. Most notable of all, his disposal during the period under report, except for two months, fell below the prescribed standard in every month. There was, we think, justification for the learned Chief Justice to have made about the first respondent the comment. "Unsatisfactory. To be watched for six months." It must be emphasised that this was a case of Civil Judges up for confirmation in the class to which they had been recruited, not for confirmation in the post in which they were officiating on promotion, nor for promotion on the basis of seniority-cum-merit. Each Civil Judge up for confirmation in Class-II, being the class to which he had been recruited, was liable to be judged individually on his own record. The Full Court cannot be faulted for not having confirmed the first respondent on 1st February, 1973, based upon his own record.

A The learned Chief Justice, as the head of the judiciary in the State and in over-all control of its administration, knows better than most of his brother Judges about his subordinate judges. It is his function to appreciate their merits and de-merits. He is entitled to record his comments upon them and make his views known during relevant discussions at a Full Court meeting. Decisions regarding confirmation, promotion, supersession and the like of subordinate Judges are taken at Full Court meetings. Every High Court Judge is of same stature, the learned Chief Justice being the first among equals. Every learned Judge is expected to contribute to the discussions of the Full Court and participate in the decisions arrived at. This mode of dealing with the confirmations, promotions and supersessions of those who man the subordinate judiciary is a sure safeguard against arbitrary or motivated decisions. The view of the learned Chief Justice would be heard with due respect, but it would not hold sway. It certainly cannot be said that the expression of this view by the learned Chief Justice would prevent independent consideration by the Full Court.

D The Division Bench relied upon the comparative assessment of the records of the first respondent on the one hand and the 39 Civil Judges who were confirmed on 5th February, 1973 on the other hand made by the Grievances Committee that considered the second representation of the first respondent. In its view, the dissent of the one learned Judge who was a member of the Grievances Committee supported the contention that the Full Court resolution of 5th February, 1973 had been passed without a comparative study of the records. Having read the dissent of the third learned Judge, we do not put this construction upon it. The learned Judge declined to evaluate the first respondent's merit by comparison of his record with that of the others. He declined to do so because the Grievances Committee had not undertaken such an exercise in the past and there appeared to him to be no special reason why such an exercise should be performed in the case of the first respondent. The learned Judge also drew attention to the fact that giving to the first respondent seniority from 1973 would mean giving consideration to an old and stale grievance as also reversing decisions of the Full Court taken in 1974 and 1976. Very properly, he left it to the Full Court to decide whether the exercise of comparing the record of a candidate with that of other candidates should be undertaken not merely in the case of the first respondent but in the case of all others who might have been superseded or not confirmed. The Full Court did not accept the recommendation of the two Learned Judges of the Grievances

Committee to give the 1st respondent seniority as of 5th February 1973 and rejected the second representation. We think the Full Court was right. Unless there is clear indication that there has been a misinterpretation of a legal position, it is undesirable and unsafe for one Full Court to revise the decision taken by the earlier Full Court, particularly in cases of promotion, confirmation, supersession and the like.

The order passed by the Divisions Bench states that the first respondent would be deemed to have been confirmed from 5th February, 1973 and it quashes the Full Court resolutions that stand in the way. It then directs the High Court and the State Government to place the first respondent in Class-II as of that date and also "in subsequent cadres of Civil Judge Class-I, Chief Judicial Magistrate and Additional District Judge". This the Division Bench could, in any event, not have done. Where the promotional post is a selection post, the most that a court can do is to order the constitution of a committee to consider the case of the candidate for promotion as on the date on which his immediate junior had been promoted thereto.

We cannot part with this matter without expressing our distress. The writ petition filed by the first respondent averred that his case did not receive independent consideration by the Full Court because the Full Court was influenced by the remarks made by the learned Chief Justice. The writ petition did not impute to the Chief Justice or the puisne Judges malafides or the lack of a "dispassionate approach" or "extraneous considerations". Yet, we find the Division Bench being this. The learned Judges constituting the Division Bench ought, we think, not to have made these harsh and wholly uncalled for remarks. They were unmindful of judicial restraint and decorum.

We shall make no order as to costs because we think that it should, ordinarily, not be made between a High Court and a Judge subordinate to it.

The appeal is allowed. The judgment and order under appeal (dated 11th March, 1993) is set aside. The writ petition (MP No.1733/85) filed by the first respondent is dismissed. No order as to costs.

G.N.

Appeal allowed.