

HIGH COURT OF GUJARAT

**B R KULKARNI
V/S
GOVERNMENT OF GUJARAT**

Date of Decision: 16 February 1978

Citation: 1978 LawSuit(Guj) 12

Hon'ble Judges: [P D Desai](#)

Eq. Citations: 1978 GLR 1021, 1979 LabIC 223, 1978 (2) SLR 682

Case Type: Special Civil Application; Civil Appeal

Case No: 416 of 1977; 2666 of 1977

Final Decision: Rule made absolute

Advocates: [J R Nanavati](#), [Ambubhai & Diwanji](#), K S Nanavati, [I M Nanavati](#)

Reference Cases:

[Cases Cited in \(+\): 8](#)

Judgement Text:-

P D Desai, J

[1] The petitioner, who hold the degree of M. Sc. (Medical) and M. S. (Ortho.), is at present working as Assistant Professor of Anatomy at the B. J. Medical College, Ahmedabad. The post of Assistant Professor is a Class I Gazetted post under the State Government, the first respondent herein. By a Memo dated August, 23, 1976, the Director of Medical Education and Research, the second respondent herein,

communicated to the petitioner the adverse remarks made in his confidential report for the period 1975-76, that is to say, from April 1, 1975 to March 31, 1976. The adverse remarks as communicated to the petitioner were in the following terms, as is apparent from a copy of the Memo in question annexed to the petition at Annexure 'A':-

"6. Capacity to take quick and sound decision -Fair

10. Exercise of delegated powers -Fair

12. General Remarks -Excessively involved in G. M. T. A. work which at time leads to negligence of primary duty as a teacher. On reviewing :-Arrogant, disobedient, and misbehaved. Devotion to duty is limited.

13. Grading -Fair."

On November 8, 1976, the petitioner made a representation (Annexure 'B') against the aforesaid remarks to the first respondent. By a communication dated March 14, 1977 (Annexure 'C') the petitioner was informed by the second respondent that his representation was examined by the first respondent and that it found no justification in expunging the adverse remarks. The petitioner was, in terms, intimated that his representation in that behalf was rejected by the first respondent. Thereupon the petitioner has filed this writ petition praying for the issue of a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside Annexure 'A' and 'C' and commanding the respondents (a) to get the performance of the petitioner for the year 1975-76 reassessed by some independent higher authority, (b) to take action against the second respondent and the Dean of the B. J. Medical College (third respondent) for writing such illegal and mala fide confidential reports and (c) to give to the petitioner all service benefits as if no adverse remarks were made in his confidential reports for the period in question.

[2] At the hearing of the petition, the following grounds were urged on behalf of the petitioner in support of the challenge levelled against the impugned adverse remarks :-

(1) The second respondent was actuated by personal malice and vengeance against the petitioner in making the adverse remarks as Reviewing Officer and in bringing pressure to bear upon the third respondent in making the other adverse remarks as Reporting Officer and, therefore, the adverse remarks in their entirety are vitiated by mala fides.

(2) The second and third respondents have acted arbitrarily and without applying their minds in making the adverse remarks and, therefore, the adverse remarks in their entirety are vitiated by legal mala fides.

(3) The second and third respondents have arbitrarily deviated from the norms laid down in the matter of preparation and review of confidential reports in the executive instructions issued by the first respondent in the Government Resolution, General Administration Department, dated March 8, 1969, thus violating Articles 14 and 16 of the Constitution of India.

[3] The second respondent was the Dean of the B. J. Medical College from April 1, 1975 to May 22, 1975. On and with effect from May 23,

1975 he is occupying the post of Director of Medical Education and Research. Dr. Amin officiated as the Dean of the B. J. Medical College from May 23, 1975 to February 2, 1976. On and with effect from February 3,

1976 Dr. Jindal became the Dean of the B. J. Medical College and he continued to occupy the said post till March 31, 1976 and for sometime thereafter. It would appear, therefore, that during the period with which we are concerned herein, that is to say, from April 1, 1975 to March 31, 1976, three different persons held the office of the Dean of the B. J. Medical College. The second respondent held the said post during the early part for a period of nearly one month and three weeks and Dr. Jindal held the post during the last part for a period of nearly the same number of days. It is Dr. Amin who held the post for a substantial part of the period in question.

[4] The Government of Gujarat in its General Administration Department issued Government Resolution dated March 8, 1969 containing instructions regarding writing

and maintenance of annual confidential reports. This Resolution superseded all previous orders issued in that connection by the State Government and directed that instructions contained in the accompaniment to the said Resolution should be followed in the matter of writing and maintenance of annual confidential reports. Briefly speaking, the instructions provided that confidential reports should be generally written by the immediate superior who was called the Reporting Officer. When there was a supervisory officer between a Government servant and his Reporting Officer, a duty was 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 (vide para 4). The Reporting Officer has to submit the confidential reports written by him to the 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 (vide para 5). 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 person who is considered to be fairly upto the expected standard for satisfactorily working in the post should be graded as 'Fair', and a person who falls short of such standard but whose work is not so bad is to be graded as "Below Average". There being only one grade, namely, "Below Average" between "Fair" and "Poor" and there being no separate grade as "Average", "Fair" or 'Average" are not to be treated as separate grades and "it is best to stick to only 'Fair' in the grade" (vide para 6). 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, (vide para 8). Forms and contents of confidential reports have also been prescribed. Though these forms are designed to cover adequately the general aspects of work and conduct of a person, yet they might not fully meet the requirements of departments employing specialised personnel. It has, therefore, been provided that in case of Professors or Lecturers in Education Department who have to be reported with respect to their teaching work, research and literary activities and extra curricular work, etc. or medical officers and Engineers who have to be reported on with respect to their professional competence, a suitable supplementary form should be devised in consultation With the General Administration Department and the Gujarat Public Service Commission (vide para 9). Confidential reports are required to be written annually. They should also be written at the time when a Reporting Officer relinquishes charge but no remarks need be recorded if the period for which the report is to be written is less than three months. Normally no report should be written, if a person has worked for less than three months. However, if there is any special reason or occasion for reporting on a point on which the Reporting Officer wishes to bring he remarks on record, there is no objection to the report being prepared for a shorter period also (vide para 10). The confidential report must be true and it must come aia 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 the report is required to be reviewed by the Reviewing 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 of 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 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 (vide para 12). Adverse remarks have to be communicated to the concerned Government servant (vide para 14). The Government servant has a right to make a representation against the adverse remarks within six weeks from the date of receipt of the communication of the adverse remarks. This representation has to be decided by the competent authority as expeditiously as possible (vide para 15). These, in brief, are the material instructions contained in the Government Resolution dated March 8, 1969.

(His Lordship after slating facts of the petition held that under those circumstances it becomes unnecessary to go into the question whether the second respondent was actuated by a sense of malice and vengeance in making the remarks. When legal mala fides, that is to say, non-application of mind to relevant material and taking into account nonexistent factors is admitted, any investigation into the question of personal malice would be unwarranted. The conclusion which obviously followed was that the remarks made by the second respondent in his capacity as Reviewing Officer in the confidential report of the petitioner for the period in question were required to be quashed and set aside. His Lordship further observed :)

[5] That takes me to the adverse remarks made by the Reporting Officer. Those remarks, as extracted above, show that the petitioner was given "Fair" grading and that in the matter of capacity to take quick and sound decision and exercise of delegated powers, he was rated as "Fair". Besides, as and by way of general remarks, it was noted that the petitioner was "excessively involved in G. M. T. A. work which at times leads to negligence of primary duty as a teacher". The question is whether these remarks are also vitiated for apparent reasons which it would be open to this Court to take into consideration.

[6] I have earlier stated that the Dean of the B. J. Medical College is the Reporting Officer in the case of the petitioner. I have also pointed out that during the material period three persons occupied the post of Dean, namely, the second respondent. Dr. M. G. Amin and Dr. M. N. Jindal. The period for which the second respondent and Dr.

Jindal occupied the post was less than four months, whereas Dr. Amin was the Dean during the remaining period. It has also been pointed out earlier that Dr. Jindal and Dr. Amin have both tried to disown the primary responsibility for making the aforesaid remarks as Reporting Officer. Dr. Jindal has come out with the version that Dr. Amin was the author of the adverse remarks, whereas Dr. Amin has stated that the remarks were entered into the confidential report by Dr. Jindal and that he had merely put his counter-signature on one of the copies of the said report at the bidding of the second respondent. It is unfortunate that persons occupying such high position in the academic world have shown lack of moral courage in owning up the remarks and that each one of the two has tried to pass the buck to the other. It is not necessary for the purposes of the decision of this case to determine as to which out of the two versions is correct. It is an undisputed position that both these officers have signed atleast one of the copies of the confidential report and when the original confidential report was produced at the time of the hearing of the petition I found that it is the copy which bears the signatures of both the officers that constitutes the original confidential report in the case of the petitioner. When both the officers have signed the original confidential report, both must be held responsible in the eye of law for the preparation of the said report and no conclusion other than that both of them acting conjointly made the relevant adverse remarks in the said report is possible in law.

[7] One more thing which requires to be noted at this stage is that under para 10 of the Resolution dated March 8, 1969, it appears to have been laid down as a matter of general policy that ordinarily no remarks need be recorded by a Reporting Officer in the confidential report if a person has worked under him for less than three months. Sub-paragraph (1) of paragraph 10 provides that the confidential reports should be written for a period of one year and that they should also be written at the time when a Reporting Officer relinquishes charge. However, no remarks need be recorded if the period for which the report is to be written is less than three months. Similar provision is to be found in sub-paragraph 2 (i). In sub-paragraph 2 (iii) it is again reiterated that normally no report should be written if a person has worked for less than three months unless there is any special reason or occasion for reporting on a point on which the Reporting Officer wishes to bring his remarks on record. In such a case, there should be no objection to the report being prepared for a shorter period also. Having regard to these broad guidelines, it is apparent that ordinarily, Dr. Jindal was not required to make any remarks in the confidential report of the petitioner inasmuch as he was the Dean during the relevant period only towards the end for about one month and three weeks. It is not the case of Dr. Jindal in his affidavit-in-reply that there was any special reason or

occasion for reporting on a point in relation to the petitioner which he wished to bring on record. In fact, as earlier stated, the version of Dr. Jindal is that he is not at all the author of the adverse remarks. Under these circumstances even proceeding on the basis that Dr. Jindal was, in the eye of law co-author of the relevant adverse remarks since he had signed the confidential report, not much weight could possibly be attached to his contribution in the authorship of those remarks. Even in absence of the provisions contained in paragraph 10, the same result would possibly have followed for, a period of about one month and three weeks is ordinarily too short to give a full and objective assessment of the person reported upon in all respects, so far as it is relevant to his official duties including his general ability, character and performance. In fact, paragraph 10 proceeds upon this principle when it lays down the limit of three months in this context.

[8] Now, it is significant to note that though Dr. Jindal and Dr. Amin have taken up conflicting stands so far as the authorship of the remarks is concerned, they have spoken with one voice in their affidavits-in-reply in relation to one matter. Dr. Jindal has in terms stated at several places in his affidavit-in-reply that the adverse remark "Fair" against the columns of the report relating to capacity to take quick and sound decision and exercise of delegated powers, as also the grading "Fair" given in column 13, were justified because similar adverse remarks were made in the confidential reports of the earlier years. The entire tenor of the affidavit-in-reply of Dr. Jindal, in substance, is that the adverse remarks in question for the relevant period were based on an assessment which was considerably influenced by the confidential record of the previous years. Dr. Jindal has, in fact, annexed as Annexure I to his affidavit in a tabular form the adverse remarks contained in the annual confidential reports of the petitioner for the period from 1952-63 to 1974-75 in order to justify the impugned adverse remarks in the confidential report for the period 1975-76. In this context he has averred as follows :-

"I say that this statement is so glaring and eloquent that it speaks for itself and requires no further elucidation....."

I say that any attempt of the petitioner to challenge the remarks as mala fide for the year 1975-76 is negatived on the perusal of Annexure I which shows that the petitioner cannot be said to have been graded better and given better remarks in the preceding years by the various authors of the confidential reports against whom no mala fides are alleged."

If any doubt is left on this point, it is clearly resolved by the averments made in the affidavit-in-reply filed by Dr. Amin. Dr. Amin has in terms stated as follows :-

"As regards the adverse remarks in columns 6 and 10 in C. R. of Dr. Kulkarni, Dr. Jindal told me that they were based on C. Reports of the previous years."

It would thus appear that at least so far as remarks in columns 6 and 10 relating to the capacity to take quick and sound decision and exercise of delegated powers being "Fair" are concerned, they were wholly founded on the confidential reports of the previous years. The question then is whether the adverse remarks were legal and justified.

[9] There are four different aspects which have a bearing on the resolution of the above question. First, under the Government Resolution dated March 8, 1969, confidential report is required to be written for a unit of one year. In other words, it is a report from year to year and it must primarily relate to the performance, ability and character of the person reported upon during the course of each of such years. I should not be understood as laying down that past reports are irrelevant. All that I am saying is that although the past reports might provide the comparative background, they cannot form the sole basis for the confidential report of the year in question. The performance, ability and character of the person reported upon has to be judged afresh every year And the Reporting Officer as well as the Reviewing Officer both have to make an effort to find out, on full and objective assessment of the performance of the person concerned, whether there has been any improvement or deterioration in all respects, so far as it is relevant to the official duties of the person concerned, as compared to the previous years. This is inherent in the very process of assessment from year to year and it also flows from the requirement of communicating the adverse remarks to the person concerned, for, it is possible that the person may improve upon his past performance on being told what he lacks. Secondly, paragraph 8 of the Government Resolution dated March 8, 1969 requires that an 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 when a Reporting

Officer should make entries 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 requirement with regard to maintenance of ephemeral rolls is advisedly provided for because it ensures not only day to day observation of the work but also contemporaneous record of such observations. Thirdly, paragraph 4 of the Government Resolution dated March 8, 1969 has in terms provided that when there is a supervisory officer between a Government servant and his Reporting Officer, the latter should invariably 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 should be kept with the ephemeral roll of the person concerned. The rationale of this instruction is not far to seek, for, it is the supervisory officer who would be in a better position to judge the day to day performance of the person to be reported upon since he is the immediate superior of such person and is better qualified to speak on those matters. Lastly, paragraphs 14 and 15 of the Government Resolution dated March 8, 1969 provide for the communication of adverse remarks and the right of representation against such adverse remarks. As pointed out in paragraph 14, it is necessary that every employee should know what his defects are and how he can remove them. The best results can be achieved if the Reporting Officer realised that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to give him at all times the necessary advice, guidance and assistance to correct his faults and deficiencies. Accordingly, when mentioning any faults or defects, a Reporting Officer should also give indication of the efforts he had made by way of guidance, admonition, etc. to get the defects removed and the result of such efforts. As pointed out in paragraph 15, such remarks should be communicated as soon as possible, the object being to help the concerned person to improve his work, conduct, etc. so that he could become better by removing the defects pointed out to him. A right of representation is also afforded so that in case any remarks are not, according to the affected person, warranted or justified, he could place the relevant material before the higher authority which can ascertain whether the assessment was objective and unbiased.

[10] Now, in the present case, I find that the salutary instructions issued by the State Government on all these four aspects have been given a complete go-bye. As earlier pointed out, it- emerges as an inescapable conclusion, on a combined reading of the affidavits-in-reply of Dr. Jindal and Dr. Amin, that atleast the adverse remarks against columns 6 and 10 in the confidential report of the petitioner are based substantially, if not wholly, on his past performance. In fact, if Dr. Amin's affidavit on this point were to

be accepted and there is no reason to discard it, for, it is he who was really required to make the confidential report, those adverse remarks are based wholly on the confidential reports of the previous years. Therefore, there was really no assessment of the petitioner's performance during the year 1975-76 in respect of which the adverse remarks in question were made and, to that extent, there is a serious infirmity. But this is not all. It is an undisputed position that the adverse remarks made in the confidential reports of the petitioner for the previous years, which admittedly entered into consideration, were not communicated to the petitioner and he had no opportunity to make a representation against those remarks. Those adverse remarks came into light only when Dr. Jindal made his affidavit-in-reply in the present proceedings. It is well-settled, so far as this Court is concerned, that adverse remarks which were not communicated to affected Government servant cannot be utilized against him. In Letters Patent Appeal No. 290 of 1974 decided on March 26, 1976 a Division Bench of these Court consisting of J. B. Mehta and T. U. Mehta, JJ. confirmed the decision dated July 9110, 1974 rendered by B. K. Mehta J. in Special Civil Application No. 1506 of 1972 wherein the Select List prepared by the Selection Committee from amongst the officers belonging to Class II Cadre of the State Forest Service for the purposes of promotion to Class I Cadre was partly struck down on the ground that the Select List, in so far as it had completely excluded the petitioners on the basis of the alleged adverse entries in the confidential records which had never been duly finalized by the competent authority, was wholly illegal and ultra vires. In that case, the first petitioner was served with adverse remarks made in his confidential reports for ten years and the second petitioner was furnished with adverse remarks in the confidential reports made for five years at a time and the representation made by one of the petitioners against those adverse remarks was pending before the competent authority when the Select List was prepared. It was found in that case that those adverse remarks were the sole basis on which the petitioners names were excluded from the Select List. It was held that great prejudice had resulted to the petitioners when they were served at a time with adverse remarks in respect of a number of previous years which were never communicated to them within a reasonable period as required by the relevant administrative directions and when the representation made by one of the petitioners against such adverse remarks was not even disposed / of and that, under those circumstances, the exclusion of the petitioners in on the sole basis of such confidential adverse entries was illegal and ultra vires. The ratio of this decision it that adverse remarks, which are not communicated within a reasonable time to the affected Government servant and against which no opportunity of representation has been afforded or, if afforded, such representation has not been disposed of, could not validly enter into consideration for

the purposes of considering the claim for promotion. The principle underlying this decision will apply with still greater force in a case like the present where adverse remarks covering a period of number of years were not at all communicated to the petitioner and no opportunity whatever was afforded to him to make a representation against the same or to improve his performance by removing the defects pointed out in such adverse remarks. Such adverse remarks would be of no avail and cannot be relied upon for any purpose to the prejudice of the petitioner. When such adverse remarks form the sole or substantial basis of adverse remarks in confidential reports for subsequent period, the confidential reports for the subsequent period would also be vitiated. In my opinion, therefore, on this ground alone, if none other, the impugned adverse remarks made in the case Of the petitioner by the Reporting Officer require to be quashed and set aside.

[11] In paragraph 28 of the petition the petitioner alleged that no ephemeral roll was maintained so far as he was concerned and that the confidential report was prepared arbitrarily at the end of the year without any relevant record for the same. Dr. Amin admits in his affidavit that no ephemeral roll was maintained by him and that nobody had shown him the ephemeral roll. Dr. Jindal's affidavit is not of any assistance on this point but even therein there is no denial of this specific allegation. The obvious conclusion, therefore, is that there was no day to day assessment of the performance of the petitioner nor was there any contemporaneous record of the assessment of such performance and further that when the adverse remarks in question were made, such material furnishing verifiable facts was not available to the Reporting Officer. In my opinion, this is yet another infirmity which goes to the root and in view of what immediately follows, vitiates the impugned adverse remarks as arbitrary for, in the absence of maintenance of ephemeral roll it was extremely difficult, if not impossible, to make objective and full assessment of the petitioner's performance during the entire period in question, particularly when three persons occupied the post of Dean during such period.

[12] Dr. Amin has further stated in his affidavit that in the case of the petitioner the "Confidential Report" written by the Head of the Department of Anatomy, Dr. D. N. Chhatrapati, was not taken into consideration. Be it noted that Dr. Chhatrapati, as the Head of the Department of Anatomy, was the supervisory officer and that, therefore, it was necessary to take into account his remarks with regard to the performance of the petitioner during the period in question. When Dr. Amin speaks of the "Confidential Report" written by Dr. Chhatrapati, he obviously refers to the remarks offered by Dr.

Chhatrapati as supervisory officer. It would thus appear that very important and relevant material, which the Reporting Officer was required to take into consideration, has not been considered. What makes the matters worse is that when the remarks made by Dr. Chhatrapati in relation to the work of the petitioner during the period in question were produced at my instance at the hearing of the petition, and they were subsequently taken on record, it transpired that the relevant adverse remarks made by the Reporting Officer were in direct conflict with the observations of the supervisory officer. Dr. Chhatrapati in his remarks offered on March 25, 1976 in relation to the petitioner against column 6 (Capacity to take quick and sound decisions) has stated "good" and against column 10 (Exercise of delegated powers) has stated "Utilises powers properly. Does not shirk from responsibilities." Against column 12 (General Remarks) he has stated "Hard working, conscientious teacher" and the grading which he has given to the petitioner is "Very good". In a Supplementary Report relating to the academic performance of the petitioner, he has observed that the petitioner was "Very good", so far as "ability to lecture to and interest students in the subject and to arrange subject matter so as to cover the whole of the prescribed course in the subject" and that the petitioner was a "strict disciplinarian". It is obvious that when the phemeral roll was not maintained and was not available, the remarks offered by the supervisory officer ought to have been taken into consideration, especially when adverse remarks quite contrary to the favourable remarks made by the supervisory officer were to be entered into the confidential record of the petitioner. This again is a serious infirmity and it too vitiates the impugned remarks.

[13] There is one more circumstance which also has its relevance. Dr. -Amin in his affidavit-in-reply has in terms stated that the adverse remarks in column 12 ("Excessively involved in G. M. T. A. work which at times leads to negligence of primary duty as a teacher") would not have been written by him had he alone written the confidential report. It would thus appear that the person primarily responsible for writing the confidential report and one who had the opportunity of observing the petitioner's work during a substantial part of the period under consideration states in no unclear terms that the petitioner did not deserve those remarks. Whether those remarks came to be entered solely on account of Dr. Amin or Dr. Jindal or as a result of joint deliberations of both of them is a matter of no consequence. I have earlier held that both. Dr. Amin and Dr. Jindal, must be held, in the eye of law, to be responsible for making the adverse remarks in the capacity of Reporting Officers. When it is found, however that one of the Reporting Officers, who was really competent to make entries in the confidential records having regard to the length of time for which the petitioner worked under him during the

relevant period, states in no uncertain terms that he would not have made those remarks left to himself, those remarks must be treated as of no effect whatever.

[14] As regards the grading "Fair" given to the petitioner against column 13, many of the considerations which have been taken into account earlier would have their sway. That apart, once it is found that all the other adverse remarks in the confidential record are vitiated, the grading given to the petitioner cannot be allowed to stand for the simple reason that "grading consists really in summing up and assessing the various points included in the report" (vide para 6 of the Government Resolution dated March 8, 1969) if the various other adverse remarks have to be discarded for the reasons aforesaid, the grading must also go, for, aught one knows, if those adverse remarks were originally not there, the Reporting Officer might not have graded the petitioner as "Fair".

[15] The foregoing discussion would show that the various adverse remarks in the confidential record made by the Reporting Officers suffer from the same vice from which similar remarks made by the Reviewing Officer are found to have suffered. In fact, the infirmities are of greater magnitude. In making those adverse remarks, the Reporting Officers have acted without having the assistance of any record of the day to day performance of the petitioner and they have in fact failed to assess the performance for the period in question. Furthermore, they have ignored the relevant material which, according to the executive instructions on the subject, they were required to take into account. Besides, the Reporting Officers have taken into consideration material which could not have been legitimately taken into account. There was non-application of mind to material aspects and, in the absence of special reasons the participation, if any, of Dr. Jindal in the making of such adverse remarks, was also not warranted. Under the circumstances, even those adverse remarks must be quashed and set aside.

[16] Apart from the grounds aforesaid, the adverse remarks made by the Reporting Officers are liable to be quashed on another aspect" linked with Articles 14 and 16. The State Government has laid down in its Resolution dated March 8, 1969 certain norms and procedure which must be followed in writing and maintenance of annual confidential reports. Though the instructions contained in the said Resolution are executive in character, they cannot 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. In the present case, as found earlier, in material respects those executive instructions have been departed from in the case of the petitioner. There is no explanation whatever for such

deviation. The petitioner is in that manner discriminated against and therefore, even on the ground that constitutional mandate has been violated, the adverse remarks in the confidential report for the year in question will have to be struck down.

[17] It is true that the adverse remarks made by the Reporting Officer must be deemed to have been approved by the second respondent when he exercised his powers of review and did not express any disagreement with such assessment. It is also true that the presentation made by the petitioner against the adverse remarks contained in his confidential report (including those made by the Reviewing Officer) has been rejected by the State Government by its communication dated March 14, 1977 which would go to show that even that authority concurred in the assessment of the work of the petitioner for the period in question. However, when the relevant adverse remarks made by the Reporting Officer as well as by the Reviewing Officer are found to be entirely vitiated and of no effect whatever in the eye of law on the grounds aforesaid, the imprimatur impliedly placed by the second respondent on the adverse remarks made by the Reporting Officers and the imprimatur put by the State Government upon the adverse remarks made both by the Reporting Officers as well as by the Reviewing Officer cannot legally stand. That which is vitiated at the root on grounds such as those which obtain in this case cannot be rectified at the higher level. The consequence which must necessarily follow is that even those assessments as to the performance of the petitioner during the relevant period will have to be treated as illegal, invalid and of no effect.

[18] The result, therefore, is that all the adverse remarks made against the petitioner in his confidential report for the year 1975-76 as communicated to him under the Memo dated August 23, 1976, Annexure 'A' will have to be treated as illegal, invalid and of no effect whatever in 'the eye of law. Similarly, the order made by the State Government (first respondent) as communicated to the petitioner under letter dated March 14, 1977, Annexure 'C' rejecting his representation against those adverse remarks will also have to be treated as illegal invalid and of 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.

[19] The next question which arises is as to what further directions should be given in the matter of preparation of the confidential report for the period in question. Having regard to the nature of allegations made in the petition and the bitter controversy between the parties as also the manner in which the confidential report for the year in

question was prepared, it would not be in the interests of justice to direct that those very officers who were concerned with the preparation of the report to the initial stage should reassess the performance of the petitioner. Both the Reporting Officer and the Reviewing Officer, must be different persons for the purpose of reassessment. So far as the Reporting Officer is concerned, I am told that there will be no difficulty because the present incumbent of the post of the Dean of the B. J. Medical College is not the same officer since Dr. Jindal is transferred. The present Dean of the B. J. Medical College will, therefore, function as the Reporting Officer, so far as the work of reassessment is concerned. In the very nature of things, the said officer must have had no opportunity of assessing the performance of the petitioner during the relevant period. Besides, there is no permanent roll. He will, therefore, have to be guided in performing his function by such record as is available. It is an admitted position that the Head of the Department of Anatomy, who is the supervisory officer, has made a report on the performance of the petitioner for the period in question. This report will, therefore, be the most relevant material and it will have to be taken into account by the Reporting Officer along with any other material on record, if any, relating to the performance of the petitioner during the period in question. As regards the Reviewing Officer, it would be in the interests of justice to direct the State Government itself to perform the said function. This would, of course, result in taking away from the petitioner the right of making a representation against the adverse remarks to the superior authority. However, in the course of the hearing, the petitioner has agreed to this course being adopted in spite of such consequential result, because the reviewing authority is the same as the authority who would have entertained the representation if any. The State Government will also perform its function as the Reviewing Authority on the basis of the material on record, if any, relating to the performance of the petitioner during the period in question. Needless to say that both the Reporting Officer and the Reviewing Authority will abide by the executive instructions issued by the State Government in the matter of preparation and maintenance of annual confidential reports and be guided by the observations made herein. The reassessment will be completed on or before March 31, 1978. A writ will issue accordingly in terms aforesaid. Rule made absolute accordingly. The respondents will pay the costs of this petition to the petitioner.

[20] Before parting with the case, one cannot help observing that this case brings into limelight two distressing features. First, the relationship between the officers at various hierarchical levels on the academic side in the Public Health Department of the State Government leaves much to be desired. The nature of allegations and counter-allegations made in this petition, the truth of which fortunately for all concerned I am not

called upon to determine, nonetheless reveal a sordid state of affairs. If proper atmosphere is not created so that those in charge of medical education at all levels can function on the basis of mutual trust and confidence and establish healthy working relationship between themselves, what example will they set and how will they instil a sense of discipline, duty and responsibility amongst those whom they are supposed to impart instructions and who, upon graduation, will go out to serve the ill, unhealthy and afflicted persons in the society? It is high time that internal corrective measures are adopted by those in charge to clean the Augean stables. Secondly, in the matter of writing and maintenance of annual confidential reports, the approach at all level appears to be thoroughly casual and perfunctory. It is possibly not, realized that confidential reports of a Government servant make or mar his future, for, they are taken into account at all stages of advancement in his career. Besides, 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 representation. 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. It is hoped 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 of Articles 14 and 16. It is hoped that this timely warning will not fail on deaf ears.

Rule made absolute.