

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.18092 of 2011

ORDER:

Heard Smt N.Anula, learned counsel for petitioner, and Mr.P.Govind Reddy, learned standing counsel for respondents.

The petitioner prays for direction to the fourth respondent to continue him as Research Associate in the branch of Fisheries at Krishi Vigyan Kendra, Nellore, and set aside the notice dated 01.06.2011 of the fourth respondent as illegal, arbitrary and in violation of principles of natural justice.

The submissions of the counsel appearing for the parties substantially centres around the notice dated 01.06.2011. To appreciate the controversy as well, this Court considers it convenient to excerpt the proceeding hereunder.

**ACHARYA N.G.RANGA AGRICULTURAL
UNIVERSITY**

KRISHI VIGYAN KENDRA: NELORE

Cir.Memo.No.08/KVK/NLR/2011

Dated:01.06.2011

SUB:-K.V.K.Nellore – Research Associate (Fisheries) – Services terminated w.e.f. 30.06.2011 AN – One month Notice – Regarding.

REF:Proc.No.82/KVK/2006 dated 02.08.2006 of Programme Coordinator, Krishi Vigyan Kendra, Nellore.

It is to inform that the performance of Sri Harisadu, Research Associate (Fisheries), Krishi Vigyan Kendra, Nellore is not satisfactory and hence it is decided to terminate his services at Krishi Vigyan Kendra, Nellore. As per the instructions in ref., one month notice is hereby served for termination of the services of Research Associate (Fisheries), Krishi Vigyan Kendra, Nellore w.e.f.30.06.2011 A.N.

Hence, the services of Sri Harisadu Research Associate (Fisheries) on temporary basis will be terminated w.e.f. 30.06.2011 AN onwards at Krishi Vigyan Kendra, Nellore.

Sd/-

Programme Coordinator

The case of the petitioner is that, on 02.08.2006, he was

appointed as Research Associate by the fourth respondent. The petitioner possesses B.F.Sc. qualification and M.F.Sc. In the year 2001-2003, he acquired Masters Degree. The first respondent issued notification for walk-in interview for appointment as Research Associate by the second respondent. The appointment as Research Associate is at fourth respondent institution. The petitioner is qualified, therefore, attended the interview and, finally, the appointment order dated 02.08.2006 was issued. The appointment order reads thus:

**ACHARYA N.G.RANGA AGRICULTURAL
UNIVERSITY
KRISHI VIGYAN KENDRA: NELORE**

Office of the Programme
Coordinator,
Krishi Vigyan Kendra, Nellore.

Proc.No.82/KVK/2006 dated:02.08.2006

SUB:-Estt.ANGRAU – KVK, Nellore – Appointment as Research Associate in Fisheries – orders – issued.

REF:Memo.No.23443/Extn/A3/2005 dated 28.06.2006 of D.E., ANGRAU.

As per the recommendations of the selection committee, I am pleased to inform you that you have been selected as Research Associate on purely temporary basis in the discipline of Fisheries to serve in Krishi Vigyan Kendra, Nellore subject to the following terms and conditions.,

1. **The appointment is purely temporary and can be terminated with a notice of one month on either side.....** (emphasis supplied)
2. Yours truly, need to perform the duties entrusted to you connected with the K.V.K. under the directions of Programme Coordinator, KVK, Nellore.
3. Yours truly, will be paid a remuneration of Rs.11,500/- (consolidated) plus admissible House Rent Allowance (7.5% per month).
4. The candidate will not have any claim whatsoever in the regular appointment of ANGRAU.
If you are willing to accept the offer with the terms and conditions mentioned above you have to report to the Programme Coordinator, Krishi Vigyan

Kendra, Nellore on or before 20.08.2006, failing which the offer will be treated as withdrawn and cancelled.

All the certificates pertaining to educational qualifications in original and physical fitness certificate (issued by Medical Doctor/Civil Asst. Surgeon) is to be furnished at the time of joining.

Sd/-

Programme Coordinator

In the petition, it is averred that the petitioner has been working from 02.08.2006 till his services were sought to be terminated through the proceedings impugned in this Writ Petition.

The petitioner against the threatened termination, contends that Krishi Vigyan Kendra, Nellore was established under the aegis of Indian Council for Agricultural Research (ICAR) and is run under the control of Agricultural University. In the case on hand, ICAR is run under the administrative control of the first respondent. The aims and objects of Krishi Vigyan Kendra, Nellore, are to enhance knowledge and skill of farmers, impart knowledge in agricultural technologies and provide training to farmers. The KVK has adopted UGC norms and regulations. The KVK mission is a continuous programme though the Research Associate was appointed on temporary basis. The petitioner claims that, according to guidelines issued by ICAR, the services of Research Associate can be terminated under para 15 (ii) of guidelines which reads as follows:

(i)

(ii) The engagement/fellowship will stand terminated on completion of the tenure of the scheme or on the date stated in the sanction order of the scheme whichever is earlier whether so communicated formally on individual basis or not.

(emphasis supplied)

Therefore, according to petitioner, termination of services of petitioner as Research Associate by giving one month notice is

illegal, arbitrary and unconstitutional.

The first respondent filed counter affidavit with the following reply. The appointment of petitioner as Research Associate is not denied, but emphasis is on condition No.1 of appointment order dated 02.08.2006 to contend that the appointment was purely temporary and can be terminated with notice of one month on either side. According to respondents, the petitioner accepted the appointment with these terms and conditions, and cannot now resile from the agreed conditions and raise factual and legal objections. The appointment of petitioner as Research Associate was purely temporary and can be terminated with one month prior notice on either side. In other words, it is stated that the appointment as Research Associate can be ended by either parties by giving one month notice. The petitioner is not governed by service conditions of permanent staff of first respondent University. It is further averred that the performance of petitioner was not satisfactory and the authorities were constrained to issue memo to petitioner to change his attitude with office colleagues. In spite of caution and memo issued by the respondents, the petitioner has not changed and further a few allegations of misbehaviour with women staff and using filthy language are noticed. The petitioner has the habit of complaining to the third respondent without bringing the facts to the notice of the fourth respondent. The petitioner is in the habit of giving false complaints against administration for untenable reasons. It is stated that the petitioner committed following omissions and commissions.

- a. Not attending to the Technical Programme of work.
- b. Unauthorized absence from the duty.
- c. Not working to the satisfaction of the Head of the station and not following the instruction.
- d. Misleading the Programme Coordinator and manipulation of tour timings.
- e. Improper behavior with colleagues.
- f. Misbehaviour with women staff.

- g. Not submitting the reports in time causing much incontinence to the administration.

The respondent in other words contends that inspite of sufficient reasons to take action against the petitioner, still by considering the option of one month notice the temporary appointment is terminated and no exception can be taken.

Learned counsel for the petitioner contends that the petitioner is working as Research Associate in a programme implemented by ICAR, and the ICAR issued guidelines. The guidelines of ICAR, do not provide for termination of services of Research Associate by giving one month notice. According to petitioner, the guidelines have overriding effect on the conditions imposed by respondents. The respondents could not have terminated the services of petitioner as Research Associate. Further, it is contended that termination of services is attaching stigma to petitioner and cannot be treated as unblemished and termination of services simplicitor. The petitioner, therefore, shall be continued as long as KVK programme is implemented by respondent Nos.1 to 4. Learned counsel for petitioner relies upon **Paraplegic Home Society v. Lt. Col. Dharam Vir**^[1]; **Amarjit Singh v. State of Punjab**^[2]; **Laksmi Precision Screws Ltd. V. Ram Bahagat**^[3]; and **Union of India v. M.A.Chowdhary**^[4]

In **Paraplegic Home Society** (1 supra), the Punjab and Haryana High Court held as under:

“Authority reported as **State of Uttar Pradesh v. Dinanath Rai**^[5] and **Bachi Ram Vs. Union of India**^[6], are remotely connected to the facts of the present case. In those cases, it has been laid down that payment of salary in lieu of notice simultaneously with the order of termination is not necessary. Here, in this case, the dispute is whether the termination order is stigmatic or not. The first Appellate Court has returned a finding that said order is stigmatic. That being a

finding of fact cannot be interfered with in the Regular Second Appeal. Authority reported as **Rakesh Kumar Singh V. The Committee of Management, Raibrali**^[7], relied upon the counsel for the appellants, relates to termination of services of an employee on probation. In the present case, the plaintiff was working on contract basis and not a probationer. So, the said authority is distinguishable. Authority reported as **State of U.P v. Adya Prasad Pandey**^[8] is also not helpful to the appellants as in that case also, there was no dispute whether the order of termination was stigmatic or not.”

In **Amarjit Singh** (2 supra), the Punjab and Haryana High Court held as under:

“In **Parshotam Lal Dhingra Vs. Union of India**^[9], it was held that if misconduct was the motive, the order was not punitive but if it was the foundation, it was punitive. The difficulties or doubts in finding as to what was motive or foundation, though clarified in **Samsher Singh Vs. State of Punjab**^[10], were ultimately removed in case of **Gujarat Steel tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha**^[11]. In this case, simple order of termination as permitted by the terms of appointment or as permitted by the rules was not held punitive even when the departmental enquiry ordered initially was stopped because the employer was not sure of establishing the guilt of the employee. It is observed that in such cases allegation against the employee merely raise a cloud on his conduct and employer was entitled to say that he would not continue an employee against whom allegations were made, the truth of which the employer was not interested to ascertain. Passing of a simple order of termination in such cases is to confer benefit on the employee so that he does not suffer from any stigma, which would attach to rest of his career if a dismissal or other punitive order was passed. These are such cases where allegations of truth have not been found but these were merely taken as motive to pass the order simpliciter in nature.

In **Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences**^[12], the Hon'ble Supreme Court observed that:-

“One of the judicially involved 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 to be upheld.”

In **Gujarat Steel Tubes** (11 supra), the Court observed that:-

“..... a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal. 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 simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. In other words, it will be a case of motive if the master, after gathering some *prima facie* facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad.”

In the light of above principle, it is now to be seen if in substance the order relieving the appellant in the present case can be termed as punitive in nature or it is a simple order passed without any stigma. The appellant has given evidence and produced on record the report, Ex.P2, which according to him, led to his termination. Otherwise, it is admitted case that no charge sheet was served to the appellant and no enquiry was held. Exhibit P-2 is the report which was made against the appellant by Gulzar Singh. The report has already been referred to above, which was to the effect that the tickets were found wrongly punched by the appellant. This was stated to be a case of fraud. A perusal of the file by the Trial Court reveal that there was a note on the file against the appellant on the report of Inspector that his services be discontinued. The Trial Court accordingly reached a conclusion that the order, annexure P-1, simply terminating the services of the appellant was in fact passed on the basis of report, Exhibit P-2, in which the allegations of fraud were made against the appellant. It was in this background held that the impugned order was punitive and passed without holding any enquiry or giving any opportunity to the appellant. This finding of fact on the basis of the material on record could not be seriously disputed before me and only prayer made on behalf of the State counsel was

that the simple order of termination has been passed as the appellant was temporary employee. It would be reasonable to hold that this order in fact is by way of punishment and, thus, can not be sustained as having been made without holding any enquiry and giving opportunity to the appellant. Mere status of the appellant, being a temporary Government employee, would not deprive him of the protection of the Constitution or the Constitutional provisions as has been held in the **State of Bihar v. Shiva Bhikshuk Mishra**^[13], and **Joginder Singh V. High Court of Punjab and Haryana**^[14].”

In **Laksmi Precision Screws Ltd** (3 supra), the Supreme Court held as under:

“Having regard to the well settled principle of law as in **D.K.Yadav v. J.M.A. Industries Ltd.** (1993) 3 SCC 259), the decision to terminate by reason of a presumption as noticed above, we cannot but lend concurrence to the conclusion of the High Court that the action is purely and surely arbitrary in nature. Arbitrariness is an anti-thesis to rule of law: equity: fair play and justice contract of employment there may be but it cannot be devoid of the basic principles of the concept of justice. Justice oriented approach as is the present trend in Indian jurisprudence shall have to read as an in-built requirement of the basic of concept of justice, to wit, the doctrine of natural justice, fairness, equality and rule of law : The letter dated 17th October cannot by any stretch be treated to be an opportunity since it is only on the fourth day that such a letter was sent the action of the appellant herein stands out to be devoid of any justification, neither it depicts acceptability of the doctrine of natural justice or the concept of fairness arbitrariness is writ large and we confirm the finding of the High Court as also that of the learned Trial Judge and the Tribunal as regards the issue as noticed above.”

In **M.A.Chowdhary** (4 supra), the Supreme Court held as under:

“In appeal, the Division Bench held that in view of clauses (1) to (4) of the Agreement it is apparent that the Government in consideration of a monthly salary, controls the nature and manner of work assigned to the staff artists, that the Government had complete control over the respondent's work and manner and method of doing the work, which was supervised by the higher authorities, that the relationship between the respondent and the appellant was clearly of a master and servant, and the respondent was, therefore; holding a 'civil post' within the meaning of [Article 311\(1\)](#) of the

Constitution. The authority to terminate the respondent's service on 6 months' notice emanated from the contract but nonetheless it has the effect of violating [Article 311\(1\)](#) of the Constitution. It must comply with [Article 311\(2\)](#), otherwise the termination would be a removal from service within the meaning of [Article 311\(2\)](#) and in violation of its provisions. The Division Bench held that the notice of termination was void and rightly quashed by the learned Single Judge and dismissed the appeal of the Union of India.”

Learned counsel appearing for respondents contends that the appointment of petitioner as Research Associate is a pure and simple temporary appointment. The respondents issued the temporary appointment with definite conditions and the important condition is that the appointment can be terminated with notice of one month on either side. According to respondents, the exit from the rigour of appointment is provided to both the parties. In the case on hand, the respondents by exercising the option available under the terms of appointment have issued notice and no exception can be taken to such procedure. It is further contended that the argument that the ICAR have overriding effect and the condition imposed in the order of appointment dated 02.08.2006 shall have to be overlooked is unavailable to the petitioner for two reasons, firstly, the petitioner has accepted the order appointing him with a few conditions. Secondly, the guidelines cannot be elevated to the level of a binding rule and impose fetters on the discretion of the respondents. It is further contended that by using the expression that the performance of the petitioner is not satisfactory, no stigma or blemish is attached. Learned counsel relies upon **Secretary, State of Karnataka v. Umadevi**^[15]; **Vidyavardhaka Sangha v. Y.D.Deshpande**^[16]; **Official Liquidator v. Dayanand**^[17]; **Brij Mohan Lal v. Union of India**^[18]; and **Kendriya Vidyalaya Sangathan v. Arunkumar Madhavrao Sinddhave**^[19].

In **Umadevi** (15 supra), the Supreme Court held as under:

"We may now consider, **State of Haryana Vs. Piara Singh**^[20]. There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. This Court started by saying:

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to [Article 309](#) of the Constitution or (in the absence of such rules) by issued rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service"

This Court then referred to some of the earlier decisions of this Court while stating:

"The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

This Court then concluded in paragraphs 45 to 50:

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if

he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of [Article 16](#) should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State "

With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of *Piara Singh (supra)* are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

In **Vidyavardhaka Sangha** (16 supra), the Supreme Court held as under:

“It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc.”

Heard the learned counsel appearing for the parties. Perused the material available on record and the following point is framed for determination.

Whether the termination order dated 01.06.2011 is legal, valid and constitutional?

The circumstances leading to the filing of the Writ Petition are not in dispute. To appreciate the legal contentions, the admitted circumstances are reiterated briefly. The fourth respondent is implementing programme of ICAR. The petitioner was appointed as temporary Research Associate. The appointment is with the following conditions:

1. **The appointment is purely temporary and can be terminated with a notice of one month on either side.....** (emphasis supplied)
2. You need to perform the duties entrusted to you connected with the K.V.K. under the directions of Programme Coordinator, KVK, Nellore.
3. You will be paid a remuneration of Rs.11,500/-

(consolidated) plus admissible House Rent Allowance (7.5% per month).

4. The candidate will not have any claim whatsoever in the regular appointment of ANGRAU.

The important condition is that the appointment can be terminated with one month notice on either side. The case of the petitioner is that the services of petitioner shall be continued as Research Associate as long as programme is continued by the respondents. The case of respondents is that the services of the petitioner need not be continued with the programme but can be terminated by giving one month notice. The petitioner complains that termination though is, according to terms of appointment still the reason alleged for termination is viz. "dissatisfactory performance by the petitioner". Therefore, according to petitioner, the impugned termination is vitiated. Respondents contend that, having accepted the appointment with conditions and the working of petitioner is not adding utility to the on going programme, the respondents are justified in following the conditions with which the petitioner was appointed and to terminate his services.

In **Kendriya Vidyalaya Sangathan** (19 supra), the Supreme Court held what are the tests for determining whether termination is with stigma or without stigma:

"In Pavanendra Narayan Verma (12 supra), after referring to large number of earlier decisions, the law on the point has been very clearly elucidated in the following manner :-
"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.

.....
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. 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."

[In State of Punjab vs. Sukhwinder Singh](#)^[21], a Bench of three learned Judges to which one of us was a party after referring to several earlier decisions of this Court including those referred to above, laid down the principle as under in para 19 of the report :

"It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not, makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong."

As shown above, the nature of enquiry conducted against the respondent was merely a preliminary or fact finding enquiry and no formal full scale departmental enquiry had been conducted against the respondent. In fact, the enquiry officer had himself recommended that disciplinary action be taken against the respondent. However, the authorities chose not to hold a disciplinary enquiry against the respondent and did not serve him with any article of charges or take any further steps in that regard. Instead they chose to exercise power under the terms and conditions of the appointment order. The termination order is wholly innocuous and does not cast any stigma upon the respondent nor it visits him with any evil consequences. The High Court seems to have proceeded on a wholly wrong basis and has treated the enquiry which was only a preliminary or fact finding enquiry into a regular disciplinary enquiry, which was not the case here. In these circumstances the judgment of the High Court is wholly erroneous in law and has to be set aside.”

Having due regard to the authoritative pronouncement of Hon'ble Supreme Court, this Court is of the view that the impugned notice is issued in accordance with the terms of appointment and mere observation that petitioner's performance is not satisfactory cannot and could not be treated as attaching any blemish to the service of the petitioner. The citations relied upon by the petitioner are distinguishable to the facts and circumstances of this case. This Court is satisfied that the appointment of the petitioner is with definite terms and conditions. The respondents have authority to terminate appointment by following the conditions and no exception can be taken. It is made clear that the observations in the termination notice that the performance of petitioner is not satisfactory cannot and could not be treated as attaching any blemish.

The Writ Petition fails and is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

Date:29.06.2016
usd

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- [1] 2008(4)SLR 156
[2] 2010(1)SLR 728
[3] (2002)6 SCC 552
[4] (1987) 4 SCC 112
[5] 1969 S.L.R 646 (SC)
[6] 1986(2) SLR 102 (SC)
[7] 1996(3) Service Cases Today 436 (SC)
[8] 1995 (7) SLR 55 (SC)
[9] AIR 1958 SC 36
[10] 1974 (2)SCC 831
[11] 1980 (2) SCC 593
[12] 2002(1) SCC 520
[13] (1970 SLR (863) SC)
[14] (1989 (1) SLR 603)
[15] AIR 2006 SCC 1806(1)
[16] (2006) 12 SCC 482
[17] (2008) 10 SCC 1
[18] (2012) 6 SCC 502
[19] AIR 2007 SC 192
[20] [1992] 3 SCR 826]
[21] (2005) 5 SCC 569