

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11590 OF 2014
WITH
CIVIL APPLICATION NO.7900 OF 2015
IN WP/11590/2014

- 1 Bukhari Urdu Education Society,
Majalgaon, District Beed.
Through its Secretary,
Khurshid Naik s/o Yakub Naik,
Age : 52 years, Occupation : Business,
R/o Majalgaon, Tq.Majalgaon,
District Beed.
- 2 Bhukari Urdu Higher Secondary
School, Majalgaon, District Beed.
Through its Head Master.
Shaikh Harun Bashirodeen,
Age : 44 years.

...PETITIONERS

-VERSUS-

- 1 Quazi Babi Farheen Tabassum,
Age : 30 years,
Occupation : Shikshan Sevak,
R/o Gandhanpura, infront of
Band-e-Nawaz Masjid,
Majalgaon, District Beed.
- 2 Guldad Gaffar Khan,
Ex-President of Bhukari Urdu
Education Society, Majalgaon,
District Beed.
- 3 Deputy Director of Education,
Aurangabad Division,
Aurangabad.

...RESPONDENTS

...

Advocate for Petitioners : Shri Kazi S.S.

Advocate for Respondent 1 : Shri R.J.Godbole.

Advocate for Respondent 2 : Shri V.B.Narke.

AGP for Respondent 3 : Shri S.N.Kendre.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th February, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ Management is aggrieved by the judgment of the School Tribunal dated 13.11.2014 by which Appeal No.4/2014 filed by Respondent No.1/ Appellant/ Employee has been allowed and she has been granted reinstatement on her original post with continuity and full back wages.

3 I have heard the strenuous submissions of the learned Advocates for the respective sides.

4 The undisputed factors emerging from their submissions and the record are as under:-

- (a) Respondent No.1 (herein after referred to as the Appellant), was appointed as a Shikshan Sevak on 18.06.2011 under the scheme introduced by the State Government through the

Government Resolution dated 13.10.2000.

- (b) The said appointment was for a period of three years which was to be treated as a period of probation.
- (c) The scheme provides for inducting such Shikshan Sevaks in service of the Institution as Assistant Teachers after completion of three years.
- (d) By order dated 15.04.2014, the Appellant was informed that her service was not satisfactory and hence, her engagement is cancelled.
- (e) Appeal No.4/2014 was preferred by the Appellant.
- (f) Below paragraph 9 of the impugned judgment, the Tribunal framed the issues as regards whether, the School is a recognized school and whether, the cancellation of the appointment of the Appellant was illegal.
- (g) In paragraph 13, the Tribunal has observed "*However, no details of unsatisfactory performance have been mentioned in this notice, so, it is necessary to go through the document filed and relied by the respondents.*"
- (h) In paragraph 14, the Tribunal has noted that there were some complaints filed against the Appellant, there was an incident of she having allegedly abused another co-teacher.

- (i) In paragraph 15, the Tribunal records that the Appellant was given a warning-cum-notice and another notice dated 30.07.2012 calling for explanation from the Appellant for threatening a colleague teacher.
- (j) In paragraph 16, the Tribunal relied upon the complaints, which are not a part of the termination order and concluded that the employer was duty bound to conduct an enquiry and without an enquiry, her appointment could not have been cancelled.
- (k) In paragraph 22, the Tribunal has concluded that *"But as I have also opined that, even for probationer, the respondent No.1 were required to conduct inquiry when the allegations are stigmatic in nature and action taken is punitive, so I hold that, the cancellation of appointment is illegal for want of enquiry."*

5 Shri Godbole, learned Advocate for the Appellant, has strenuously defended the impugned judgment. His contention is that if the appointment of a Shikshan Sevak on probation is to be terminated, clause 14(2) of the Government Resolution dated 13.10.2000, which introduced the scheme of appointments of Shikshan Sevaks, mandates that prior permission of the Deputy Director of Education has to be taken. He

submits that no such permission was taken.

6 He then submits that Rule 15(6) of the MEPS Rules, 1981 requires the Head of the Institution to maintain an adverse report against a probationer. Even if such reports may have been maintained, they were never conveyed to the Appellant and she was not informed that her performance is not satisfactory. He, therefore, submits that she was not given an opportunity to improve her conduct.

7 In support of his contentions, Shri Godbole relies upon the judgment of the Honourable Supreme Court in the matter of *Jarnail Singh and others vs. State of Punjab and others*, **AIR 1986 SC 1626**, the judgment of the learned Division Bench of this Court in the matter of *Progressive Education Society, Hinghanghat and others vs. Nitin Krishnarao Nimbalkar and others*, **2006 (4) Mh.L.J. 747** and the judgment of this Court in the matter of *Vishwanath Dnyanoba Kirade vs. Nav Akanksha Mahila Mandal, Parbhani*, **2015 (3) Mh.L.J. 725**.

8 Considering the submissions of the learned Advocates, it is necessary to peruse the order of termination. The said order is in Marathi wherein it is specifically mentioned that the performance of the Appellant

was not satisfactory and therefore, her engagement as a Shikshan Sevak is cancelled. Much ado has been made out of the word "cancelled" by the Appellant inasmuch as the Tribunal has given undue weightage to the said word. The appointment of Shikshan Sevak cannot be cancelled after the tenure of Shikshan Sevak is completed or has practically completed. Eventuality of cancellation of the appointment order is possible either before the joining of the concerned Shikshan Sevak or within a short time of joining. The Government Resolution dated 13.10.2000 is in fact a sort of a safety feature in favour of the Shikshan Sevaks to prevent unlawful cancellation of the orders of appointments as Shikshan Sevaks.

9 In the instant case, the tenure of the Appellant was to end on 18.06.2014. The vacation for the schools is in May and June of the year. The new academic year in such schools normally commences from the 15th day of June. For all purposes, the academic year 2013-2014 would have come to an end by the end of April, 2014. As such, though the word "cancelled" has been used in Marathi in the order of disengagement, it is apparently an inappropriate word used as the appointment of Shikshan Sevak cannot be cancelled when hardly a month was to go for completion of the three years tenure as Shikshan Sevak. In my view, it has, therefore, to be read as the probation period of the Appellant being brought to an end.

10 Having so concluded as above, it needs to be seen as to whether, the dissatisfaction of the employer could be termed as being a stigmatic removal. It is settled law that if the probation period is satisfactory after testing the suitability of a probationer for regular employment, such candidate has to be regularized in employment. If the performance is not to the satisfaction of the employer, the employer has to mention so in the disengagement order since a simple order not even mentioning that the performance was not satisfactory, would be construed to mean that there was nothing wrong about the performance of the probationer. It is, therefore, trite law that the disengagement of a probationer for not keeping to the subjective satisfaction of the employer, is not a stigmatic termination.

11 Reliance placed upon the judgment of the Honourable Supreme Court in Jarnail Singh case (supra), would be of no assistance for the reason that the services of the Petitioner therein were terminated on expiry of the term on the basis of an adverse remark and the allegations of embezzlement. This having been voiced, the Honourable Supreme Court concluded that the termination would, therefore, amount to a stigmatic removal from service.

12 The judgment of the learned Division Bench in Progressive Education Society's case (supra), pertains to the appointment of an Assistant Teacher on probation. The MEPS Act, 1977 and the MEPS Rules, 1981 are applicable to the Assistant Teachers unlike the case of Shikshan Sevaks, which are initially covered by the Government Resolution dated 13.10.2000. One month's notice in the Progressive Education Society's case (supra) was offered after the disengagement of the Assistant Teacher and the learned Division Bench found fault with the same. The judgment of this Court in Vishwanath Dnyanoba Kirade's case (supra) is also on the same lines.

13 In the instant case, the Appellant has failed to indicate from the Government Resolution dated 13.10.2000 that if the performance of a Shikshan Sevak is not satisfactory, one month's notice is mandatorily required to be given so as to bring his engagement to an end.

14 The issue before this Court is that after the Appellant was paid 15 days wages and informed that the performance is not satisfactory, the probation period was brought to an end. The Honourable Supreme Court (a three Judge Bench), in the matter of *M.Venugopal vs. The Divisional Manager, Life Insurance Corporation of India*, AIR 1994 SC

1343, has observed in paragraph 15 as under:-

"15. *Even under general law, the service of a probationer can be terminated after making overall assessment of his performance during the period of probation and no notice is required to be given before terminating his service. This aspect has been examined by this Court in the case of The Governing Council of Kidwai Memorial Institute of Technology, Bangalore vs. Dr.Pandurang Godwalkar, AIR 1993 SC 892, where it has been pointed out that if the performance of the employee concerned during the period of probation is not found to be satisfactory on overall assessment, then it is open to the competent authority to terminate his service.*"

15 The Honourable Supreme Court, in the matter of *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others*, **AIR 1999 SC 983**, while dealing with the case of a probationer, who was in fact issued with the charge sheet and the enquiry was commenced, concluded that when the employer found it appropriate to abort the enquiry and without mentioning any adverse remarks in the order of disengagement, terminates the probation period of the employee, it could only be termed as being an innocuous order and no stigma can be said to have been attached in such circumstances.

16 The observations of the Honourable Supreme Court from paragraphs 19 till 36 read as under:-

"19. *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?

Point 1:

20. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in *Madan Gopal vs. State of Punjab* [AIR 1963 S.C. 531], there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in *R.S. Gupta vs. U.P. State Agro Industries Corporation Ltd. & Anr.* [J.T. 1998 (8) S.C. 585 : 1999 AIR SCW 207] and reference was made to the development of the law from time to time starting from *Purshottam Lal Dhingra vs. Union of India* [1958 SCR 828 : AIR 1958 SC 36], to the concept of 'purpose of inquiry' introduced by Shah, J. (as he then was) in *State of Orissa vs. Ram Narayan Das* [1961 (1) SCR 606 : AIR 1961 SC 177] and to the seven Bench decision in *Samsher Singh vs. State of Punjab* [1974 (2) SCC 831 : AIR 1974 SC 2192] and to post *Samsher Singh* case-law. This Court had occasion to make a detailed examination of what is the 'motive' and what is the 'foundation' on which innocuous order is based.
21. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in *Gujarat Steel Tube vs. Gujarat Steel Tubes Mazdoor Sangh*

[1980(2) SCC 593 : AIR 1980 SC 1896]. As to 'foundation', it was said by Krishna Iyer, J. as follows:

".....a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the 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 different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry 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."

and as to motive:

"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 simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge."

As to motive one other example is the case of *State of Punjab vs. Sukh Raj Bahadur* [1968(3) SCR 234 : AIR 1968 SC 1089] where a charge memo for a regular inquiry was served, reply given and at that stage itself the proceedings were dropped and a simple termination order was issued. It was held, the order of simple termination was not founded on any findings as to misconduct. In that case, this Court referred to *A.S. Benjamin vs. Union of India* (Civil Appeal No.1341 of 1966 dt.13.12.1966) (SC) (reported in 1967 (15) Fac LR 347) where a charge

memo was issued, explanation was received, an inquiry officer was also appointed but before the inquiry could be completed, the proceedings were dropped and a simple order of termination was passed, the reason for dropping the proceedings was that "departmental proceedings will take a much longer time and we are not sure whether after going through all the foundation, we will be able to deal with the accused in the way he deserves". The termination was upheld.

22. 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.

23. In the light of the above principles, laid down in R.S.Gupta's case (1999 AIR SCW 207) we do not think anything more is to be added. Point 1 is decided accordingly.

Points 2:

24. In the present case before us, the order of termination dated 30.4.97 is not a simple order of termination but is a lengthy order which we have extracted above. It not only says that performance during probation is not satisfactory but also refers to a letter dated 30.4.1996 by which the period of

probation was extended by six months from 2.5.1996, and to letters dated 17.10.96 and 31.10.96. It concludes by saying that the appellant's 'conduct, performance, ability and capacity' during the whole period of probation was not satisfactory and that he was considered 'unsuitable' for the post for which he was appointed.

25. The contention for the appellant is that if the appellant is to seek employment elsewhere, any new employer will ask the appellant to provide the copies of the letters dated 30.4.96, 17.10.96 and 31.10.96 referred to in the impugned order and that if the said letters contain findings which were arrived at without a full fledged departmental inquiry, those findings will amount to stigma and will come in the way of his career.
26. In the matter of 'stigma', this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven Judge case in *Samsher Singh vs. State of Punjab* [1974 (2) SCC 831 : AIR 1974 SC 2192], Ray, CJ observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in *Bishan Lal Gupta vs. State of Haryana* [1978 (1) SCC 202 : AIR 1978 SC 363] that if the order contained a stigma, the termination would be bad for "the individual concerned must suffer a substantial loss of reputation which may affect his future prospects".
27. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a 'stigma'. The other issue in the case before us is whether - even if the words used in the order of termination are innocuous, -the court can go into the words used or language employed in other

orders or proceedings referred to by the employer in the order of termination?

28. *As to what amounts to stigma has been considered in Kamal Kishore Lakshman vs. Pan American World Airways [1987 (1) SCC 146 : AIR 1987 SC 229]. This Court explained the meaning of 'stigma' as follows:*

"According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc., indicating that something is not considered normal or standard. The Legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary 'stigma' is a matter for moral reproach."

Similar observations were made in Allahabad Bank Officer's Association vs. Allahabad Bank [1996 (4) SCC 504 : 1996 AIR SCW 2432].

29. *At the outset, we may state that in several cases and in particular in State of Orissa vs. Ram Narayan Das [AIR 1961 S.C. 177], it has been held that use of the word 'unsatisfactory work and conduct', in the termination order, will not amount to stigma.*
30. *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 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 vs. State of Punjab [1975 (1) SCC 774 : AIR 1974 SC 2263], 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 'stigma' would amount to robbing the authority of the right under the rule. Similarly where a Rule required a show cause notice issued and an inquiry 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 inquiry. That was because, in such a case, the purpose of the inquiry 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 vs. Ram Narayan Das* (AIR 1961 SC 177); *Ravindra Chandra vs. Union of India* (AIR 1963 S.C.1552). In *State of Gujarat vs. Akhilesh C. Bhargav* [1987 (4) SCC 482 : AIR 1987 SC 2135], 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).

31. We shall next advert to some more cases and to particular words employed while passing orders of termination of probationers. In *State of Bihar vs. Gopi Kishore Prasad* [AIR 1980 S.C. 689], a show cause notice was given seeking a reply to the allegation regarding the officers' 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 inquiries 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 inquiry under Rule 55 of the CCS (CCA) Rules. In *Jagdish Mitter vs. Union of India* [AIR 1964 S.C. 499] the use of the words "undesirable to be continued" in service was held by the Constitution Bench to amount to stigma. This case was followed in *State of U.P. vs. Madan Mohan Nagur* [AIR 1967 S.C. 1260] where the order said that the officer had 'outlived his utility' and such an order was held to amount to a stigma. *Jagdish Mitter* was approved by the Seven Judge Bench in *Samsher Singh's* case on this point. But in *Kunwar Arun Kumar vs. U.P. Hill Electronics Corporation* [1997 (2) SCC 191], the termination order used the word 'unsatisfactory' and the same was upheld as it did not amount to stigma. In two cases arising under industrial law, one in *Chandu Lal vs. Pan American World Airways* [1985 (2) SCC 727 : AIR 1985 SC 1128] and *Kamal Kishnore Lakshman vs. Pan American Land Ways Inc.* [1987 (1) SCC 146 : AIR 1987 SC 229] where the termination order used the word 'loss of confidence', the said orders were held to contain stigma and therefore punitive. In *Jagdish Prasad vs. Sachiv Zila Gaon Committee* [1986 (2) SCC 338 : AIR 1986 SC 1108], the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on charge of corruption and therefore not suitable for appointment. This was held to amount to stigma. But in *Union of India vs. R.S.Dhabe* [1969 (3) SCC 603] where the order merely said 'found unsuitable', it was held not to amount to stigma. In *Allahabad Bank Officers Association vs. Allahabad Bank* [1996 (4) SCC 504 : 1996 AIR SCW 2432], the order was one of compulsory retirement and said that a Special Committee had unanimously recommended for the officers' compulsory retirement, that the Chairman and Managing Director agreed with the Committee's views regarding want of application to 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:

"Any person reading the letter on 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 vs. Pandey Madan Mohan Prasad Sinha & Others [1997 (10) SCC 409] it was held that termination of probationer on basis of uncommunicated adverse remarks, was valid.

32. *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 stigma or not. Point 2 is decided accordingly.*

Point 3:

33. *The next question is whether the reference in the impugned order to the three earlier letters amounts to stigma if those three letters contained anything in the nature of a stigma even though the order of termination itself did not contain anything offensive.*

34. *Learned counsel for the appellant relies upon Indrapal Gupta vs. Managing Committee [1984 (3) SCC 384 : AIR 1984 SC 1110] 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:*

"With reference to the above (viz. termination of service as Principal), I have to mention that in view of the 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 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 institute, 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:

"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 serious view 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 the termination of his period of probation, too, the approval of the DIOS will be necessary. Accordingly, any delay in the matter may also be harmful to our interests.

Accordingly, I suggest that instead of taking serious action, the period of probation of Sri 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 alongwith 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 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 benefits of backwages and continuity of service.

35. *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 stigma. The termination order was, as stated above, set aside.*
36. *The above decision is, in our view, 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 inquiry 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.*

17 It was thus, settled that unless the material attaching stigma to the service/ conduct of the probationer is set out in the order of

termination of the probationer thereby, pointing towards such material, an innocuously worded termination order would not amount to a stigmatic termination.

18 It is apparent from the observations of the School Tribunal that it relied upon the complaints produced by the Management before the Tribunal, though these complaints were not referred to or mentioned in the order of disengagement. The Tribunal concluded that the complaints would indicate the termination of the Appellant was stigmatic. Such conclusions of the Tribunal, in the light of the ratio laid down by the Honourable Supreme Court in Dipti Prakash Banerjee (supra), are against the settled law. Not a single complaint has been mentioned in the notice of termination. There is no reference made to any report or grievance of any particular individual as regards the conduct of the Appellant, in the notice of termination. In these circumstances, the said notice of termination cannot be termed as being a stigmatic termination of the Appellant.

19 Rule 15(6) of the MEPS Rules, 1981 requires the Head of the School to objectively assess the performance of the employee appointed on probation. After such assessment is recorded, it would assist the decision making of the Institution in order to conclude as to whether, the concerned employee deserves to be absorbed in service or not. The said

rule, however, does not prescribe that the adverse remarks must necessarily be conveyed to the probationer though it would always benefit the Institution as well as the employee that such assessment reports are brought to his notice so that the employee gets an opportunity to improve his or her performance.

20 In this backdrop, had the Management brought the assessment of the Appellant to her notice, in all probability, she would have got an opportunity of reforming herself and improving her conduct. If her performance was not upto the mark, the Management was not precluded from bringing the said performance to the notice of the Appellant. It is for these reasons that I find it proper to impose costs on the Management so as to compensate Respondent No.1/ Appellant.

21 In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the School Tribunal dated 13.11.2014 stands quashed and set aside and Appeal No.4/2014 stands dismissed.

22 However, the Petitioner/ Management shall pay an amount equivalent to the last drawn gross salary of Respondent No.1/ Appellant for a period of SIX MONTHS for having failed to inform her about her lack of performance and for failing to apprise her of her shortcomings which

would have enabled her to improve her performance. The said amount shall be paid to Respondent No.1/ Appellant within a period of EIGHT WEEKS from today, failing which the same shall attract interest at the rate of 6% per annum from the date of the judgment of the School Tribunal.

23 It is informed by the learned Advocate for the Petitioner/ Management that the Appellant was being paid Rs.9000/- per month as a stipend under the Government Resolution dated 13.10.2000 by virtue of which she was appointed. He, therefore, submits that the stipend for the last six months would be Rs.54,000/- (Rupees Fifty Four Thousand), which Respondent No.1/ Appellant may withdraw from the amount deposited by the Petitioner/ Management in this Court.

24 Considering the same, Respondent No.1/ Appellant would be at liberty to withdraw the amount of Rs.54,000/- without conditions and the rest of the amount with accrued interest could be withdrawn by the Petitioner/ Management. Rule is made partly absolute in the said terms.

25 The pending Civil Application does not survive and therefore, stands disposed of.