PETITIONER:
T. LAKSHMI NARASIMHA CHARI, GOVERNMENT OF ANDHRA PRADESH, K.

Vs.

RESPONDENT:
HIGH COURT OF ANDHRA PRADESH & ANR.

DATE OF JUDGMENT: 09/05/1996

BENCH:
SUJATA V. MANOHAR, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS. 2166-67 OF 1989
WITH
WRIT PETITION (C) NO. 331 of 1994
J U D G M E N T

J.S. Verma, J.

All these appeals are against the same judgment.

The appellant - T. Lakshmi Narasimha Chari was selected for the Andhra Pradesh State Judicial Service and appointed as District Munsiff on 21.1.1974 by the Governor. He was confirmed as District Munsiff on 25.5.1979. He was then promoted temporarily to act as Subordinate Judge on 20.2.1980. A preliminary enquiry was made into an allegation of misconduct, which had led to the appellant's arrest by the police on 26.91976, in which a prima facie case was made out against the appellant. Accordingly, a regular departmental enquiry was initiated on the charges of misconduct. The allegation against the appellant was that when he was posted as Munsiff Magistrate, Hyderabad (East), he had forced a woman, who was a litigant before him, to have an illicit relationship with him; and the appellant was arrested on the night of 26.9.1976 on the complaint of that woman when the police found him with her in a hotel. A criminal case was registered against the appellant under Section 5(2) of the Prevention of Corruption Act and Section 509, I.P.C. and sanction of the State Government was sought for his prosecution. However, the Government did not accord the sanction and took the decision of not prosecuting him without even consulting the High Court. In the departmental enquiry held by the Session Judge, who was appointed as the enquiry officer, the charge of misconduct was found proved and the punishment of removal from service was recommended. The High Curt accepted the findings and itself made an order dated 20.1.1982 removing the appellant from service.

Apparently, the Andhra Pradesh High Court took the view that the order of removal from service could be made by the High Court itself and it was not necessary for the High Court to make its recommendations to the Governor for issuing the order imposing the penalty of removal from service. The appellant challenged the order dated 20.1.19822

made by the High Court removing him from service, in an appeal to the Governor under Rule 21(2) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963. By G.O.Ms. No. 534 dated 14.9.1984 of the Government of Andhra Pradesh, Home Department, that appeal was allowed by the Governor on the ground that the High Court is not the competent authority to order the dismissal or removal from service of the Subordinate Judicial Officer. The order also granted all consequential benefits to the appellant.

The Andhra Pradesh High Court filed Writ Petition No. 14588/1984 in the High Court for quashing G.O.Ms. No. 534 dated 14.9.1984, by which the Governor has allowed the appeal and set aside the order dated 20.1.1982, issued by the High Court, removing the appellant from service. This writ petition was dismissed on 16.10.1988 by a learned single Judge of the High Court. Writ Appeal No. 130 of 1980 has then filed by the High court against the dismissal of the writ petition, before a Division Bench of the High Court. In addition, Writ Petition No. 13691 of 1986 was also filed by the High Court challenging the validity of Rule 21(2) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963, which provides an appeal from an order passed by the High Court to the Governor of Andhra Pradesh. The writ appeal and the said writ petition were both referred for decision to a Full Bench of the High Court, which allowed both of them by the impugned judgment dated 25.8.1988. The Full Bench of the High Court in the impugned judgment has upheld the contentions of the High Court that the order of removal from service could be made by the High Court itself; and that the provision for appeal against the High Court's order to the Governor is invalid. A further direction was issued therein that the Governor could not entertain any appeal preferred under Rule 21 (2) against any order made by the High Court in the exercise of its disciplinary jurisdiction over the members of the subordinate judiciary.

C.A. No.2165/1989 is by T.Lakshmi Narasimha Chari, the concerned judicial officer, against the judgment of the Full Bench. C.A. Nos.2166/2167/1989 are by the Government of Andhra Pradesh against the same judgment of the Full Bench.

Writ Petition (C) No.331/1994 is by K.David Wilson, another member of the subordinate judiciary in Andhra Pradesh who was removed from service by an order dated 01.12.1993, issued by the High Court after a departmental enquiry into the charges of misconduct against him. He too was a District Munsiff in the Andhra Pradesh Judicial Service, who was temporarily promoted as a Subordinate Judge, when the order for his removal from service was made by the High Court. In view of the above Full bench decision of the High Court, the petitioner-K. David Wilson has challenged the order of removal from service directly by this petition filed under Article 32 of the Constitution. This writ petition also is being decided by this common judgment since it involves a common question of law for decision namely, the competence of the High Court to itself issue the order of removal from service.

Before we proceed to consider the questions which arise for decision, the material conclusions in the impugned judgment of the Full Bench may be summarised thus:

(1) Article 235 of the Constitution of India vests the control over District Courts and the courts subordinate thereto, in the High Court. The control includes the disciplinary control over the conduct and discipline of the members of the subordinate judiciary.

(2) In the State of Andhra Pradesh except for the posts of District Judges filled by direct recruitment or by promotion and the posts of District Munsiffs filled by direct recruitment or by transfer for which the appointments have to be made by the Governor of the State of Andhra Pradesh, it is the High Court which is the appointing authority to the posts of Judicial Second Class Magistrates, to the posts of District Munsiffs by promotion from the category of Judicial Second Class Magistrates and to the posts of Subordinate Judges by promotion from the cadre of District Munsiffs.
(3) In the case of persons appointed of promoted to be District Judges or the District Munsiffs appointed directly or by transfer by the Governor, if the High Court exercising disciplinary control over them recommends to the Governor to impose on them the major penalty of dismissal or removal or reduction in rank, such a recommendation is binding on the Governor by virtue of Article 235 of the Constitution.
(4) Rule 11 (1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules 1963 is ultra vires Article 235 of the Constitution in so far as it denies to the High Court the authority to impose punishments, both major and minor, regarded as necessary and proper in disciplinary enquiries held against the subordinate judicial officers who have been holding the posts to which they have been either initially appointed or promoted by the High Court.
(5) There is no right of appeal under Rule 21(2) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 to the Governor against the order of the High Court passed in exercise of its disciplinary jurisdiction against all the members of the subordinate judiciary including District Judges. Rule 21(2) must be read down to mean that the right of appeal saved under Article 235 of the Constitution is available only in respect of matters not relating to the disciplinary control vested in the High Court over members of the Subordinate Judicial Service.

The first question is whether the orders of removal from service issued by the High Court itself against T. Lakshmi Narasimha Chari and K. David Wilson are validly made. Admittedly, both these subordinate judicial officers were directly recruited as District Munsiffs and had been confirmed on that post. At the time of removal from service, the substantive rank held by each of them was of a District Munsiffs and they were promoted temporarily as Subordinate Judges. Since their lien was in their substantive rank as District Munsiff, the orders of removal from service had the effect of terminating their service as District Munsiff. The validity of the orders of removal from service made by the High Court has to be adjudged on these facts.

One of the conclusions rightly reached by the High Court is that the appointing authority for a directly recruited District Munsiff is the Governor. Both these persons were directly recruited as District Munsiffs and it was this substantive rank held by them when they were removed from service. The High Court has further correctly concluded that the major penalty of dismissal or removal or reduction in rank can be imposed on a directly appointed District Munsiff only on the recommendation of the High Court which is binding on the Governor. The result is that the order of removal from service of a person holding the substantive rank of District Munsiff has to be made only by the Governor, even though the Governor must act in accordance with the recommendation of the High Court which

is binding on the Governor. This the true import of Article 235 of the Constitution which vests control over the District Courts and the courts subordinate thereto in the High Court. This is well settled by a catena of decisions of this Court. It is sufficient to refer the decisions in B.S. Yadav and Others etc. vs. State of Haryana and Others etc., (1981) 1 S.C.R. 1024 and Chief Justice of Andhra Pradesh and Others vs. L.V.A. Dixitulu and Others etc., (1979) 2 SCC 34.

Applying the settled legal principle to the undisputed facts in the case of both these subordinate judicial officers who held the substantive rank of directly appointed District Munsiff at the time of issuance of the order of removal from service by the High Court itself, it is plain that the order of removal from service in the case of each of them had to be made by the Governor and not by the High Court itself. It is equally plain that the recommendation of the High Court for their removal from service after the charges of misconduct were found proved in the disciplinary inquiry, was binding on the Governor who had to issue the order of removal in accordance with the recommendation made by the High Court. Unfortunately the High Court, in spite of the settled legal position, did not adopt the correct procedure for issuance of the order of removal from service of these two judicial officers. The High Court, instead of sending its recommendation to the Governor for issuing the order of removal from service, which would be binding on the Governor, proceeded to issue the order of removal from service itself. The State Government also failed to appreciate the correct legal position and to make amends by issuing the order of removal in the name of Governor treating the action of the High Court as its recommendation for removal from service. Such an action would have corrected the formal defect in the order of removal. Another opportunity to correct the mistake in this manner came when the appeal was filled under Rule 21(2) by the judicial officer. However, that too was missed. It is this error which has enabled these judicial officers to challenge the orders of removal from service.

The next question is of the effect of GOMs No. 534 dated 14.9.1984 issued by the Governor allowing the appeal under Rule 21(2) filed by T. Lakshmi Narasimha Chari. In view of the conclusion reached by us on the first point that the order of removal issued by the High Court itself was not validly made since it had to be issued by the Governor on the recommendation made by the High Court, this question has to be viewed in this background. In the present case, the practical effect of the answer to this question may have relevance only for moulding the relief in view of the conclusion reached on the above first question.

It would be appropriate at this stage to first consider the need for examining the correctness of the High Court's conclusion that Rule 11(1) is ultra vires Article 235 and Rule 21(2) has to be read down to confer only a limited right of appeal to the Governor.

The relevant provisions of the Andhra Pradesh (Classification, Control and Appeal) Rules, 1963 may be referred. Admittedly, these rules are applicable to the Andhra Pradesh State Higher Judicial Service and the Andhra Pradesh State Judicial Service which are items 32 and 33 in Schedule I to the Rules which has to be read with Rule 6 which says that the State Services shall consist of services included in Schedule I to these Rules. Relevant provisions of the Rules are as under:-

"PART III- CONTROL

8. (1) The following penalties may,

for good and sufficient reason and as hereinafter provided, be imposed upon a member of a Civil Service or holder of Civil post specified in Rule 2, namely:-
(G.O.Ms. No. 691, Ser. C, dated 4-11-1980)
(i) Censure;
(ii) Fine;
(iii) Withholding of increments or promotion;
(iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited.
(v) Recovery from pay of the whole or any part of the pecuniary loss caused to the State Government or the Central Government or to a local authority.
(vi) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited.
(v) Recovery from pay of the whole or any part of the pecuniary loss caused to the State Government or the Central Government or to a local authority.
(vi) Compulsory retirement, otherwise than under sub-rules (2) and (2A) or rule 3 of the Andhra Pradesh Liberalised Pension Rules, 1961, or under rules 292, 293 and 293-A of the Hyderabad Civil Services Rules, or under the Andhra Pradesh Government Servants Premature Retirement Rules, 1975, or under Article 465 (2) or under Note I to Article 465-A of the Civil Services Regulations or in the case of members of the Civil Service of the erstwhile Hyderabad Government, compulsory retirement before completion of 30 years or 25 years of qualifying service according as the member of the service is governed by the Revise Pension Rules, 1951 or by the rules in force before that date, as the case may be (hereinafter referred to as compulsory retirement);
(vii) Removal from the civil service of the State;
(viii) Dismissal from the civil service of the State;
(ix) Suspension, where a person has already been suspended under rule 13 (1), to the extent considered necessary.
xxx xxx xxx
"11. (1) The High Court of Andhra Pradesh may impose on members of the Andhra Pradesh State Judicial Service, any of the penalties

specified in items (i), (iii), (iv) and (v) of rule 8:
Provided that the High Court of Andhra Pradesh may impose on the Judicial Second Class Magistrates any of the penalties specified in rule 8.
xxx xxx xxx
"PART IV - APPEALS
20. Every person who is a member of any of the service specified in rule 5, shall be entitled to appeal, as hereinafter provided, from an order passed by an authority-
(a) imposing upon him any of the penalties specified in rule 8 or rule 9;
xxx xxx xxx
21.(2) An appeal from an order passed by the High Court shall lie to the Governor of Andhra Pradesh.
xxx xxx xxx

In view of the fact that neither T. Lakshmi Narasimha Chari nor K. David Wilson, determination of whose services has given rise to this litigation, were initially appointed directly as District Munsiffs by the High Court, the question of considering the validity of Rule 11(1) does not arise in this case. It was, therefore, unnecessary for the High Court to have raised that question and then to have considered and decided the same in the abstract. For the same reason, we consider it unnecessary to pronounce any concluded opinion on that point and leave that question for decision in an appropriate case, wherein that question may arise directly. The decision of the High Court on this point is, therefore, set aside for this reason alone, being unnecessary, leaving the question open for decision in an appropriate case.

The only surviving question now is the correctness of the High Court's decision relating to Rule 21(2) that it has to be read down to confer only a limited right of appeal to the Governor in some cases alone.

In our opinion Rule 21(2) can be interpreted in conformity with Article 235 without the requirement of reading any limitation therein as indicated by the High Court. The second part of Article 235 enables the framing of such a rule to confer a right of appeal. Such a provision for appeal must be construed to mean that the appeal to the Governor against the order of the High Court provides for reconsideration of the High Court's order by the Governor, but in keeping with the requirement of Article 235 that the power of control over persons belonging to the judicial service of a State vests in the High Court, and that the appeal must be decided by the Governor only in accordance with the opinion of the High court. In other words, such an appeal has to be forwarded by the Governor to the High Court for its opinion, which would enable the High Court to reconsider its earlier decision and give its opinion to the Governor, in accordance with which the Governor must decide the appeal. In short, the remedy of such an appeal provided by the rules which have been framed in consultation with the High Court is in the nature of a provision for reconsideration or review by the High Court of its earlier decision. The High Court on reconsideration of the matter has to give its opinion to the Governor and the Governor

must invariably act in accordance with the opinion so given by the High Court. The Governor has no option to act in a manner different from that recommended by the High Court. This procedure requirests reconsideration by the High Court of its earlier opinion and the opinion given by the High Court after reconsideration indicates the manner of decision f that appeal. There is thus no erosion in the control vested in the High Court over persons belonging o the judicial service of a State; and the requirement of an appeal i.e. reconsideration of the earlier decision is also satisfied. In this process, any comments by the Governor on the merits of the case would also receive consideration of the High court before it forms the final opinion and forwards its recommendation to the Governor for decision of the appeal in accordance with that opinion. This is the scheme and requirement of Article 235. We are informed that similar provision exists for appeal in the case of persons belonging to the judicial service in some other States and the rule is worked in the manner indicated. Such a construction of the rule gives effect to the provision for appeal consistent with the right of appeal available under the second part of Article 235 and is consistent with the vesting of control in the High Court over the subordinate judiciary.

There is no need to read down Rule 21(2) in the manner in which it has been done by the High court. The High Court's decision overlooks this aspect.

The question now is of the kind of final order to be made in these cases. In the cases of both these officers, namely, T. Lakshmi Narasimha Chari and K. David Wilson, the order of removal made by the High Court is set aside for the reasons already given. However, the action of the High Court against both these judicial officers who held the substantive rank of District Munsiff, is to be treated as the recommendation of the High Court to the Governor for their removal from service. In view of the control over them vested in the High Court by virtue of Article 235 of the Constitution, the Governor is bound, in each case, to act in accordance with the recommendation of the High Court and each of them has to be removed from service for the misconduct found proved by the High Court against them. The Governor of the State of Andhra Pradesh is to proceed and make the necessary consequential orders in accordance with the recommendation of the High Court in each came, in accordance with law. It was submitted by learned counsel for T. Lakshmi Narasimha Chari that he has attained the age of superannuation in the meantime. Any such subsequent event is to be brought to the notice of the High Court and it is for the High court to consider and decide the effect thereof in making any further recommendation to the Governor. In formulating its recommendation, the High Court is to keep in view the relevant rules and the decisions relating to this aspect. No such question arises for consideration by us in this appeal and, therefore, we need not deal with this aspect any further. All consequential actions are to be considered and taken by the High Court in accordance with law.

Consequently, these appeals and the writ petition are decided in the above manner.