

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

Judgment reserved on July 1, 2015

Judgment delivered on July 7, 2015

+ **W.P.(C) 6284/2012**

S.S. MOTA SINGH. JR. MODEL SCHOOL

..... Petitioner

Through: Mr.Siddharth Yadav and
Mr.Washim Ashruf, Advs.

versus

TANJEET KAUR AND ANR

..... Respondents

Through: Mr. K. Venkatraman, Adv. for R-
2 with Dr.Balesh Kumari, Dy.
Education Officer

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this Writ Petition is to the order dated August, 9 2012 passed by the Delhi School Tribunal ('Tribunal' in short) in an Appeal filed under Section 8 (3) of the Delhi School Education Act, 1973 by the respondent No.1.

The Facts

2. The respondent No.1 was initially appointed on a consolidated salary of Rs.5,000/- per month on August 16, 2006. She was placed on probation w.e.f July 1, 2008. Two memos were issued to the respondent No.1 on December 23, 2008 and July 27, 2009 wherein it was pointed

out that she has not performed her duties properly and had been given verbal warnings to rectify herself. It was also contended that parents have given complaints to the Administrators regarding her behaviour towards the children. The verbal warnings were overlooked by her. A reference was also made to a complaint received on the said date that the respondent No.1 speak harshly to the children and do not care for them. She was called upon to rectify herself and improve her behaviour towards the children, otherwise strict action was contemplated.

3. On July 31, 2009, the probation of the respondent No.1 was extended for a period of six months w.e.f July 1, 2009. Again vide letter dated January 4, 2010, the probation was extended for a further period of six months w.e.f January 2010.

4. Vide letter dated March 23, 2011, the services of the respondent No.1 were terminated. The letter dated March 23, 2011 reads as under:-

MRS. TANJEET KAUR

Nursery Teacher

Despite a number of verbal warnings and memorandum dated (23.12.08 and 27.07.09), dereliction of duty on your part still continued, no rectification has been observed till date. It is observed that your class performance is also not upto the mark and you are being violating the decorum of the school.

Keeping in view, the above you are relieved from your

services w.e.f 23rd April, 11.

Sd/

MRS. JATINDER KAUR

HEADMISTRESS

5. It was the contention of respondent No.1 that she had completed her probation on June 30, 2009. She had also stated that she has not received letters dated December 23, 2008 and July 27, 2009. She had also stated that there was no complaint against her uptill July 23, 2008. The ground of challenge was also that Rule 118 and Rule 120 of the Delhi School Education Rules, 1973 were not followed.

6. On the other hand, the case of the Petitioner/School was that respondent No.1 was placed on probation w.e.f July 1, 2008. She was also informed that her probation could be extended depending upon her behaviour and performance. The petitioner also refers to the fact, probation of the respondent No.1 was extended vide letter dated July 1, 2009 and January 4, 2010. The petitioner had also highlighted that there were number of complaints from the parents of the children relating to the behaviour of the respondent No.1 towards the children. She was given number of verbal warnings to improve her behaviour. She did not show any improvement and for that reason, a written warning was given to her vide memo dated December 23, 2008. She was asked to tender

apology in writing but she refused to tender the same. She was allowed to continue as teacher because of her verbal apology. She did not improve herself and it was for this reason, a Letter of Termination dated March 23, 2011 was issued to her terminating her services w.e.f April 23, 2011. It is the petitioner's case that the services of a probationer could be terminated at any time if his/her services are not found satisfactory during the probation. The Tribunal after noting Rule 105 of the Rules, was of the view that an employee can remain on probation for a period not more than two years. It referred to and relied on the judgment of this Court in the case of *Deputy Director of Education Vs. Veena Sharma 175 (2010) DLT 311 (DB)* and of the Supreme Court in the case of *High Court of Madhya Pradesh, through Registrar and Ors. vs. Satya Naraan Jhavar AIR 2001 SC 3234* to hold that under Rule 105 of the Rules, initially the period of probation is of one year but the same can be extended by another year. In such cases, the maximum period of probation is only of two years. Beyond the said period, it is not permissible to extend the probation. In other words, it was the conclusion of the Tribunal that there is a concept of 'Deemed Confirmation' upon expiry of the maximum period of probation and the respondent No.1, having been confirmed upon the expiry of the maximum period of probation, her services could not be terminated

without holding a Domestic Enquiry.

7. The Tribunal was also of the view that the termination order, issued on March 23, 2011 was on the basis of memos dated December 23, 2008 and July 27, 2009 which, included the ground of dereliction of duty; her performance was not upto the mark; she has violated the decorum of the school. It is the Tribunal's conclusion that the misconduct was the ground for terminating the services of respondent No.1 and the Petitioner/School ought to have conducted Domestic Enquiry in terms of the procedure laid down under Rule 120 of the Rules. It also held that the words '*Dereliction of Duty*' and '*Violation of Decorum*' of the school referred to in the impugned order are stigmatic in nature. It has also relied upon the judgment of the Supreme Court in ***Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basis Sciences, Calcutta and ors 1999 (3) SCC 60*** of the Supreme Court wherein, the Supreme Court held that it depends upon the circumstances of each case as to whether a termination order is stigmatic or not. The Tribunal, also referred to the judgment of the Supreme Court wherein, the Supreme Court held that material which, amount 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 its

annexure and in such case, also the termination would stand vitiated on the ground that no regular enquiry was conducted.

8. Ultimately, the Tribunal has set aside the termination of the respondent No.1 and directed re-instatement with all consequential benefits and back wages quantified at 50% till the date of the order i.e August 9, 2012 and to be paid full salary and other allowances from that date onwards. It had awarded 8% interest per annum on the arrears of the back wages, in case the same are not paid within two months from that date.

9. Mr. Siddharth Yadav, learned counsel for the petitioner, after taking me through the documents annexed with the petition, would state, that the conclusion of the Tribunal of 'Deemed Confirmation' is untenable and contrary to what has been held by this Court in the judgment referred to and relied upon by the Tribunal in the case of ***Veena Sharma (supra)***. He states, the Tribunal has misread the judgment. He has drawn my attention to para 23 of the judgment in ***Veena Sharma's*** case wherein this Court has held that sub-Rule 2 of Rule 105 does not use the word '*shall be deemed to have become a confirmed employee*' and further the conclusion of this Court that an employee cannot be said to be a confirmed employee after the expiry of one year of probation. It is his submission that this conclusion of the

Tribunal needs to be set aside. Further, it is his submission that the order of termination passed by the school dated March 23, 2011 is not stigmatic but an order simplicitor. It is his case, that the conclusion of the Tribunal to hold that the usage of the words '*Dereliction of Duty*' and '*Violation of Decorum*' in the order dated March 23, 2011 are not stigmatic in nature. In this regard, he has also drawn my attention to the judgment of this Court in the case of ***Smith Paul vs. St. Anthony Senior Secondary School and Anr. 125 (2005) DLT 787*** to contend, in that case this Court held, the usage of the word *unsatisfactory services* in the termination order does not amount to stigma. He has also taken me through the judgment relied upon by learned counsel for the respondent No.1 of the Supreme Court in the case of ***Dipti Prakash Banerjee (supra)*** to contend that the usage of the words "*Dereliction of Duty*" and "*Violation of Decorum*" does not amount to stigma as has been held by the Tribunal. He states, that the order of the Tribunal needs to be set aside as the petitioner was within its right to terminate the services of respondent No.1, being a probationer. He also relied upon the following judgments in support of his contention which were filed by him on July 2, 2015:-

(i) ***State of W.B and Ors. Vs. Tapas Roy, (2006) 6 SCC 453;***

(ii) ***Abhijit Gupta Vs. S.N.B National Centre, Basic Sciences and***

Others, (2006) 4 SCC 469;

(iii) Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and Another, (2002) 1 SCC 520.

10. On the other hand, Mr. K. Venkatraman, learned counsel for the respondent No.1 would, at the outset, submit that the respondent had in fact accepted the judgment of the Tribunal and had issued a letter dated August 17, 2012 addressed to the respondent No.1 wherein it has informed the respondent No.1 that her services transferred to the Nursery Branch of the School at Guru Harkishan Nagar, New Delhi. He would state, the petition need to be dismissed on this ground only. That apart, he has drawn my attention to the communication sent by the General Secretary of the trust to the Education Officer, Zone-18 informing that the trust had obeyed the order passed by the Tribunal dated August 9, 2012 and the respondent No.1 has been re-instated pursuant to the said orders. It is his submission that the aforesaid letters were prior in time to the filing of the Writ Petition. Unfortunately, the said aspect has not been highlighted in the Writ Petition. Mr. Venkatraman concedes to the fact that the conclusion of the Tribunal on the aspect of Deemed Confirmation is contrary to the judgment of this Court in ***Veena Sharma's*** case. He states, that this Court in ***Veena Sharma's*** case has clearly held that even if the maximum period of probation has expired,

till such time, there is an order of confirmation, the employee cannot be said to be a permanent employee. His only submission is, in support of the conclusion of the Tribunal that the order of termination was stigmatic. He has also drawn my attention to the judgment of the Supreme Court in ***Dipti Prakash Banerjee's*** case (supra) to contend that the Supreme Court has culled out, under what circumstances, an order of termination can be held to be stigmatic. According to him, the usage of the words “*Dereliction of Duty*” and “*Violation of Decorum*” are stigmatic in nature as the said words depict the personal attributes/conduct of the respondent No.1 and surely, such reference in the termination order would affect future employment of respondent No.1. He states, no fault can be found with the conclusion of the Tribunal on that particular aspect. Mr. Venkatraman has also relied upon the following judgments in support of his contention which were filed by him on July 3, 2015, after the petition was reserved for judgment:-

(i) ***Poonam Sharma Vs. U.O.I and Ors ILR (2011) III Delhi 739 (Para- 12, 16, 17);***

(ii) ***N.G. Dastane Vs. Shrikant S. Shivde and Anr. 2001 (3) Scale 619 (Para-17).***

11. Having considered the rival submissions made by learned counsel for the parties, in so far as the conclusion of the Tribunal that there is a

concept of 'Deemed Confirmation' under Rule 105 of the Rules is concerned, suffice to state, in view of the ratio laid down by this Court in ***Veena Sharma's*** case, the Tribunal had clearly erred in holding otherwise. It is a clear misreading of the judgment of this Court in ***Veena Sharma's*** case. To that extent, the conclusion of the Tribunal needs to be set aside. I, for benefit, refer to para 23 wherein this Court held, on the completion of one year, there is no deemed confirmation.

23. The reliance placed on by Mr. Khan on the decision in Wasim Beg (supra) has been distinguished in Satya Narayan Javar (supra) because of the position of Rule in this regard and the affidavit filed by the Corporation which showed that the services of the incumbent were satisfactory for the first few years and the work was very good. In that case, he was deemed to have become a confirmed employee. It is apposite to note that the Rule which was under consideration in Wasim Beg (supra) clearly stipulated that an employee directly appointed or promoted to any post in the Corporation shall be deemed to have become a confirmed employee in that grade after he has successfully completed a period of probation. In the present case, the language employed in the Rule is quite different. It does not use the words 'shall be deemed to have become a confirmed employee'. That apart, a condition precedent is attached to the effect that the work and conduct of an employee during the period of probation has to be found to be satisfactory. Quite apart from that, in Wasim Beg

(supra), the Apex Court had held that his work was satisfactory for number of years. In the case at hand, regard being had to the language employed and keeping in view the decision rendered in Satya Narayan Javar (supra), we are of the considered view that the employee could not be put in the compartment of confirmed employee after the expiry of one year of probation and accordingly, the finding recorded by the learned Single Judge on this score is set aside. We may also proceed to state that the learned Single Judge has opined that the services of a confirmed employee cannot be dispensed with in violation of principles of natural justice. As we have not concurred with the finding that the employee was a confirmed employee, the conclusion arrived at as an inevitable corollary relating to the violation of the doctrine of natural justice is also set aside, for there is no stigma attached to the order of termination.

12. Insofar as the conclusion of the Tribunal that the order of termination is stigmatic is concerned, the same would depend upon the nature/words mentioned, which, depicts the foundation of the order of termination. I have already reproduced the termination order above. Before, I deal with the termination order, as passed against the respondent No.1, I would like to deal with the position of law as enunciated by the Supreme Court with regard to termination of probationer. One of the first decisions on this point is a decision of the

Constitution Bench of the Supreme Court reported as ***AIR 1958 SCR 826 Parshotam Lal Dhingra Vs. Union of India*** wherein the Supreme Court has held that under the Contract or Rules, the Government has a right to terminate the services of a probationer at any time. The termination of services of a probationer in the manner provided in the Contract or under the Rules would not attract Article 311 (2) of the Constitution of India. In such cases, the motive of the Government while terminating the services of a probationer is irrelevant. However, if the services of a probationer have been terminated to penalize for misconduct, negligence or any like reason, the requirement of Article 311 (2) of the Constitution must be complied with. It was further held that it is not the form of the termination order but the substance thereof, which would determine the real reason behind the termination order. The judgment in ***Parshotam Lal Dhingra*** was followed by the judgment of the Constitution Bench reported as ***AIR 1960 SC 689 State of Bihar vs. Gopi Kishore Prasad*** wherein the following propositions were laid down regarding the termination of a probationer:-

- 1. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid*

down in the relevant rules for dismissing a public servant, or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct or inefficiency of for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of [Art. 311\(2\)](#) of the Constitution.

4. In the last-mentioned case, if the probationer is discharged on any one of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of [Art. 311\(2\)](#) of the Constitution and will, therefore, be liable to be struck down.

5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily

holding, on account of his misconduct or inefficiency or some such cause.

13. In a judgment reported as **1961 (1) SCR 606 State of Orissa and anr vs. Ram Narayan Dass**, it was laid down that one should look into ‘*object or purpose of the enquiry*’ and not hold the termination to be punitive merely because an enquiry was conducted before the issuance of termination order. Where the enquiry was conducted to ascertain whether the probationer is fit to be confirmed, the termination order would not be punitive. In a subsequent judgment reported as **(1964) 5 SCR 190 Champak Lal Chiman Lal Shah Vs. Union of India**, it was held that a preliminary enquiry conducted by the employer to satisfy that there was reason to dispense with the services of a probationer would not attract the provisions of Article 311 (2) of the Constitution of India. The Supreme Court in the year 1968 in the judgment reported as **AIR 1968 SC 1089 State of Punjab v. Sukh Raj Bahadur** has, after considering its decision in **Parshotam Lal Dhingra’s case (supra)**, **Gopi Kishore’s case (supra)**, **Ram Narayan’s case (supra)** had culled out the following prepositions:-

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such

termination without anything more would not attract the operation of [Art. 311](#) of the Constitution.

2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of [Art. 311](#) of the Constitution.

5. If there be a full-scale departmental enquiry envisaged [Art. 311](#) i.e. an Enquiry Officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article.

14. In the decision of the Constitution Bench reported as ***AIR 1974 SC 2192 Shamsher Singh v. State of Punjab***, it was held that where the order of termination of services of a probationer is motivated by

misconduct, negligence, inefficiency or any other disqualification, the same is not punitive. However, where the order terminating the services of a probationer is founded on misconduct, negligence, inefficiency or any other like disqualification, the same is punitive. It was further held, motive behind the termination order is irrelevant but if the order of termination is founded on misconduct, it is objective and manifest. In ***AIR 1980 SC 1896 Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha***, a three judge bench of the Supreme Court has dwelt upon the concept of motive and foundation and has held as under:-

“The anatomy of a dismissal order is not a mystery, once we agree that that substance, not semblance, governs the decision. Legal criteria is not so slippery that verbal manipulations may outwit the court. Broadly stated, the face is the index to the mind and an order fair on its face may be taken at its face value. But there is more to it than that, because sometimes words are designed to conceal deeds by linguistic engineering. So it is beyond dispute that the form of the order or the language in which it is couched is not conclusive. The court will lift the veil to see the true nature of the order. Many situations arise where courts have been puzzled because the manifest language of the termination order is unequivocal or misleading and dismissals have been dressed up as simple termination. And so, judges have dyed into distinctions between the motive and foundation of the

order and a variety of other variations to discover the true effect of an order of termination. Rulings are a maze on this question but, in sum, the conclusion is clear. If two factors coexist, an inference of punishment is reasonable though not inevitable. What are they? If the severance of service is effected, the first condition is fulfilled and if the foundation or causa causans is the servant's misconduct the second is fulfilled. If the basis or foundation of the order of termination is clearly not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and vice versa. These canons run right through the disciplinary branch of master and servant jurisprudence, both under Article 311 and in other cases including workmen under managements....

Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic process but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The court will find out from other proceedings or documents connected with the formal order of termination what the true ground for termination is. If, thus scrutinize, the order has a punitive flavor in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the services of a

delinquent servant, it is a dismissal, even if he had right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal even if full benefits as on simple termination, are given and non-injurious terminology is used. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant.

Then it is not dismissal but termination simplicitor, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is then not the moving factor in the discharge. We need not chase other hypothetical situations here. What is decisive is the plain reason for the discharge, not the strategy of a non-enquiry or clever avoidance of stigmatizing epithets. If the basis is not misconduct, the order is saved. (Emphasis Supplied).

15. In a decision reported as ***Dipti Prakash Banerjee case (supra)***, the Supreme Court had framed the following three questions for its

consideration:-

(i) 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?

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

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

16. With respect to question No.1, the Court observed as under:-

“If findings were arrived at in inquiry 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 inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry 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 inquire 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.”

17. In a decision reported as **2002 (1) SCC 520 Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I of Medical Sciences**, the Supreme Court has held as under:-

“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 (c) which 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 termination. Conversely if any of the three factors is missing, the termination has been upheld.

.....

....Therefore, whenever a probationer challenges his termination the courts 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.

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.” (Emphasis Supplied)

18. In a case reported as **2005 (5) SCC 569 State of Punjab Vs. Sukhwinder Singh**, the Supreme Court reiterated the law laid down in **Ram Narayan's case** wherein it was held, where an enquiry has been conducted, an employer to ascertain whether the probationer is fit to be confirmed, a termination order would not be punitive.

19. In a judgment in **S.B.I & Ors vs. Palak Modi & anr. 2013 (3) SCC 607**, the Supreme Court while considering an issue related to termination of a probationer, after summing up the position of law right from **Parshotam Lal Dhingra's case (supra)** has held that if a final decision, taken by the competent authority to dispense with the services of the probationer albeit by a non stigmatic order, the Court can lift the veil and declare that in the garb of termination simplicitor, the employer has punished the employee for a matter of misconduct.

20. In the case in hand, the termination order dated March 23, 2011 does reflect the cause for terminating the services of respondent No.1 was for dereliction of duty, which continued even after the last extension of the probation vide order dated January 4, 2010, which is clear from the usage of the words *‘dereliction of duty on her part still continued’*.

That apart, the order refers to the respondent No.1 class performance was not upto the mark and she has been violating the decorum of the school. Assuming that the respondent No.1 class performance, not upto the mark denotes her unsatisfactory performance. The reasons for termination i.e *'Dereliction of Duty'* and *'Violation of Decorum'* of the school surely denotes a misconduct on the part of the respondent No.1. Since the alleged misconduct reflected in the termination order, surely the said order is not simplicitor, and it is stigmatic. In so far as the judgments relied upon by learned counsel for the petitioner are concerned, first I deal with the judgment in the case of ***Pavanendra Narayan Verma (supra)***, the judgment would not help the petitioner in any way more particularly as noted in ***Pavanendra Narayan Verma***, the Supreme Court was considering an order of termination where the language used was 'work and conduct has not found to be satisfactory', the Supreme Court was of the view that the said words are almost exactly those which have been quoted in ***Dipti Prakash Banerjee (supra)***, clearly falling within the class of non stigmatic order of termination. As I have concluded above, the usage of the words *'Dereliction of Duty'* and *'Violation of Decorum'* depicts misconduct, termination on those grounds would be illegal, the judgment of ***Pavanendra Narayan Verma (supra)***, would be of no help to the petitioner. In so far as ***State of W.B***

and Ors. Vs. Tapas Roy case (supra) is concerned, there the Supreme Court was concerned with the discharge order mentioning several instances of unauthorized absence of probationer/trainee/constable from training centre and concluding therefrom, that he was not interested in training and had no respect for discipline. The Supreme Court was also of the view that there are no allegations of moral turpitude or misconduct. As I have, in this judgment, concluded that the termination order qua the respondent No.1 founded on misconduct and the termination is stigmatic, on facts, the case relied upon by learned counsel for the petitioner can be distinguished.

21. In *Abhijeet Gupta case (supra)*, the Supreme Court was considering a termination order where the words used were '*perverted mind and dishonest duffer having no capacity to learn*'. The Supreme Court was of the view that despite the use of such intemperate language, if the order is read as a whole, the reason of termination was the absence of hope for his improvement. The Supreme Court had upheld the conclusion of the High Court that the services of the appellant were unsatisfactory. As I have concluded, the order of termination is stigmatic in the facts, the judgment of the Supreme Court can be distinguished to be in the facts of that case. That apart, I note that the petitioner herein, before filing the petition, had issued communications

implementing the order passed by the Tribunal.

22. In view of the above discussion, the present petition challenging the order of the Tribunal needs to be dismissed. However, it is made clear that neither the impugned order of the Tribunal and this judgment shall preclude the petitioner from taking fresh decision in the matter of confirmation of respondent No.1 after giving her an effective opportunity of hearing against the allegations of dereliction of duty/violation of decorum of the school, the reasons, so specified in the order of termination dated March 23, 2011.

23. No Costs.

(V.KAMESWAR RAO)
JUDGE

JULY 7, 2015/ak