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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : August 20, 2015*

+ **LPA 75/2014**

S.P.SHARMA Appellant
Represented by: Mr.Ankur Chhibber, Advocate with
Mr.Prashant Sivarajan, Advocate

versus

IFCI LTD. & ANR. Respondents
Represented by: Mr.Dinkar Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The order by which, while still on probation, appellant's service was terminated reads as under:-

"No.HR/PF/S-325/2012-100907 September 11, 2012

To

*Mr.S.P.Sharma,
Vice President
IFCI Ltd.
IFCI Tower,
61, Nehru Place,
New Delhi-110019*

Subject: Termination

Owing to the lapses committed by you in the handling of the Jupiter Bioscience Ltd. case, the Competent Authority has decided to terminate your contract of employment with immediate effect. The payment of dues including the Notice Pay will be settled in due course.

*(Michael Mili)
Sr.Associate Vice President
Human Resources”*

2. Two issues were raised by the appellant before the learned Single Judge. The first pertaining to his deemed confirmation. The second pertaining to the language of the order/letter terminating his service; and the issue was whether on the face of the letter the termination is stigmatic and since it was not preceded by any inquiry, the termination was illegal.
3. The appellant has lost on both counts before the learned Single Judge, and in respect of the second issue decided concerning whether the letter terminating appellant's service is stigmatic, we find a contradiction in the impugned decision wherein after holding that the termination order is non-stigmatic the learned Single Judge has issued a direction that a fresh order of termination simplicitor would be issued to the appellant.
4. Learned counsel for the appellant, though in the appeal grounds have been urged regarding appellant's contention of deemed confirmation, gives up said grounds and restricts argument in the appeal to whether the language of the letter/order terminating appellant's services casts a stigma.
5. Learned counsel for the respondents wants to cite judgments where Courts have strived to draw a distinction between past acts of misdemeanours constituting the motive or the foundation to an order of terminating the services of a probationer in the context of the argument advanced that though the order on its face is non-stigmatic, the actual reason

for service being terminated is a finding of guilt for a misdemeanour allegedly committed. We are not noting said decision because in the instant case the only issue which arises is whether the letter terminating the service of the appellant is stigmatic.

6. The letter gives the reason for terminating the service of the appellant, and we note the language of the reason : *‘owing to the lapses committed by you in the handling of the Jupiter Bioscience Ltd. case’*.

7. Is an allegation of committing lapses, as the reason for terminating the services, one which casts a stigma?

8. We need not list the decisions which give the reason why an order terminating the service of a probationer, if stigmatic, is a penal order. We simply note that the legal principle is that where the order affects the reputation of the employee it would hinder future prospects of a job and therefore would be penal. A stigma is a mark of disgrace and hence stigmatic would mean *‘of or relating to a stigma’*.

9. Law treats reputation as a property. Law also treats reputation as an honour and if understood as an honour it signifies the estimation which a person receives from society. Reputation is also treated in law as dignity for the reason a person’s dignity depends on whether others in the community give him the deference that is his desert as a full member of the society.

10. An imputation which disparages a person in his profession, calling, trade or business is bound to be stigmatic, and therefore any imputation which is disparaging *in the way* of a person’s occupation would be stigmatic.

11. The test whether an imputation against a person is disparaging/stigmatic would be : whether the words used tend to lower the person in the estimation of right thinking members of the society. In the

context of defamation/liable in the decision reported as (1970) 1 ALLER 1094 Drummond-Jackson Vs. British Medical Association, imputation of incompetence in the conduct of one's business was held capable of being defamatory even though such an imputation does not expose such a person to hatred, ridicule or contempt or cause others to shun or avoid him.

12. Tested on the anvil of the legal norms and principles aforementioned, an imputation against a person in a letter of termination of service that the reason for service being terminated is the lapses committed by the person, would mean that in his occupation, the person is labelled as a negligent person while discharging duties for the reason a lapse is an act of omission and could be either deliberate or negligent. Such a person would obviously face the penal consequence of not being able to get a job for the reason the prospective future employer would like to know the reason for cessation of a past service. If informed that it was on account of the allegation of being negligent in discharge of duties and the language used is that the service is being terminated owing to the lapses committed, the consequences would be adverse against the employee.

13. Learned counsel for the respondent states that there are decisions where a letter terminating the service of a probationer giving reason that the work was not found to be satisfactory have been held to be non-stigmatic and sought time to cite the same.

14. There is no reason to adjourn hearing today to enable learned counsel to cite said decisions because the Bench agrees that terminating the service of a probationer giving reason that the work was not found to be satisfactory is non-stigmatic because it would not prejudice the mind of a future prospective employer. The reason is that one may not measure up to

somebody's expectations of efficiency but would do so in the eyes or estimation of somebody else. Terminating the service of a probationer on ground of work not found to be satisfactory would not be at par where the termination is with the reason that it is on account of lapses committed by the employee while discharging duties. An act of negligence alleged against a person is not a matter of opinion. It is a matter of fact and law. Quality of work output of a person is a matter of opinion.

15. We allow the appeal and quash the letter dated September 11, 2012. The appellant would be reinstated in service with all consequential benefits. It would be open to the respondents to charge-sheet the appellant and hold an inquiry and thereafter pass such orders as are permissible to be passed.

16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 20, 2015
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