

GAHC010175612020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5190/2020

PURUSUTTAM BHAGAWATI
S/O. JIBAN BHAGAWATI, R/O. VILL. PANIGAON, P.O. PANIGAON, DIST.
LAKHIMPUR, PIN-787052.

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 2 ORS
REP. BY THE CHAIRMAN, BUJULEE BHAWAN, P.O. GUWAHATI G.P.O., P.S.
PALTAN BAZAR, DIST. KAMRUP (M), GUWAHATI-781001.

2:THE CHIEF GENERAL MANAGER (HRA)

THE ASSAM POWER DISTRIBUTION CO. LTD.
BIJULEE BHAWAN
GUWAHATI-781001.

3:THE MANAGING DIRECTOR

THE ASSAM POWER DISTRIBUTION CO. LTD.
BIJULEE BHAWAN
GUWAHATI-781001

Advocate for the Petitioner : MR. A K BARUAH

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Date of hearing : 28.02.2023, 21/30.03.2023

Date of Judgment : 30.06.2023

::JUDGMENT AND ORDER (CAV)::

Heard Mr. A. K. Baruah, learned counsel for the petitioner. Also heard Mr. S. P. Sharma, learned standing counsel for the respondent, APDCL.

2. This petition is filed by the petitioner, praying for setting aside and quashing of the impugned order dated 10.11.2020, whereby the Assam Power Distribution Company Ltd.(APDCL) authorities came to a finding that the petitioner had demanded illegal gratification and the same was considered as gross misconduct including moral turpitude and therefore, it was ordered that the petitioner shall not be engaged any further in any capacity in the APDCL.

3. The petitioner, who was engaged as Computer Operator on temporary basis on 20.01.2012, the petitioner was initially posted at Guwahati Electrical Eastern Division, and was subsequently transferred to the Office of the Managing Director, APDCL.

4. It is submitted by the petitioner that he had been rendering sincere and dedicated services to the utmost satisfaction of all concerned and without any blemish. The service of the petitioner was extended temporarily from time to time. The further case of the petitioner is that in response to an advertisement dated 14.08.2018 issued by the respondent No.1, company, APDCL for appointment to the post of 'Office cum Field Assistant', 'Sahayak' and 'Mali', the petitioner submitted his candidature through the online recruitment portal of the APDCL, namely, the respondent No.1, company. The petitioner fulfilled all the eligibility criteria and accordingly, he was issued an Admit Card with the Roll No. 80800. The written test was conducted on 28.04.2019, in which the petitioner appeared and had cleared the same successfully. Thereafter, a notice dated 10.02.2020 was issued by the respondent No.1, Company notifying that certain candidates, including the petitioner were provisionally short-listed for recruitment to the post of 'Office cum Field Assistant', subject to

successful completion of document verification at the APDCL Training Institute. On the date fixed for document verification namely, 24.02.2020, the petitioner visited the aforesaid venue for document verification and all relevant documents were produced before the authorities for the purposes of document verification. The documents produced were all found to be genuine and proper. Having successfully cleared the written examination and also having the required documents being duly verified by the Competent Authorities, the petitioner was awaiting for his appointment to the post of 'Office cum Field Assistant', for which post he had submitted his candidature in response to the advertisement dated 14.08.2018. However, to the utter surprise of the petitioner, he was served with a show-cause notice dated 28.09.2020. The said show-cause notice was for showing cause against termination from temporary engagement of the petitioner as outsource Computer Operator. As per the said Notice, it was alleged that the petitioner had conspired to collect illegal gratification from the applicants in the matter of appointment on compassionate ground and further that he petitioner had confessed in his written statement and had accepted the act of demanding illegal gratification from the concerned applicants. Such acts were held to be gross misconducts involving moral turpitude. Accordingly, he was asked to

explain in writing on or before 05.10.2020, as to why he should not be terminated from temporarily engagement from his act of taking illegal gratification. In response to the said notice, the petitioner submitted his reply denying all the allegations made. However, by the impugned order dated 10.11.2020, the respondent, APDCL authority held that the petitioner had indulged in gross misconduct and accordingly he shall not be engaged any further in any capacity in APDCL limited.

5. Being aggrieved, the petitioner has filed this writ petition assailing the actions of the respondent, APDCL authority and terminating the petitioner and holding that he shall not be entitled for any employment in any capacity in future in APDCL. The challenge made by the petitioner on the writ petition are on the following grounds:-

“i. Firstly, as has been conclusively established herein above, neither was the enquiry report dated 17.09.2020 furnished to the petitioner nor a copy of the complaints of the purported complainants were served upon him. The entire decision making process was shrouded with such secrecy that even the names of the complainants were not revealed to the petitioner. Moreover, no opportunity was provided to the petitioner to cross-examine the complainants and/or the written complaints, if any. The violation of the principles of natural justice is apparent on the face of the records.

ii. Secondly, the impugned order dated 10.11.2020 (Annexure-H) imputes the petitioner over and above the mere the unsustainability

of the job. The allegations contained therein questions the very integrity of the petitioner. This in itself amounts to stigma. Therefore, the principles of natural justice could not have been dispensed with under any circumstances.

iii. Thirdly, since the impugned order dated 10.11.2020 (Annexure-H) is founded on alleged misconduct of the petitioner, the requirements of the constitutional mandate laid down in Article 311 of the Constitution of India could not have been dispensed with under any circumstances. On this count also, the impugned order dated 10.11.2020 (Annexure-H) is liable to be set aside/quashed.

iv. Fourthly, mere allegations against the petitioner will not hold him guilty. In the present case, the petitioner has been punished on the basis of some off-the-cuff allegation(s) made by some unidentified complainants. All these allegations were made behind the back of the petitioner.

v. Fifthly, in the instant case, the rules are silent with regard to the temporary employees. Even in such a situation, the basic principles of audi alteram partem cannot be violated.

vi. Lastly but not leastly, hostile discrimination has been meted out to the petitioner in the form of an extremely stigmatic impugned order dated 10.11.2020. The direct violation of Articles 14, 16 and 21 of the Constitution of India is palpable on the face of the records. “

6. The respondents contested the claims of the petitioner by filing their counter affidavit. According to the respondents an internal enquiry was conducted by the APDCL by putting the petitioner to notice. In the said enquiry, the petitioner participated and submitted his written statements, where he admitted that at the behest of some of his colleagues, he had approached some candidates, who had applied for appointment in compassionate appointment for seeking gratification. In view of such

categorical statements made by the petitioner before the authorities concerned, there is no illegality in issuing the order dated 10.11.2020 and disengaging the petitioner from his temporary services. It is submitted that there is no infirmity in the order impugned dated 10.11.2020, and as such there is no merit in the writ petition and the same needs to be dismissed.

7. The further contentions of the respondents are that the engagement of the petitioner was in the temporary capacity and therefore, continuance of the same is subject to the satisfaction of the employer. The petitioner was never engaged as a regular employee in any cadre under the APDCL. And accordingly, the steps taken by the respondent authority in putting the petitioner to notice and the petitioner having participated in the said enquiry by filing a written statement, sufficient opportunity was given to the petitioner prior to issuing of the order of disengagement dated 10.11.2020. The petitioner also filed an appeal before the appellate authority, which also came to be rejected.

8. The learned counsel for the petitioner has urged that the entire process by which the impugned termination order dated 10.11.2020, was

issued to the petitioner is opposed to the principles of natural justice as well as the canons of service jurisprudence. It is urged that notwithstanding that the petitioner was engaged in temporary service, his services are extended from time to time upon being satisfied by the authorities concerned. The fact that the petitioner is not regularized in a regular cadre cannot be attributed to the petitioner, since the APDCL authorities did not initiate any process for regularization of the petitioner cadre.

9. The learned counsel for the petitioner submits that pursuant to the petitioner having appeared for the written test and his credentials being verified and examined by the authorities, the petitioner was hopeful of securing a regular employment as a Field Assistant pursuant to the advertisement dated 14.08.2018. The show cause notice dated 28.09.2020 issued to the petitioner reflects that it is a show cause notice for termination from service and in response to which the petitioner has accordingly filed his written statements. However, prior to the show cause notice, no enquiry or preliminary enquiry was held by the authorities nor was the petitioner ever put to notice of such preliminary or prior enquiry. As such, the steps taken by the respondent authorities to proceed for

termination of the petitioner without holding any enquiry, is contrary to the provisions of natural justice and violative of Article 311 of the Constitution of India. Learned counsel for the petitioner strenuously urges that the fact that the disengagement/termination of the petitioner is not termination simpliciter, but is a punitive termination, in as much as, in the impugned order dated 10.11.2020 that it was held that the petitioner will not be entitled for any future employment in APDCL. As such, in the face of such punitive termination, even an employee appointed in a temporary capacity is entitled to the protection under Article 311 of the Constitution of India. The same not having been done, the impugned order needs to be interfered with, set aside and quashed and the petitioner is directed to be reinstate in service with full back wages.

10. The further contention of the petitioner is that no enquiry report had been furnished to the petitioner pursuant to this so called preliminary enquiry conducted by the petitioner. The show cause notice dated 28.09.2020 did not enclose the list of witnesses nor by the documents relied upon by the authorities were made known to the petitioner. Accordingly, the written statements furnished by the petitioner was submitted without being given an opportunity of at least examining the

documents, which were relied upon by the respondent department, on the basis of which the impugned show cause notice was issued. The further contention of the petitioner is that since the impugned order dated 10.11.2020 contains stigmatic remarks on the character of the petitioner, and which will have serious consequences in respect of any engagement or employment of the petitioner, the petitioner ought to have been given a fair opportunity of presenting his case before the APDCL authority after being given adequate opportunity of examination of the documents relied upon by the respondent authorities.

11. The learned counsel for the petitioner in support of his contentions has relied on the following Judgments:-

1. AIR 1958 SC 36 (Parshotam Lal Dhingra Vs Union of India).

2. Mazid Ansari Vs Union of India and Ors.

3. (2013) 4 SCC 301 (Nirmala J. Jhala Vs State of Gujarat and another).

4. (1993) 4 SCC 727 (Managing Director, ECIL Vs Karuna Kar).

5. (2002) 1 SCC 520 (Pavanendra Narayan Verma Vs Sanjay Gandhi PGI of Medical Sciences and another).

6. (1979) 1 SCC 477 (Government Branch Press).

12. The learned counsel for the petitioner submits that it was incumbent on the respondent/authorities to apprise the petitioner that the enquiry is being conducted on the basis of the allegations made against the petitioner and which, if sustained, may entail termination or disengagement of the petitioner. The entire enquiry conducted by the concerned officer of the APDCL authorities prior to issuing of the show-cause Notice dated 28.09.2020 was conducted behind the back of the petitioner. No opportunity of hearing was granted to the petitioner.

13. Per contra, Mr. S. P. Sharma, learned standing counsel, APDCL contends that the petitioner was admittedly engaged in temporary service and which was being renewed from time to time. The law as regards employees engaged in temporarily service is fairly well settled and if the employers are satisfied with the services rendered, the said employee can be discharged. There is no question of issuing any show-cause. However, considering that the allegations were serious against the petitioner, the

show cause dated 28.09.2020 was issued to the petitioner giving him one opportunity as to why the petitioner should not be disengaged.

14. Learned counsel for the respondent submits that protection under Article 311 of the Constitution of India is available only as regards regular employees. Since the petitioner was admittedly engaged in temporary service, he cannot in law demand for protection under the provisions of Article 311 (2) (c) of the Constitution of India. The petitioner's employment was extended from time to time making it clear that he can be disengaged at any time. It is submitted that the impugned show-cause Notice dated 28.09.2020 was issued to the petitioner on the basis of the Enquiry Report dated 17.09.2020 submitted by the General Manager (COM-Rev), Office of Chief General Manager (COM and E.E.), APDCL. Learned counsel for the respondent submits that on the basis of the complaints received against the petitioner regarding collection of illegal gratification from applicants in matters of appointments on compassionate grounds in APDCL, an enquiry was conducted and a fair and reasonable opportunity was granted to the petitioner to participate in the said enquiry. The petitioner submitted his written submissions, where he had categorically admitted that he had approached certain candidates

for illegal gratification, who had applied for appointment on compassionate ground on APDCL. As such, in the written statement filed by the petitioner in response to the enquiry, petitioner had admitted to the illegalities and the allegations made against the petitioner. As such, it was only on the conclusion of the such enquiry resulting in an Enquiry Report dated-17.09.2020, that the authorities proceeded to issue the show-cause for termination. The learned counsel for the respondent submits that notwithstanding, the petitioner being engaged in temporary employment, and the protection under Article 311 of the Constitution of India being not available to the petitioner, nevertheless in the enquiry conducted by the General Manager of APDCL, petitioner was given adequate opportunity and he had participated in the said enquiry by filing written statements, which are in his own handwriting. Under such circumstances, even assuming though not admitting, the petitioner is entitled to protection under Article 311 of the Constitution of India, the fact that the petitioner was given a reasonable opportunity to participate in the enquiry proceedings and that he had categorically admitted in his written statements and had confirmed the allegations made against him, the requirement of the principles of natural justice has been duly complied with by the respondent authorities. No further opportunity was

necessary. In that view of the matter the grounds urged in the writ petition failed to demonstrate the bonafides of the petitioner as well as any violation of any principles of natural justice prior to issuing the termination/disengagement order dated **10.11.2020**. As such, the writ petition should be dismissed and the termination order ought not to be interfered with as prayed for.

15. Learned counsel for the respondent also relies upon the Judgment of the Apex Court of ***Parshotam Lal Dhingra Vs Union of India*** reported in ***AIR 1958 SC 36***, to contend that temporary employment or employment on Ad-hoc basis does not confer any right to the post and therefore, the services of the said employee can be terminated at any time, unless, it is contrary to the service rules prescribed or any condition of any contract that may have been executed by and between the employer and the said employee appointed on temporarily basis.

16. In the facts of the present case, the service Rules do not apply to the petitioner as his services are temporary in nature. No contract or agreement was executed by and between the employer and the employee. He was allowed to be engaged on temporary service

depending on the recruitment of the job and the nature of services rendered by the employee. In the present case, the employees' tenure of service was extended from time to time. As such, the claim of the petitioner that he is entitled to the protection under Article 311 of the Constitution of India is not acceptable and contrary to the law laid down by the Apex Court in ***Parshotam Lal Dhingra Vs Union of India (Supra)***.

17. The learned counsel for the respondent further relies upon the Judgment of the Apex Court rendered in ***Chairman and Managing Director, VSP and Ors Vs Goparaju Sri Prabhakara Hari Babu*** reported in ***(2008) 5 SCC 569***. Learned counsel for the respondent referring to the said Judgment submits that the jurisdiction of the High Court in respect of the disciplinary matters is circumscribed by well known factors. The High court under Article 226 of the Constitution of India cannot set aside a well reasoned order only on the ground of sympathy or sentiments. Once it is found that all procedural requirements have been complied with, ordinarily it is not open to the Courts to interfere with the quantum of punishment imposed on a delinquent employee. It is only in some specific cases, where the doctrine of proportionality may be

involved by superior Court. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked with the misconducts stands proved.

18. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. The Judgments of this Court as well as the Apex Court cited at the Bar have also been carefully noted.

19. As per the regulations of the APDCL under Clause (D) *taking or giving bribes or illegal gratification* is considered to be an act of misconduct and the following penalties may be imposed on the employee found guilty or misconduct:-

i) Warning;

ii) Reprimand or Censure;

iii) Stoppage of increment for a specified period;

iv) Fine;

v) Recovery of loss caused to the Board through negligence or

breach of orders from the pay of the employee upto such extent as may be decide by a competent authority;

vi) Reduction to a lower post or time scale or to lower stage in a time-scale;

vii) Termination of employment;

viii) Dismissal.

The APDCL has a set of regulation which governs the service conditions of each of the employees. This regulation prescribes the acts or omissions, which can be construed to be misconduct in respect of its employees. The Regulation 9 of... Reads as follows:

Except as otherwise specified at the time of appointment in writing, the service of an employee may be terminated:

a. Without any notice –

(i) At any time, in the case of a casual employee;

(ii) In the case of probationer, during the period of probation or on its expiry;

(iii) In the case of a temporary employee, if the period of temporary employment does not extend beyond 12 calendar months, before the expiry of the said period;

(iv) In the case of all employees, if such termination is the result of disciplinary action or takes place under an agreement which specifies a date of the termination of service.

(b) With notice –

Of not less than one calendar month on either side as may be specified in the case of a permanent employee or a temporary employee not covered under (a) (i) above, provided that pay in lieu of notice may be ordered by a competent authority in any specific case.

All dues of an employee whose service has been terminated shall be paid before the expiry of one week from the day on which his employment is terminated”.

20. The question whether a temporary employee is or is not entitled to the benefit of the protection under Article 311 of the Constitution of India, or at least the benefit of an opportunity of being heard adequately has been dealt with by this Court as well as by the Apex Court in a catena of Judgments. In ***Parshotam Lal Dhingra Vs Union of India***, the Apex Court held that:-

“37. The position may, therefore, be summed up as follows : Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. The Union of India (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. The State of Uttar Pradesh MANU/SC/0134/1954 : (1954)IILLJ139SC. In either of the two abovementioned cases the

termination of the service did not carry with it the penal consequences of loss of pay, or allowances under r. 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla C.J. has said in Shrinivas Ganesh v. Union of India (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an inedible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has not title to the post or the rank

and the Government has, by contract express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.”

But, it is noteworthy to take into account the minority view of the Apex court in this matter also, which is extracted as under:-

“60. In view of the almost frivolous resort that is sometimes made to Art. 311 I want to guard against too wide an interpretation of what I have said. I do not mean to imply that the reasons that lead to an order of reduction are relevant when there is a "contractual right" to

act in a particular way; nor do I mean to imply that a mere recording of disappointment or dissatisfaction would attract Art. 311 even if it is followed by a contractual termination of the engagement. All that is not of the essence. The real test is whether additional evil consequences are implicit in the order.

61. It is here that I venture to dissent, with the very greatest respect, from my Lord's construction of Art. 311. If I read his judgment aright, I gather that his view, and that of my learned brothers, is that Art. 311 is confined to the penalties prescribed by the various rules and that one must look to all the relevant rules to determine whether the order is intended to operate as a penalty or not. With deep respect, I do not think that the gist of the matter is either the form of the action or the procedure followed, nor do I think it is relevant to determine what operated in the mind of a particular officer, The real hurt does not lie in any of those things but in the consequences that follow and, in my judgment, the protections of Art. 311 are not against harsh words but against hard blows. It is the effect of the order alone that matters; and in my judgment, Art.311 applies whenever any substantial evil follows over and above a purely "contractual one" . I do not think the article can be evaded by saying in a set of rules that a particular consequence is not a punishment or that a particular kind of action is not intended to operate as a penalty. In my judgment, it does not matter whether the evil consequences are one of the "penalties" prescribed by the rules or not. The real test is, do they in fact ensue as a consequence of the order made ?"

21. In *Pavanendra Narayan Verma Vs Sanjay Gandhi PGI of Medical Sciences and anr.* reported in (2002) 1 SCC 520, the Apex Court examined several documents. From the Judgment rendered in *Parshotam Lal Dhingra Vs Union of India (supra)*, the question would be is what would amount to a termination order, which is stigmatic.

The Apex Court held as under:-

“19. Thus some courts have upheld an order of termination of a probationer’s services on the ground that the enquiry held prior to the termination was preliminary and yet other courts have struck down as illegal a similarly worded termination order because an inquiry had been held. Courts continue to struggle with semantically indistinguishable concepts like “motive” and “foundation”; and terminations founded on a probationer’s misconduct have been held to be illegal while terminations motivated by the probationer’s misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.

21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

28. Therefore, whenever a probationer challenges his termination the court’s first task will be to apply the test of stigma or the “form” test. If the order survives this examination the “substance” of the termination will have to be found out.

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer’s appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit

in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

22. In this context, reference may be made to the Judgment of the Apex Court rendered in ***Dipti Prakash Banerjee Vs Satyendra Nath Bose National Centre for Basic Sciences, Calcutta***, reported in ***(1999) 3 SCC 60***. The questions, which confronted the Apex Court in the said judgment are in para 18 and the findings of the Apex Court in respect of each of this questions are as under:

18. *On the basis of the above contentions, the following points arise for consideration:*

(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?

(2) When can an order of termination of a probationer be said to contain an express stigma?

(3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?

(4) To what relief?

Regarding Point No.1 or Question No.1

“21. *If findings were arrived at in an enquiry as to misconduct, behind*

the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

22. *In the light of the above principles laid down in R.S. Gupta case [(1999) 2 SCC 21 : JT (1998) 8 SC 585] we do not think anything more is to be added. Point 1 is decided accordingly".*

Regarding Point No.2 or Question No.2

“29. *We may advert to a few cases on the question of stigma. We shall refer initially to cases where a special rule relating to termination of a probationer required a particular condition to be satisfied and where the said condition was referred to in the order of termination. In Hari Singh Mann v. State of Punjab [(1975) 3 SCC 182 : 1974 SCC (L&S) 534] the probationer was governed by Rule 8(b) of the Punjab Service Rules, 1959 and the fact that the word "unfit" as required by the Rules was used, was held not to be a ground for quashing the order on the ground of "stigma", for to hold that it amounted to a "stigma" would amount to robbing the authority of the right under the Rule. Similarly, where a rule required a show-cause notice to be issued and an enquiry to be conducted before terminating probation, such as Rule 55-B of the Central Civil Services (CCA) Rules, there would be no question of characterising the simple order of termination as one founded on the allegations which were the subject of the enquiry. That was because, in such a case, the purpose of the enquiry was to find out if the officer was to be continued in service and not to find out if he was guilty (State of Orissa v. Ram Narayan Das [AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 LLJ 552] , Ranendra Chandra Banerjee v. Union of India [AIR 1963 SC 1552 : (1964) 2 SCR 135]). In State of Gujarat v. Akhilesh C. Bhargav [(1987) 4*

SCC 482 : 1987 SCC (L&S) 460 : (1987) 5 ATC 167] the termination order merely referred to Rule 12(bb) of the Indian Police Service (Probationer) Rules, 1959. It was contended that the reference to the said Rule 12(bb) itself amounted to a stigma but this was rejected following Ram Narayan Das case [AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 LLJ 552] .

30. *We shall next advert to some more cases and to particular words employed while passing orders of termination of probationers. In State of Bihar v. Gopi Kishore Prasad [AIR 1960 SC 689 : (1960) 1 LLJ 577] a show-cause notice was given seeking a reply to the allegation regarding the officer's bad reputation and in regard to certain perverse decisions given by him in his judicial functions during the period of probation. The termination order stated that certain facts were brought to the notice of the Government about his unsatisfactory work and conduct and that grave doubts had arisen about his integrity which indicated that he was a corrupt and an unreliable officer. It was also said that confidential enquiries revealed that he was a corrupt officer and that annual confidential reports of his superior officer referred to his bad reputation and therefore his work during the period of probation was not satisfactory. The Constitution Bench of this Court held that it was a clear case of stigma and the matter indeed required a full-fledged departmental enquiry under Rule 55 of the CCS (CCA) Rules. In Jagdish Mitter v. Union of India [AIR 1964 SC 449 : (1964) 1 LLJ 418] the use of the words "undesirable to be continued" in service was held by the Constitution Bench to amount to a stigma. This case was followed in State of U.P. v. Madan Mohan Nagar [AIR 1967 SC 1260 : (1967) 2 LLJ 63] where the order said that the officer had "outlived his utility" and such an order was held to amount to a stigma. Jagdish Mitter [AIR 1964 SC 449 : (1964) 1 LLJ 418] was approved by the seven-Judge Bench in Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] on this point. But in Kunwar Arun Kumar v. U.P. Hill Electronics Corpn. Ltd. [(1997) 2 SCC 191 : 1997 SCC (L&S) 558] the termination order used the word "unsatisfactory" and the same was upheld as it did not amount to a stigma. In two cases arising under industrial law, one in Chandu Lal v. Pan American World Airways [(1985) 2 SCC 727 : 1985 SCC (L&S) 535] and Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) 1 SCC 146 : 1987 SCC (L&S) 25] where the termination order used the word "loss of confidence", the said orders were held to contain a stigma and therefore punitive. In Jagdish Parsad v. Sachiv, Zila Ganna Committee [(1986) 2 SCC 338 : 1986 SCC (L&S) 267] the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on the charge*

of corruption and therefore not suitable for appointment. This was held to amount to a stigma. But in Union of India v. R.S. Dhaba [(1969) 3 SCC 603] where the order merely said "found unsuitable", it was held not to amount to a stigma. In Allahabad Bank Officers' Assn. v. Allahabad Bank [(1996) 4 SCC 504 : 1996 SCC (L&S) 1037] the order was one of compulsory retirement and said that a Special Committee had unanimously recommended for the officer's compulsory retirement, that the Chairman and Managing Director agreed with the Committee's views regarding "want of application to the Bank's work and lack of potential" and that the officer was also found to be not "dependable". This Court after referring to a number of cases explained that the words "not dependable" were used in the context of the facts of the case and not as an aspersion on his reputation but in relation to his work and were to be understood in that sense in the setting of the words "want of application" and/or "lack of potential". It was observed: (SCC p. 513, para 19)

"Any person reading the letter or the order of compulsory retirement would not be led to believe that there was something wrong with Appellant 2 as regards his conduct or character. They would only indicate that he had ceased to be useful to the Bank in his capacity as a Manager."

Again in High Court of Judicature at Patna v. Pandey Madan Mohan Prasad Sinha [(1997) 10 SCC 409 : 1997 SCC (L&S) 1703 (2)] it was held that termination of a probationer on the basis of uncommunicated adverse remarks was valid.

31. *Thus, it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to judge whether the words employed amount to a stigma or not. Point 2 is decided accordingly".*

Regarding Point No.3 or Question No.3

33. *Learned counsel for the appellant relies upon Indra Pal Gupta v. Managing Committee, Model Inter College [(1984) 3 SCC 384 : 1984 SCC (L&S) 555] decided by a three-Judge Bench of this Court. In that case, the order of termination of probation, which is extracted in the judgment, reads as follows: (SCC p. 386, para 1)*

"With reference to the above (viz. termination of service as Principal), I

have to mention that in view of Resolution No. 2 of the Managing Committee dated April 27, 1969 (copy enclosed) and subsequent approval by the D.I.O.S., Bulandshahr, you are hereby informed that your service as Principal of this Institution is terminated...."

Now the copy of the resolution of the Managing Committee appended to the order of termination stated that the report of the Manager was read at the meeting and that the facts contained in the report of the Manager being serious and not in the interests of the institution, that therefore the Committee unanimously resolved to terminate his probation. The report of the Manager was not extracted in the enclosure to the termination order but was extracted in the counter filed in the case and read as follows: (SCC p. 388, para 3)

"It will be evident from the above that the Principal's stay will not be in the interest of the Institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e., for termination of his period of probation, too, the approval of the D.I.O.S. will be necessary. Accordingly, any delay in this matter may also be harmful to our interests.

Accordingly, I suggest that instead of taking any serious action, the period of probation of Shri Inder Pal Gupta be terminated without waiting for the period to end."

It was held by Venkataramiah, J. (as he then was) (p. 392) that the letter of termination referred to the resolution of the Managing Committee, that the said resolution was made part of the order as an enclosure and that the resolution in its turn referred to the report of the Manager. A copy of the Manager's report had been filed along with the counter and the said report was the "foundation". Venkataramiah, J. (as he then was) held that the Manager's report contained words amounting to a stigma. The learned Judge said: "This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct ...", that these findings in the Manager's report amounted to a "mark of disgrace or infamy" and that the appellant there was visited with evil consequences. The officer was reinstated with all the benefits of back wages and continuity of service.

34. *It will be seen from the above case that the resolution of the Committee was part of the termination order being an enclosure to it. But the offensive part was not really contained in the order of termination nor in the resolution which was an enclosure to the order of termination but in the Manager's report which was referred to in the*

enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager's report were the basis for the termination and the said report contained words amounting to a stigma. The termination order was, as stated above, set aside.

35. *The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.*

Regarding Point No.4 or Question No.4

“38. *Under this point, two aspects of the case fall for consideration, firstly, whether the impugned order is founded on any conclusions arrived at by the employer as to his misconduct or whether the termination was passed because the employer did not want to continue an employee against whom there were some complaints. The second aspect is whether there is any stigma in the order of termination or in the documents referred to in the termination order.*

39. *Taking up the first aspect, we have noticed that during the first one year of probation, a letter dated 11-12-1995 was served on the appellant. That letter stated, among other things, that the appellant "prepared false bills" and that he "misbehaved with women academic staff members". The appellant sent a reply denying the allegation and he also sought for a copy of the complaint said to have been given by the lady academic staff member. It is true that subsequently, there were two orders of extension of probation each for six months. But in the impugned order dated 30-4-1997, it was stated in para 8 that the order of termination was being passed because of the "conduct", performance, ability and capacity of the appellant during the "whole period". This would clearly take in the facts stated in the letter dated 11-12-1995. It is obvious that findings of preparation of false bills or of misbehaviour with women which ought to be arrived at only in a*

regular departmental enquiry, were referred to in this letter without any enquiry. It will be noticed that the letter dated 11-12-1995 does not merely say that there are such complaints against the appellant but it says conclusively that the appellant had "prepared false" bills and "misbehaved" with women academic staff members.

40. *The above language in the letter dated 11-12-1995 would clearly imply that this was not a case of any preliminary findings. If these were referred to as mere allegations, it would have been a case of motive. But as these definitive conclusions of misconduct are evident on the face of this letter dated 11-12-1995 and this letter falls within the "whole period", the conclusion is inescapable that these findings were part of the foundation of the impugned order and it is not a case of mere motive. On this ground, the order requires to be set aside.*

41. *We shall next take up the second aspect relating to stigma. We shall assume that the words used in the impugned order do not contain any stigma. We shall then refer to the three other letters to which the order makes a reference. In the first letter dated 30-4-1996, we do not find anything objectionable. Coming to the next letter, we however find that para (iii) refers to the scuffle between the appellant and one P. Chakraborty regarding which the appellant made a complaint on 28-5-1996. An Enquiry Committee is said to have been appointed and it gave a report. The extract from the report of the Committee dated 15-7-1996 is found in the counter of the respondents. The Enquiry Committee found the appellant's "behaviour reprehensible" and it confirmed that the appellant was "involved in a scuffle and did misdeeds like obtaining false signatures", and said that the appellant was "guilty of inefficient performance or duty, irregular attendance without permission, rude and disorderly behaviour and wilful insubordination". Whatever may be said about the other words, the words used in connection with the finding of the Enquiry Committee about the scuffle and about the appellant obtaining false signatures, are, in our opinion, clearly in the nature of a stigma. Further, the Enquiry Committee said he must be "punished". It did not say that proceedings for disciplinary action were to be initiated. Thus on the ground of "stigma" also, the impugned order is liable to be set aside.*

42. *It was argued that the appellant was given notice of the above enquiry by the Committee but he was "not cooperative". In our view, findings arrived at by such an informal committee against the appellant, which committee was, in fact, constituted on a complaint by the appellant against Mr Chakraborty, cannot be used for terminating the appellant's probation, without a proper departmental enquiry. The said findings, in our view, were the foundation for the impugned order among other facts. Such findings must, in law, be arrived at only in a*

regular departmental enquiry.

43. *As pointed out in Bishan Lal Gupta v. State of Haryana [(1978) 1 SCC 202 : 1978 SCC (L&S) 55] an ordinary enquiry by a show-cause might be sufficient for the purpose of deciding whether the probationer could be continued, but where the findings regarding misconduct are arrived at without conducting a regular departmental enquiry, then the termination order will be vitiated. The learned Senior Counsel for the respondent relied upon Hindustan Paper*

Corpn. v. Purnendu Chakrobarty [(1996) 11 SCC 404] where it was held that for termination of a "lien", no detailed enquiry was necessary and that if that be the position, termination of probation stands on a lesser footing. But the case turned upon a special rule in that case which specifically provided that for "termination of a lien", a regular enquiry was not necessary. That case cannot therefore be of any assistance to the respondents.

44. *We do not find anything objectionable in the third letter dated 31-10-1996 but the second letter, as stated above, is clearly objectionable.*

45. *For the aforesaid reasons, the impugned order is liable to be set aside".*

23. Again in **Mahabir C. Singvi**, while examining the question of discharge during probation and as to whether the discharge was a discharged simpliciter or punitive, the Apex Court on the facts of the case came to the finding that the termination order was punitive in character and had been motivated by considerations, which was not reflected in the said order and accordingly, the Judgment rendered by the High court was interfered with and the petitioner was directed to be reinstated.

24. In **VSP vs. Goparaju Sri Prabhakara Hari Babu**, reported in **(2008) 5 SCC 569**, the Apex Court held that charges which are admitted are not required to be proved under Section 58 of the Evidence

Act. In the fact of that case, the respondent before the Apex Court was a habitual absentee and he in respect to the charges brought out against him in the charge-sheet pleaded guilty admitting to the charges and the inquiry proceeding was closed on that premise. The Apex Court held that judicial domain can be made evidence of right of parties. Subsequent explanation before the another authority which had not been pleaded in the departmental proceeding cannot by itself be a ground to hold that the principles of nature justice had not been complied with in the disciplinary proceedings. It was held by the Apex Court that:

“Jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well reasoned order only on sympathy or sentiments. The High Court in exercise of its jurisdiction under Article 226 also cannot, on the basis of sympathy or sentiment, overturn a legal order. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke doctrine of proportionality. If decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when misconduct stands proved.”

25. The Enquiry Report dated 17.09.2020 was submitted by the General Manager (Com-R), APDCL, who conducted the enquiry. The enquiry was

conducted when allegations were received as regards demand of illegal gratifications by three employees including the petitioner in respect of appointments sought to be made compassionate ground in the APDCL. The Enquiry Officer was entrusted to enquire into the matter vide office order dated 27.08.2020. The Enquiry Officer conducted the enquiry on the basis of the following:-

- a) Collection of information/data from the HRA Department on the matter.
- b) Examination/Cross Examination on the matter.
- c) Collection of Reports/information from fields.
- d) Oral, personal, telephonic, virtual conferencing with officers, staffs, candidates etc.
- e) Field visit to Bongaigaon Zone/Circle for interacting with candidates.

26. It is mentioned in the Enquiry report that based on the facts, confession, evidences, reports, submission of materials, documents etc.,

the Enquiry report was submitted on 17.09.2020. The relevant findings in the Enquiry report are as under:

“14. It is revealed that all three persons i.e. Sri Karan Das, AM (HRA), Sri Suman Das, BC/MR (HRA) and Sri Purusottam Bhagawati, Outsourced computer operator, O/o the MD, APDCL worked in tandem for the above operation as evident from their no. of times assembly before and after the incident on 21-08-2020. In fact, Sri Karan Das AM (HRA) and Sri Suman Das, BC/MR (HRA) were trying to conceal the fact from the very beginning.”

27. However, the Enquiry Officer in his Enquiry report did not arrive at any finding regarding the termination of the petitioner along with the other two employees against whom the enquiry was conducted. Based on this enquiry report the impugned show-cause Notice dated 28.09.2020 has been issued by the respondent, APDCL. What is noticed from the enquiry report is that at paragraph-16 of the Enquiry report, the enquiry officer has referred to other official areas/activities, where it is stated that the other two employees namely, Sri Karan Das and Sri Suman Das worked together. These areas are as under:-

“a) Pensionary & DCRG benefit to 199 nos. MR workers of KLHEP.

b) Matters related to DPC-IV (Promotion & transfer of Class-III & IV employees of APDCL).

c) Pay matters such as MACPS, FUP & pay fixation of Class-III & IV Employees of O/o the MD, APDCL, Pay anomalies related to RoP 2017 etc.”

28. The Enquiry Officer did not delve into these issues in depth due to paucity of time and these areas were left to be addressed separately. In paragraph-18 of the said Enquiry Report, the Enquiry Officer was further stated that during the process of enquiry some more antisocial teams were found to be working parallelly in the matter of appointment on compassionate ground. However, due to paucity of time, the study on the areas concerning more antisocial behavior could not be covered by the Enquiry Officer. However, the names of such persons and their contact numbers as well as the call recordings of the persons available in a DVD were submitted along with the Enquiry Report.

29. Based on this Enquiry Report, the termination or disengagement was issued only to the petitioner. It is not a disputed that the other two employees against whom the enquiry was conducted by the Enquiry Officer were however not terminated from service. There are no averments in the affidavit found as to the steps if at all which were taken against the other two employees based on the Enquiry Report.

30. The question of issuing show cause or giving an opportunity to any delinquent employee during any enquiry process is to prevent any miscarriage of justice by denying adequate opportunities to the delinquent employee to effectively participate in an Enquiry process and also to facilitate the Enquiry Officer to arrived at a finding in respect of the guilt of the delinquent employee. In the facts of the present case, although it is submitted that no list of witnesses or available documents were given to the petitioner, what is not in dispute is that the petitioner participated in the enquiry proceedings and had submitted the written statements. From the enquiry report, it is evident that at least three personal hearings were granted to the delinquent employees including the petitioner. A copy of the written statements submitted by the petitioner is enclosed to the counter affidavit filed by the petitioner. In response to queries put by the Enquiry Officer regarding the involvement of the petitioner, it was categorically stated that the other two employees named in the Enquiry Report had shared a list containing the names of 4 candidates from North Lakhimpur and had asked him to collect money. It is also stated that besides these 4 candidates, there were talks going on with other candidates from the district of Bongaigaon and Nagaon, however, he did not know how many candidates were there. The

petitioner in his reply submitted that upon interacting with the prospective candidates, one of the candidates undertook to give money to the petitioner and requested him to do the work. These statements have not been denied by the petitioner, rather it is the contention of the petitioner that these statements made are not proved as no opportunity of cross-examination of the witnesses was given to the petitioner. While it is evident from the pleadings on record that no opportunity of examination or cross-examination was granted to the petitioner in respect of the witnesses relied upon by the Enquiry Officer for the purposes of arriving at the conclusion regarding the allegations made against the petitioner, but there is no dispute also that the petitioner does not resile from these statements made in his written statements/ submissions before the Enquiry Officer. In the face of such statements made by the petitioner, which are not denied, that the petitioner was involved at some level with regard to collection of illegal gratification from the prospective candidates, it cannot be said prima-facie, that any prejudice was caused to the petitioner. The challenge to the procedure adopted by the APDCL authority in conducting an enquiry proceeding against the petitioner as has been raised by the petitioner in the present proceedings has to be adjudicated on the touchstone of any pre-judice that may have been caused to

the petitioner by the procedure adopted. The very fact that during the enquiry proceedings the petitioner had admitted to be a part of the illegal scheme to atleast approach and attempt to receive illegal gratification from the prospective candidates, who were seeking appointment on compassionate ground in APDCL, and the said fact not having been denied or disowned by the petitioner cannot be overlooked. Petitioner has not been able to explain that in the face of such categorical statements made by the petitioner in writing, admitting to the fact that he had met/spoken with the candidates for receiving illegal gratification from the said candidates, what prejudice had been caused to the petitioner by the manner in which the enquiry was conducted.

31. In view of the undisputed position regarding the admission of the petitioner regarding his involvement in the matter, and also in view of the fact that the petitioner was not a regular employee of the APDCL, this Court is not inclined to interfere with the enquiry conducted and the termination ordered. On the other hand, the termination order dated 10.11.2020, which is stated to be based on the Enquiry Report dated 17.09.2020, prima-facie also cannot be said to be termination/discharge simpliciter. The direction that the petitioner shall not be available for any future employment is a finding which may be arrived at by any employer only on the basis of any enquiry conducted. As discussed above, the Enquiry Report dated 17.09.2020

does not arrive at any finding that the petitioner should be discharged from service. Accordingly, a decision to discharge the petitioner was perhaps taken by the appointing authority namely, General Manager (Com-R), APDCL, the petitioner was in temporary employment and his appointment order clearly specify that he could be discharged/terminated at any time. The impugned termination or discharge order issued to the petitioner, which is based on the Enquiry Report does not merely discharge or terminate the petitioner, but it precludes his future employment under the APDCL. This according to this Court cannot be considered to be termination simpliciter, but has to be considered to be a termination of punitive nature. That apart the finding of the appointing authority based on all materials including the written reply of the petitioner that the same amounts to gross misconduct including moral turpitude, must certainly be considered be stigmatic in nature.

32. Under such circumstances, where the termination of an employee on temporary service is not termination simpliciter, but the same is punitive or stigmatic in nature, the employee is certainly entitled to the protection under Article 311 of the Constitution of India.

33. From a consideration of the entire facts & circumstances in the

present proceedings, although it has not been demonstrated before this Court that the enquiry conducted by the department is contrary to the Rules, but it does appear to this Cot that the petitioner was unaware of his rights available to him as a delinquent employee as the department did not apprise him of his rights nor does it appear that he had access to any proper at the relevant point in time. Accordingly, he proceeded to participate in the enquiry by submitting his written statements. It is also seen that prior to the issuance of the termination Notice, the Enquiry Report was not furnished to the petitioner. The law in respect of the departmental proceeding and furnishing of copies of the Enquiry Report has been clearly enunciated by the Apex Court in the case of ***Managing Director, ECIL Vs Karunakar*** reported in ***(1993) 4 SCC 727***.

34. As discussed above, the Enquiry dated 17.09.2020 conducted by the Enquiry Officer may not strictly be in the form contemplated under the Regulations of the APDCL, nevertheless the enquiry was conducted where the delinquent employees including the petitioner participated and opportunities were given to explain the circumstances alleged against them. The petitioner had submitted his written statements where he admitted getting in contact with certain candidates, who had submitted

their candidatures for selections for appointment on compassionate ground.

35. Under the Regulations there is a provision for an appeal before the Appellate Authority. However, in the absence of any Enquiry Report being submitted or furnished to the delinquent employee, namely, the petitioner, he was prevented from preferring an appeal before the Appellate Authority. The copy of the Enquiry Report has been enclosed to the affidavit-in-opposition filed by the APDCL during the currency of this writ petition.

36. The appellate authority is reposed with the all powers to call for records and apply its mind and give a finding on the conclusions arrived at in the Enquiry Report. Such procedure could not be availed of by the petitioner because of the failure of the department to furnish copy of the Enquiry report to the petitioner.

37. This Court is of the view that the ends of justice will be met, if this writ petition is disposed of by permitting the petitioner to file an appeal before the Appellate authority as per the Rules prescribed. If no Appellate Authority is prescribed under the Rules or any instructions by the APDCL,

then the appeal shall be preferred before the Chairman, of APDCL. If the appeal is filed within 4 (four) weeks from today, then the Appellate Authority will decide the appeal on merits within a further period of 4 (four) weeks therefrom. The Appellate Authority upon such an appeal preferred by the petitioner will decide the appeal by taking all relevant facts and circumstances into account as well as the law laid down by the Apex Court as well as this Court. In the event the appeal is decided in favour of the writ petitioner, then the impugned termination order dated **10.11.2020** shall be withdrawn and the petitioner will be deemed to be in service and he will be entitled to all back wages and other service benefits. If the Appellate Authority rejects the appeal, so preferred by the petitioner, then they will be at liberty to enforce the impugned termination order.

38. The writ petition is allowed to the extent indicated above and disposed of.

39. No order as to cost.

JUDGE

Comparing Assistant