

Gujarat High Court

5 Whether It Is To Be Circulated To ... vs State Of Gujarat & 5 on 16 January, 2015

C/SCA/10572/2013

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10572 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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SANJAY M VAISHNAV....Petitioner(s)
Versus
STATE OF GUJARAT & 5....Respondent(s)

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Appearance:

MR RR MARSHAL, SR. ADVOCATE with MS. SHAILI A KAPADIA,
ADVOCATE for the Petitioner

MR SUDHANSHU PATEL, ASSTT. GOVERNMENT PLEADER for the
Respondents No. 1 - 4

NOTICE SERVED for the Respondent(s) No. 1 - 6

SERVED BY RPAD - (N) for the Respondent(s) No. 1 - 6

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

Date : 16/01/2015

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks a declaration that the action of the respondents in not giving promotion to the petitioner on the post of Associate Professor is illegal, arbitrary, unjust and void ab initio. The petitioner seeks a direction to the respondents to give promotion to the petitioner to the post of Associate Professor in the Government Engineering College, Gujarat State Education Service Class-I as per the Departmental Selection Committee meeting dated 8.2.2012 with all consequential benefits. The petitioner also seeks a direction to expunge the adverse remarks made by the 5 th respondent against the petitioner in his confidential report for the period between 21.7.2009 to 31.3.2010.

2. The backdrop of the facts in which the petitioner had claimed the above reliefs are that the petitioner was selected in an interview and had been appointed as an ad-hoc lecturer on 13.5.1994 at the Bhavnagar Engineering College. Subsequently, the petitioner was appointed by the Gujarat Public Service Commission for Technical Education Service Class-II by an order dated 14.10.2004. In the year 2000, the petitioner came to be transferred to Lakhdirji Engineering College, Morbi on 10.1.2000 and worked there till 22.11.2000. He was again transferred to S.S. Engineering College, Bhavnagar on 23.11.2000. By an order dated 6.8.2008, the first respondent-State of Gujarat deputed the petitioner for the course of M.E./M.Tech programme for the period from August, C/SCA/10572/2013 JUDGMENT 2008 to August, 2010 to L.D. Engineering College, Ahmedabad. Pursuant thereto, by an order dated 4.9.2008, the petitioner was relieved for the purpose of deputation. By a communication dated 30.6.2009, the 5 th respondent, Principal directed the petitioner to resume duty for a period of four days in a week at the parent institute and to pursue studies for the remaining days. Subsequently, by a communication dated 21.7.2009, the 5th respondent directed the petitioner to discharge duties at the parent institution each week from Monday to Thursday and undertake the workload of teaching for 16 hours. By a communication dated 4.11.2009, the 5 th respondent assigned additional work to the petitioner in the nature of overload in-charge, day to day electrical maintenance and work, as well as plans of electric wiring of all the buildings of the institution. Thereafter, by a memorandum dated 6.1.2010, the petitioner was informed that the petitioner had been assigned the work of overload bill of the institution; overload bill is required to be submitted maximum within 10 days of completion of the month, however, though one month has passed since the semester was over, overload bills of various departments have not been submitted. The petitioner was informed that he should expeditiously submit the overload bills and should submit his explanation for the delay in that regard. By a communication dated 6.1.2010, the petitioner explained the circumstances on account of which there was delay in submitting the overload bill. Once again, by a communication dated 4.2.2010, the 5th respondent issued a memo to the petitioner to the effect that at the time of his laboratory practical, the Principal

had taken round of the premises, at which point of time, he was absent from the laboratory. The petitioner was, accordingly, called upon to C/SCA/10572/2013 JUDGMENT tender his explanation within three days. By a communication dated 9.2.2010, the petitioner submitted his explanation to the effect that he was present at the second door of the lab when the 5th respondent was taking the inspection round and, hence, possibly he had not seen the petitioner. Thereafter, by a communication dated 10.2.2010 yet another memo came to be issued to the petitioner to the effect that on 10.2.2010 as per the time table he was required to undertake laboratory in digital communication for semester 6 (EC), B-4 batch, during the third and fourth periods. It has been noticed that during that duration, he was still preparing the setup of all the experiments and that he did not have any prior preparation for carrying out the experiment and that he was spending the laboratory time for setting up the experiment. Ordinarily, the experiment is to be set up in the laboratory in advance and the laboratory time is required to be used for explaining the experiment to the students and for performing the same. Once again, the petitioner was called upon to submit his explanation within 3 days. Apart from the above, another notice dated 10.2.2010 came to be issued to the petitioner that the responsibility of electrical maintenance, possession, etc. had been entrusted to him and that after writing one letter to P.W.D. (Ele.) he had not taken any further action and that the motor of the electric tubewell of the institute needed repairing and the electric installation of the institute did not have earthing, despite which, he had displayed a very negligent attitude and that he did not possess the initiative to act according to his understanding. The petitioner was called upon to give his explanation in this regard within three days. The petitioner submitted separate replies to the above two memos on 11.2.2010.

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3. Thereafter, by an office order dated 15.3.2010, the petitioner was informed that for the last month, the electrical supply work of the production building had been entrusted to him and that it is intolerable for the students to attend classes in the B-Block in the heat and that he should show-cause as to why steps should not be taken against him for the negligence in the discharge of his duties. The petitioner immediately, on 16.3.2010, submitted his reply to the show-cause notice.

4. It is the case of the petitioner that for reasons best known to him, the 5th respondent harbours a personal grudge against the petitioner and that the petitioner was sent on deputation to L.D. Engineering College for the M.E. Course against the wish of the 5th respondent. It is only for this reason that the petitioner was called back to the parent institute and was directed to remain there for a period of four days in a week and impart education for fourteen hours. According to the petitioner, having regard to the days fixed for attending the parent institution from Monday to Thursday, only Friday and Saturday are left for the petitioner to pursue the M.E. Course for which he was sent on deputation. That apart from the fact that despite his deputation, the petitioner was required to discharge the above duties four days in a week, the 5th respondent added to his workload by giving additional work of overload in-charge, maintenance of electrical equipment and electrical wiring.

5. By a communication dated 20.4.2010, the petitioner was informed that there are adverse remarks in his confidential report and was asked to explain the circumstances. Once C/SCA/10572/2013

JUDGMENT again, by a communication dated 10.5.2010, the petitioner was informed that adverse remarks have been passed in his confidential report and that he should give his explanation within a period of six weeks. Pursuant thereto, by a communication dated 13.5.2010, the petitioner gave a detailed explanation. By a communication dated 31.8.2010, the Joint Director, Technical Education, confirmed the adverse remarks. Thereafter, the petitioner made a representation dated 1.12.2012 to the first respondent in respect of the adverse remarks. However, it appears that no action has been taken pursuant thereto.

6. It is the case of the petitioner that he has successfully completed the M.E. Course in the year 2010 and has an unblemished service record from the year 1994 to 2010. The petitioner is meritorious and has his performance before the Selection Committee was good, however, the petitioner had been declared unfit on the basis of the adverse remarks. It is in these circumstances that the petitioner has approached this court seeking the reliefs noted hereinabove.

7. Mr. R.R. Marshal, Senior Advocate, learned counsel for the petitioner, vehemently assailed the action of the respondents by pointing out that the 5th respondent was biased against the petitioner, inasmuch as, he did not approve of the petitioner being sent on deputation for the M.E. Course at L.D. Engineering College and had, therefore, taken all steps to see that the petitioner does not successfully complete the course. Referring to the record of the case, it was pointed out that though the petitioner was sent on deputation to L.D. Engineering College in accordance with the rules, the 5th C/SCA/10572/2013 JUDGMENT respondent-Principal called upon the petitioner to resume duty at the parent institution for four days in a week from Monday to Thursday and impart teaching for 16 hours. It was submitted that in view of the fact that the petitioner was required to discharge duties from Monday to Thursday, he could attend the M.E. Course only on Friday and Saturday. However, not being satisfied with assigning work for four days at the parent institute, the 5th respondent saddled the petitioner with the additional liability of overload in-charge maintenance of regular electrical equipment and electrical wiring of all the buildings of the institution. It was submitted that the additional duties entrusted to the petitioner had nothing to do with his regular service as a lecturer in the Government Engineering College. However, in relation to such additional work, the petitioner had been issued several memos only with a view to tarnish his career. It was submitted that the facts as emerging from record are eloquent and clearly demonstrate that the petitioner has been targeted by the 5th respondent. It was submitted that not being satisfied with the various memorandums issued to the petitioner, the 5th respondent made adverse remarks in his confidential report. Inviting attention to the adverse remarks dated 20.4.2010 (Annexure-O to the petition), it was pointed out that the 5th respondent had made as many as eight adverse remarks. It was submitted that the first adverse remark pertains to delay in the overload and electrical maintenance work which was entrusted to the petitioner and the remaining adverse remarks are also in the context of such work. Reference was made to the supplementary noting in the adverse remarks dated 20.4.2010 which came to be communicated on 10.5.2010, it was pointed out that the same were also in relation to the work entrusted C/SCA/10572/2013 JUDGMENT to the petitioner. It was argued that the above events clearly show the bias and personal grudge of the fifth respondent against the petitioner herein. It was emphatically argued that the petitioner has an unblemished service record from 1994 to 2010 and for such a long period there was no adverse remark against the petitioner. It was urged that when an officer with a constantly good record has

suddenly been given such adverse remarks, the higher authority ought to have called upon the reporting officer to substantiate the remarks given by him as prescribed in the notification of the General Administration Department of the State of Gujarat dated 8.3.1969. It was pointed out that instead of following such course of action, the burden has been cast upon the petitioner to prove his innocence, which is against all canons of law.

7.1 Reliance was placed upon the decision of this court in the case of *Dr. B. R. Kulkarni v. Government of Gujarat and others*, 1978 (19) GLR 1021, wherein the court after referring to the Government of Gujarat, General Administration Department, Government Resolution dated 8 th March, 1969 which contains instructions regarding Writing and Maintenance of Annual Confidential Reports, has held that in terms of the said Government Resolution, ephemeral roll in respect of each Government servant whose work and conduct is to be reported on, should be maintained by the Reporting Officer and that such ephemeral roll should be written quarterly and when a Reporting Officer makes entry therein about that person's work as seen from day to day. These ephemeral rolls are to be taken into account when writing the annual confidential report of that person. The court held that though the instructions contained in the said resolution are executive in character, they cannot C/SCA/10572/2013 JUDGMENT be departed from at the sweet-will of those who are required to implement them. Any arbitrary departure from those instructions without any rational and justifiable grounds would fall within the mischief of Articles 14 and 16. It was held that those entrusted with the task of preparing these reports have to perform a duty which is analogous to judicial function and which requires them to act with equanimity, objectivity, detachment and conscience. The performance of this function must be looked upon more as a discharge of duty than as an exercise of power. Those entrusted with this duty hold golden scales and not a weapon of offence. The human fallibility and want of objectivity are factors which, however, cannot be eliminated altogether. It is for that reason that safeguards are provided in the executive instructions by laying down norms and guidelines in order to make the assessment in confidential reports as objective as possible. Besides, above the Reporting Officer, there is the provision for a Reviewing Officer and then, there is the authority which considers the representations. At each of these three levels, there must be conscious effort to maintain complete objectivity and conscientious endeavour to thoroughly discharge the duty according to the guidelines. The court expressed the hope that those who are charged with the duty to oversee that the entries in the confidential record are fair, just and objective will function more effectively and intervene and rectify the mistakes, if any, committed at any lower level. Unless all this is ensured and arbitrariness insulated against, a time might well come when the method of selection based on past performance as disclosed by the confidential reports might have to be treated as not the just and proper method for adjudging suitability of the officer concerned for a higher post having regard to the broad sweep C/SCA/10572/2013 JUDGMENT of Articles 14 and 16. Mr. Marshal submitted that the norms and guidelines for making assessment in confidential reports in terms of the above Government Resolution have been given a complete go-bye in the present case. It was submitted that no ephemeral roll appears to have been maintained by the Reporting Officer and that the Reviewing Officer has failed in his duty of independently assessing the performance of the petitioner. It was submitted that at all levels, the concerned authorities have failed to objectively consider the matter and hence, the adverse remarks made against the petitioner deserve to be cancelled.

7.2 Reliance was also placed upon the decision of the Supreme Court in the case of Sukhdev Singh v. Union of India and others, (2013) 9 SCC 566, wherein the court had permitted the appellant therein to make a representation to the authorities concerned for retrospective promotion in view of the legal position stated by the court in respect of making of the annual confidential report.

7.3 The decision of the Supreme Court in the case of P. K. Shastri v. State of M. P. and others, (1999) 7 SCC 329, was cited for the proposition that the confidential reports of an officer are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the confidential reports can mar the entire career of that officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong C/SCA/10572/2013 JUDGMENT committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the confidential reports.

7.4 In conclusion, it was submitted that the action of the respondents in not giving promotion to the petitioner to the post of Associate Professor deserves to be held to be arbitrary, unjust and illegal, and that the respondents be directed to give promotion to the petitioner to the post of Associate Professor in the Government Engineering College, Gujarat State Education Service, Class I, as per the Departmental Selection Committee meeting dated 08.02.2012 with all consequential benefits and the adverse remarks made against the petitioner by the fifth respondent for the period between 21.07.2009 to 31.03.2010 are required to be expunged.

8. Opposing the petition, Mr. Himanshu Patel, learned Assistant Government Pleader for the respondents submitted that the petition deserves to be dismissed on the ground of delay and laches, inasmuch as, the petitioner seeks to challenge the adverse remarks for the period between 21.07.2009 to 31.03.2010 in the year 2013. Moreover, the representation made by the petitioner to the Director of Technical Education came to be rejected by a communication dated 31st August, 2010, however, the petitioner did not seek to challenge the same at the relevant time and hence also, the petition does not deserve to be entertained.

8.1 On the merits of the case, it was submitted that while considering the case for promotion, the respondents have C/SCA/10572/2013 JUDGMENT acted in terms of the Government Resolution dated 07.02.1995, clause (9) whereof lays down that while considering the departmental promotion, the Departmental Promotion Committee has to consider previous five years confidential reports of Government servant/officer from the date of DPC (Departmental Promotion Committee) meeting. It was submitted that since the confidential report of the petitioner for the year 2009-10 contained adverse remarks, the Principal Secretary, Education Department did not consider the petitioner for promotion in terms of the conditions laid down in the said Government Resolution. It was submitted that the petition, therefore, deserves to be dismissed with costs.

9. In rejoinder, Mr. R. R. Marshal, learned counsel for the petitioner has submitted that there were no adverse remarks in the confidential reports of the petitioner before the year 2009-10 and that

during the said tenure, the petitioner was on deputation to L. D. Engineering College, Ahmedabad and was doing M. E. (Electronics & Communication) and the second year of M.E. was continued during the said period of time. It was submitted that when a person is on deputation, the Head of the Department is required to write a progress report only and no confidential report is required to be written. It was submitted that the confidential report of the petitioner had been written dehors the provisions with the mala fide intention of destroying the career of the petitioner. It was submitted that the entire action of the respondent No.5 was actuated by mala fides inasmuch as, though the order of deputation was declared in the first week of August, 2008, the petitioner was relieved by the fifth respondent only on 04.09.2008 and was recalled to the institute by the fifth respondent upon C/SCA/10572/2013 JUDGMENT completion of one year of M.E. It was further submitted that there are no adverse remarks in connection with the teaching task of the petitioner and all the adverse remarks pertain to non-official duties regarding maintenance of electricity of the office building and processing of overtime bills etc. It was argued that the confidential remarks of the petitioner have been spoiled on flimsy grounds by the fifth respondent. It was submitted that the confidential remarks having been made in contravention of the provisions made in that regard, ought not to be taken into consideration by the Departmental Promotion Committee. In conclusion, it was submitted that the petition deserves to be allowed by granting the reliefs as prayed for.

10. This court has considered the submissions advanced by the learned advocates for the respective parties and has also perused the record of the case as well as the decisions cited at the bar.

11. It may be noted that though various allegations have been made in the memorandum of petition against the fifth respondent and several contentions have been raised in relation to the adverse remarks made in the confidential report of the petitioner, no affidavit-in-reply has been filed in response thereto. A short affidavit-in-reply has been filed on behalf of the respondents No.2 and 4 wherein all that is stated is that the Education Department and Office of Commissioner of Technical Education, while considering the promotion of Assistant Professor of Electronics & Communication Engineering to the Class I Post of Associate Professor of Electronics and Communication Engineering has acted as per conditions laid down in the Government Resolution dated C/SCA/10572/2013 JUDGMENT 07.02.1995, wherein it is clearly stated in clause (1) that while considering the departmental promotion, the Departmental Promotion Committee has to consider previous five years confidential reports of Government servant/officer from the date of DPC (Departmental Promotion Committee) meeting. The confidential report of the petitioner for the year 2009-2010 had adverse remarks and hence, the Principal Secretary, Education Department did not consider the petitioner for promotion as per the conditions laid down in the Government Resolution dated 07.02.1995. These, in sum and substance, are the averments made in the affidavit-in-reply filed on behalf of the respondents. Under the circumstances, all the other averments made in the memorandum of petition remained uncontroverted and are, therefore, required to be accepted as true.

12. The petitioner who was appointed by the Gujarat Public Service Commission for Technical Education Service Class-II, had been appointed as a Lecturer and was at the relevant time, posted at S. S. Engineering College, Bhavnagar. The State of Gujarat vide order dated 06.08.2008 had deputed the petitioner for the course of M.E./M. Tech. Programme for the period from August 2008

to August 2010 to L. D. Engineering College, Ahmedabad. The petitioner was relieved on 04.09.2008 and by a communication dated 30.06.2009, was directed by the fifth respondent to resume duties at Bhavnagar for a period of four days in a week at the parent institute and to pursue his studies for the remaining days. Though the petitioner was on deputation, apart from the regular duties for a period of four days in a week at the parent institute, the fifth respondent directed the petitioner to perform additional duties C/SCA/10572/2013 JUDGMENT in the nature of overload in-charge, maintenance of regular electrical equipments and electrical wiring of all the buildings of institution. In connection with the additional duties imposed upon the petitioner, various memorandums were issued upon the petitioner and subsequently, the following adverse remarks were made in his confidential report.

Sr. No. Item No. and Details Adverse remarks made in the confidential report 1 (1) Whether the officer I partly agree. There is in agreement with the appears to have been a self-assessment made delay in the work of by the officer in respect overload and electrical of his work in Part II? If maintenance.

he does not agree, give reasons.

2	4(1) Initiative, standing willingness to take responsibility.	under- and take	Weak
3	4(2) Administration and ability to take work from subordinates.		Weak
4	4(3) Ability to take fast and concrete decisions.		Weak
5	(5) Whether he has used the powers assigned to him in a proper manner or does he have the habit of sending back cases for		No

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6	guidance? (6) Whether he makes a true and correct assessment of the officers working under him?		No
7	(9) Whether during the He has been reprimanded		

reporting period, he has by a letter of the institute in been reprimanded or respect of the work relating any steps have been to late processing of taken against him for overload bills and work of breach of discipline. electrical maintenance.

8	(10) assessment.	Overall	Weak
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In addition to the above adverse remarks, supplementary adverse remarks have been made on 10.05.2010, which are as follows:

Sr. No.	Item No. and Details	Adverse remarks made in the confidential report
1	Part-4 (Note Reporting Authority) The overall assessment of any special done in connection with serial No.4 of (Notes of the Reporting Officer)	of the He has not completed the works entrusted to him satisfactorily. work Part-4 Weak
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2	Supplementary Serial No.8 Initiatives	"A" - "C" - Poor

13. Against the above referred adverse remarks which appear to have been accepted by the Reviewing Officer, the petitioner made a representation to the Directorate of Technical Education, Gujarat State. By a communication dated 31st August, 2010 of the Joint Director, Technical Education, the petitioner was informed that after due consideration of the adverse remarks made in his confidential report, there is no substantive reason for cancelling the adverse remarks and the same are maintained.

14. From the facts and contentions noted hereinabove, it clearly emerges though the petitioner was on deputation at the relevant time, the fifth respondent assigned him duties for four days in a week

and in addition to his teaching duties, further duties in the nature of overload in-charge, day to day electrical maintenance and work as well as planning of electrical wiring of all the buildings of the institution, were entrusted to him. In connection with the additional duties regarding overload bills and electrical maintenance etc., various memorandums were issued to the petitioner in response to which, the petitioner immediately tendered his explanation thereto, as detailed in paragraphs 2 and 3 of this judgement. It is not in dispute that the petitioner has an unblemished service record from the year 1994 to 2010 and it is only for the period in question, that is, for the period between 21.07.2009 to 31.03.2010, that he has been visited with adverse remarks as noted hereinabove. On a perusal of the adverse remarks, it is apparent that the same do C/SCA/10572/2013 JUDGMENT not relate to the regular duties of the petitioner, but relate to the additional duties in the nature of overload in-charge, day to day electrical maintenance and work as well as planning of electrical wiring of all the buildings of the institution. The facts also reveal that the fifth respondent appears to be harbouring some grudge against the petitioner, inasmuch as, the petitioner had been sent on deputation against his will. This fact is substantiated by the fact that though the petitioner was on deputation, the fifth respondent entrusted him with regular duties for a period of four days in a week and saddled him with the further responsibility of the work of overload in-charge, day to day electrical maintenance and work as well as planning of electrical wiring of all the buildings of the institution.

15. As to how annual confidential reports are to be written and maintained, has been provided by the Government Resolution, General Administration Department dated 8 th March, 1969 which directs that instructions contained in the accompaniment to the said Resolution should be followed in the matter of writing and maintenance of annual confidential reports. The said instructions, inter alia, provide that confidential reports should generally be written by the immediate superior who is called the Reporting Officer. When there is a supervisory officer between a Government servant and his Reporting Officer, a duty is enjoined upon the Reporting Officer to consult the supervisory officer when writing the confidential report. Remarks of the supervisory officer should be obtained by the Reporting Officer in writing on plain paper and those remarks have to be kept with the Ephemeral Roll of the person concerned. The Reporting Officer has to submit the confidential reports written by him to the C/SCA/10572/2013 JUDGMENT next higher officer who should review his reports and make his own remarks therein. The next higher officer is called the Reviewing Officer. The Reviewing Officer has to form his own judgment of the work and conduct of the persons reported upon and he must state clearly his own agreement or disagreement on the remarks and assessment made by the Reporting Officer. Where the Reviewing Officer considers that the remarks of the Reporting Officer do not give a complete picture of the ability, merit or defects of the persons reported upon, he is required to add his detailed and specific remarks. Each Government servant should be graded on the basis of his confidential report every year, the standard grades being "Outstanding", "Very Good", "Good", "Fair", "Below Average" and "Poor". The grading should be done by the Reporting Officer himself because grading consists really in summing up and assessing the various points included in the report. The Reviewing Officer being a higher officer must review not only the whole report but also the grading given by the Reporting Officer. A Reporting Officer has to maintain an Ephemeral Roll in respect of each Government servant whose work and conduct he is required to report on. The Ephemeral Roll should be maintained in the form appended to the Government Resolution dated March 8, 1969. The Ephemeral Roll has to be written quarterly by the

Reporting Officer who should make entries therein about the person's work as seen from day to day. The remarks have to cover good as well as bad points that might come to the notice of the Reporting Officer. The Ephemeral Roll has to be taken into account when writing the annual confidential report of that person. The Ephemeral Rolls have to be destroyed one year after the confidential reports have been submitted to the Reviewing Officer. The confidential C/SCA/10572/2013 JUDGMENT report must be true and it must contain an objective assessment of the concerned Government servant's ability and character as reflected in his official work during the period under report. Absolute objectivity should be the aim of every Reporting Officer. His work in this respect would be facilitated by the proper maintenance of Ephemeral Rolls. The Reporting Officer should take particular care to disregard all subjective considerations and bias that he may have one way or the other. He should aim at giving, as far as possible, a complete picture of that person's good and bad points. His judgment should be based on verifiable facts. Remarks should be unequivocal, specific and should give a balanced view of the person's capabilities and failings. It is for this reason that after a Reporting Officer has written a report it is required to be reviewed by a higher officer. It is a special responsibility of the Reviewing Officer to ensure that the quality of reporting is such as to give a complete account of a person's character and work covering bad as well as good points. A Reviewing Officer has to correct the conscious or unconscious bias that may be there in the assessment given by the Reporting Officer, particularly when any adverse remarks have been made. When an officer has consistently earned good reports for a series of years and has been suddenly reported on adversely, or vice versa, the Reviewing Officer or a higher authority should generally require the Reporting Officer to amplify his remarks and to substantiate them. If annual confidential reports are not written carefully and if they do not give a correct and adequate picture of the work, ability qualities, failings and draw-backs of the persons reported on, such defects in the reports would reduce their usefulness in matters relating to placement, promotion etc. It is, therefore, necessary that a confidential C/SCA/10572/2013 JUDGMENT report gives, as far as possible, a full and objective assessment of the person concerned in all respects so far as it is relevant to his official duties.

16. The facts of the present case are required to be examined in the light of the guidelines issued in the above referred Government Resolution.

17. The record of the case reveals that pursuant to communication of the adverse remarks vide letters dated 20.04.2010 and 10.05.2010, the petitioner by a communication dated 13.05.2010 submitted his representation as contemplated under paragraph 15 of the above referred Government Resolution. In the said representation, the petitioner has given explanation in respect of each of the adverse remarks. In connection with the adverse remark at serial No.3, it has been stated that no subordinate employee had been placed under him and hence, there was no question of his taking work from a subordinate employee. It has been further stated that since no employee had been placed under him, he, at best, could request the concerned employees to help him, but did not have the authority to pass any orders against them. In case the work was not done in time, he was not in a position to issue any memo to them. In respect of the adverse remark at serial No.6, it has been stated that no employee had been placed under him and hence, the question of assessing their work did not arise. The petitioner has also given his explanation in respect of all the other adverse remarks communicated to him, however, reference has been to the reply given in response

to the above two adverse remarks which clearly indicate total non-application of mind on C/SCA/10572/2013 JUDGMENT the part of the authority who has considered the representation. Despite the fact that no employee had been placed under the petitioner, adverse remarks have been issued in respect of assessment of such employees and the work taken from them.

18. Pursuant to the representation, the higher authority has merely stated that no solid/substantive reasons have been given by the petitioner for cancelling the adverse remarks. When one considers the explanation tendered by the petitioner, more particularly in connection with the adverse remarks No.3 and 5, as communicated vide letter dated 20.04.2010, it is not possible to state that no substantive reasons have been stated by the petitioner for cancellation thereof. In respect of the adverse remarks, the petitioner has given satisfactory explanation, however, it appears that the higher authority, without due application of mind, in a casual and perfunctory manner, has rejected the representation made by the petitioner.

19. It may be noted that though it has been specifically contended by the petitioner that the adverse remarks made in the petitioner's annual confidential report are in relation to the additional duties entrusted to the petitioner and not to his regular duties, no counter affidavit has been filed by the respondents denying the same. Though specific allegations of mala fides have been levelled against the fifth respondent, which are clearly substantiated by the record of the case, the fifth respondent has not filed any affidavit-in-reply controverting the same. Therefore, it is an accepted position that the adverse remarks relate to the additional duties C/SCA/10572/2013 JUDGMENT entrusted to the petitioner which were in the nature of overload in-charge, day to day maintenance of regular electrical equipments and electrical wiring of all buildings of the institution, etc. It is also an admitted position that in respect of the previous 16 years, no adverse remarks were made in the confidential reports of the petitioner and for the first time, several adverse remarks have been made.

20. At this juncture, reference may be made to paragraph 15 of the Government Resolution dated 8 th March, 1969 which, inter alia, says that in case a person desires to make any representation against the adverse remarks, he may do so within 6 weeks from the date of receipt of communication of adverse remarks and the decision on the representation should be taken expeditiously. Thus, when the guidelines specifically provide for making of a representation against adverse remarks, the same cannot be treated as an empty formality and the concerned authority should look into the same having regard to the explanation given by the concerned person. The higher authority to whom the representation is made, is required to duly consider the explanation given by the Government servant and cannot deal with the same in a perfunctory manner, as has been done in the present case. Having regard to the representation made by the petitioner explaining each of the adverse remarks made against him, in the opinion of this Court, the higher authority was not justified in stating that no substantive ground had been advanced by the petitioner for cancellation of the adverse remarks.

21. On a perusal of the record of the case, the adverse remarks appear to be actuated by mala fides. Besides, the C/SCA/10572/2013 JUDGMENT respondents have not thought it fit to produce the Ephemeral Roll, if any, maintained by the Reporting Officer, on the record of the case. The Government Resolution dated 8 th March, 1969 provides that the Reporting Officer should maintain

Ephemeral Roll in respect of each Government servant whose work and conduct he is required to report on. The Reporting Officer is required to enter in it any remarks whenever he notices anything noteworthy about an employee's character or work together with a brief note of the evidence or a reference to the relevant case. These remarks have to cover good as well as bad points that might come to the notice of the Reporting Officer. The Ephemeral Roll has to be taken into account when writing the annual confidential report of that person. These Ephemeral Rolls have to be destroyed one year after the confidential reports have been submitted to the Reviewing Officer. In the present case, there is nothing to indicate that any Ephemeral Roll in respect of the petitioner has been maintained by the Reporting Officer.

22. Paragraph 14 of the said Government Resolution provides for "Communication of adverse remarks" and sub-paragraph (3) thereof provides that while communicating the serious adverse remarks, it will be necessary to look at the report of the year under report as well as previous records in order to check whether an officer who has consistently earned good reports may have been suddenly reported on adversely, in which case, the remarks may need assessment or amplification before they are communicated. In the facts of the present case, though the petitioner had consistently earned good reports in the previous years, the requirements of sub- paragraph (3) of paragraph 14 of the said Government C/SCA/10572/2013 JUDGMENT Resolution have not been followed. The Reviewing Officer also seems to have failed in his duty of considering the previous record of the petitioner and has failed to notice that the petitioner had a consistently good record prior to the adverse remarks made in the present case. Despite the fact that there were no adverse remarks in the petitioner's annual confidential report in the last 14 years, the Reviewing Officer does not appear to have applied his mind to such fact and appears to have casually confirmed the remarks made by the Reporting Officer. This court in the case of Dr. B. R. Kulkarni v. Government of Gujarat and others (supra), held that those entrusted with the task of preparing these reports have to perform a duty which is analogous to judicial function and which requires them to act with equanimity, objectivity, detachment and conscience. The performance of this function must be looked upon more as a discharge of duty than as an exercise of power. Those entrusted with this duty hold golden scales and not a weapon of offence. The human fallibility and want of objectivity are factors which, however, cannot be eliminated altogether. It is for that reason that safeguards are provided in the executive instructions by laying down norms and guidelines in order to make the assessment in confidential reports as objective as possible. Besides, above the Reporting Officer, there is the provision for a Reviewing Officer and then, there is the authority which considers the representations. At each of these three levels, there must be conscious effort to maintain complete objectivity and conscientious endeavour to thoroughly discharge the duty according to the guidelines. The court expressed the hope that those who are charged with the duty to oversee that the entries in the confidential record are fair, just and objective will function more effectively and C/SCA/10572/2013 JUDGMENT intervene and rectify the mistakes, if any, committed at any lower level. Unless all this is ensured and arbitrariness insulated against, a time might well come when the method of selection based on past performance as disclosed by the confidential reports might have to be treated as not the just and proper method for adjudging suitability of the officer concerned for a higher post having regard to the broad sweep of Articles 14 and 16. Unfortunately, in the present case, at all the three levels the officers concerned have failed to make any conscious effort to maintain complete objectivity and conscientious endeavour to thoroughly discharge the duty

according to the guidelines.

23. On a perusal of the adverse remarks made in the annual confidential report of the petitioner, it is abundantly clear that the same relate to the additional duties entrusted to the petitioner and have no bearing on the main official duties of the petitioner. There is nothing on record to indicate that there is any deficiency on the part of the petitioner in the discharge of his principal official duties as Lecturer at the concerned college. Despite the fact that the petitioner was on deputation, the Reporting Officer instead of submitting a progress report, has proceeded to write the annual confidential report and make several adverse remarks all in regard to additional duties entrusted to the petitioner. Though the petitioner had been placed under deputation, the fifth respondent had entrusted him with regular duties for a period of four days in a week and had saddled him with additional duties in the nature discussed hereinabove and has made adverse remarks in the annual confidential report of the petitioner in relation to such additional duties. The reviewing authority has also failed to C/SCA/10572/2013 JUDGMENT take into consideration the nature of the adverse remarks made by the fifth respondent and has also failed to consider the fact that none of the adverse remarks related to the principal duties of the petitioner and all related to the additional duties assigned to the petitioner. The record reveals that there is no complaint against the petitioner in respect of his duties as a Lecturer and that all the adverse remarks relate to additional duties assigned to him in relation to overload in- charge, maintenance of electrical equipment and electrical wiring of the buildings of the institution, etc. The Reviewing Officer has not even thought it fit to examine as to whether adverse remarks can be made about the additional works which are not part of the basic duties of the petitioner as an Assistant Professor. The Reviewing Officer has, therefore, clearly failed to follow the guidelines contained in the Government Resolution dated 8th March, 1969. The Reviewing Officer has also failed to consider that the petitioner had consistently earned good reports for a period of 15 years and had suddenly been adversely reported and appears to have put his signature as a Reviewing Officer in the confidential report in question of the petitioner without application of mind. The higher authority before which the representation had been made also appears to have perfunctorily dealt with the same without considering the explanation given by the petitioner.

24. The Supreme Court in the case of P. K. Shastri v. State of M. P. and others, (supra) has held that the CRs of an officer are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs can mar the entire career of that officer. Therefore, it is necessary that C/SCA/10572/2013 JUDGMENT in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the CRs. In the instant case, the Reporting Officer has rested his opinion in regard to the efficiency of the petitioner based upon the manner in which he has handled the additional duties entrusted to him without reference to his basic duties as an Assistant Professor. The decision regarding making adverse remarks in the petitioner's annual confidential report does not appear to have been taken objectively and appears to have been made for extraneous reasons. Unfortunately, neither the Reviewing Officer nor the higher authority before

which the representation was made stepped in to rectify the same and in a casual and perfunctory manner, have affirmed such adverse remarks which have been instrumental in denying promotion to the petitioner.

25. In the light of the above discussion, it is apparent that the adverse remarks made in the petitioner's annual confidential report have been actuated by mala fides and have no bearing on the basic duties of the petitioner as an Assistant Professor. Though the petitioner was on a deputation, the fifth respondent, against whose will the petitioner has been so deputed, has entrusted regular as well as additional duties to the petitioner and has entered several adverse remarks in relation to the additional duties entrusted to the petitioner which have no bearing on the basic duties entrusted to him.

C/SCA/10572/2013 JUDGMENT Though the petitioner has given a satisfactory explanation in respect of the adverse remarks, the representation made by the petitioner has been perfunctorily rejected by the higher authority. Under the circumstances, the adverse remarks made against the petitioner in his confidential report for the year 2009-2010 as communicated under the memo dated 20.04.2010 and 10.05.2010 will have to be treated as illegal, invalid and of no effect whatsoever in the eye of law. Similarly, the order made by the State Government (first respondent) as communicated to the petitioner under letter dated 31 st August, 2010 (Annexure "Q" to the petition) rejecting his representation against those adverse remarks will also have to be treated as illegal and invalid and as having no effect. All the adverse remarks in the petitioner's confidential report will, therefore, have to be eliminated from the confidential report for the period in question.

26. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The adverse remarks made against the petitioner in his confidential report for the year 2009-2010 as communicated under the memo dated 20.04.2010 and 10.05.2010 are hereby quashed and set aside as being illegal, invalid and of no effect whatsoever in the eye of law. The order made by the Joint Director, Technical Education dated 31 st August, 2010 (Annexure "Q" to the petition) is also hereby quashed and set aside as being illegal, invalid and shall have no effect. Consequently, all the adverse remarks in the petitioner's confidential report for the period in question shall stand eliminated. As a consequence of setting aside of the adverse remarks, the action of the respondents in not giving promotion to the petitioner to the post of Associate Professor, C/SCA/10572/2013 JUDGMENT is also held to be illegal, arbitrary and unjust. The respondents are, accordingly, directed to give promotion to the petitioner to the post of Associate Professor in the Government Engineering College, Gujarat State Education Service, Class I as per the Departmental Selection Committee meeting dated 08.02.2012 with all consequential benefits.

27. Rule is made absolute accordingly, with no order as to costs.

(HARSHA DEVANI, J.) parmar*