

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.19721 of 2015

ORDER:

In this Writ Petition, the petitioner is assailing the order No.4(285)/P/2015/124/03 dt.24-06-2015 passed by 3rd respondent removing the petitioner from the post of Assistant Manager by terminating his probation.

2. The petitioner obtained degree in Bachelor of Technology in Computer Engineering in 2008.

3. An Employment Notification No.2 of 2012 dt.23-04-2012 was issued by the respondents calling for applications from the eligible candidates for the post of Assistant Manager (C & IT) among other posts.

4. Petitioner applied for the said post enclosing his education certificate as well as experience certificate issued by M/s.Hari Constructions and Associates Private Limited.

5. Petitioner was called for interview on 17-02-2014 and also on 02-05-2014. He was also later subjected to medical examination.

6. Thereafter, the petitioner was issued an appointment letter No.2 (42)/R/2012 dt.27-08-2014 appointing him as Assistant Manager (C&IT).

7. The said appointment order stated in clause 1 (i) that his appointment is temporary and he would be in probation for a period of one year from the date of his appointment, which may be extended or curtailed at the discretion of the respondents; that failure to complete period of probation to the satisfaction of the Management would render him liable to discharge from service; and if the work of the petitioner was found to be satisfactory during the period of probation, he would be continued in service and he may be confirmed in service in the event of it being decided to absorb him in the permanent cadre of respondents.

8. Clause 9 of the said order stated that if any declaration given or information furnished by petitioner proves to be false or if he is found to have willfully suppressed any material information, he would be liable for removal from service and such other action of the respondents may deem it necessary.

9. The other clauses in the appointment order are not relevant.

10. On 26-09-2014, the petitioner joined his services of the 1st respondent in the post of Assistant Manager (C&IT).

11. On 08-06-2015, the Deputy General Manager (Personnel) of the 1st respondent issued a Certificate to the petitioner stating that his Performance Annual Rating (for short 'PAR') for the year ending 1-03-2015 was very good.

12. On 24-06-2015, the impugned order was issued by 3rd respondent removing the petitioner from the post of Assistant Manager (C&IT) by terminating his probation.

13. The said order stated that his appointment was made on temporary basis on 27-08-2014 on the basis of documents/certificates, information etc. submitted by him, that he was on probation for a period of one year from the date of his appointment, that he accepted his appointment on the terms and conditions mentioned in the appointment letter dt.27-08-2014 and that *the appointing authority, keeping mind the ground realities, in the fitness of the circumstances and in terms of clause No.1 (i) and clause 9 of the above referred appointment letter*, removed him from his probationary services with immediate effect i.e. 24-06-2015. It was also stated that a sum equivalent to one month salary of Rs.41,303/- in lieu of notice was being credited to his bank account.

14. Assailing the same, this Writ Petition is filed.

Contentions of counsel for petitioner

15. Learned Senior Counsel Sri C.V. Mohan Reddy, appearing for the petitioner contended that clause 1 (i) empowered the respondents to discharge the petitioner from service for unsatisfactory performance, but the respondents have issued a Certificate dt.08-06-2015, about 16 days prior to the passing of the impugned order for removal, certifying that the petitioner's PAR rating was very

good for the year ending 31-03-2015 and so clause 1 (i) could not have been invoked.

16. He contended that clause 9 of the appointment order no doubt empowers the respondents to remove the petitioner from service, if any declaration given or information furnished by him proved to be false or if he was found to have willfully suppressed any material information, but there is no material available with the respondents to invoke the said clause. He contended that the petitioner had not suppressed any material nor did he give any false information or declaration and he had furnished all the information required truthfully; and after scrutinizing the same and after satisfying themselves only, the respondents called him for interview twice and issued the appointment order to him.

17. He also stated that before furnishing the impugned order of removal, a vigilance enquiry was conducted by the vigilance department of the respondents on 30-03-2015; that in the said enquiry, the petitioner was interrogated and was coerced to give a statement that he worked in Larsen and Toubro (L&T) Limited on *ad hoc* basis; as per the Employment Notification dt.23-04-2012, all the candidates were required to have two years experience after obtaining the qualification; petitioner had 3 years 3 months experience as on the date of said Notification out of which he worked for one year six months in the organization M/s. L&T Ltd through a contractor by name M/s.Hari constructions which was the man power supplier to

M/s.L & T Limited, and for the remaining period of 1 year 9 months, he was appointed on regular basis in M/s.L & T Limited and his services were also confirmed. He stated that during the vigilance enquiry, petitioner was called upon to furnish documents such as bank statements, pay slips issued by M/s.Hari Constructions, that he submitted the said documents and on the basis of the same, impugned order was passed by respondents without furnishing the copy of the vigilance report to him.

18. He contended that the termination of the petitioner's probation casts stigma, that the petitioner's employment opportunities in future would be adversely affected and no employer would offer employment to the petitioner and therefore a departmental enquiry ought to have been held before terminating his services.

19. Learned counsel for the petitioner relied upon the judgments of the Supreme Court in **Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others¹**, **Radhey Shyam Gupta Vs. U.P. Stae Agro Industries Corporation Ltd., and another²** and **V.P.Ahuja Vs. State of Punjab and others³**.

¹ (1999) 3 SCC 60

² (1999) 2 S.C.C. 21

³ (2000) 3 SCC 239

The contentions of the Respondents

20. Counter affidavit was filed by the 3rd respondent who passed the impugned order justifying his action and refuting the contentions raised by the petitioner.

21. In the counter affidavit, it is stated that pursuant to information given by CBI, the Vigilance Department of 1st respondent conducted an investigation and found that three persons including the Writ Petitioner had produced false experience certificates and therefore, the petitioner's probation was terminated through an order of termination *simpliciter* without attaching any stigma with respect to his future employment.

22. It is stated that Regulation 14 of the Service Regulations of 1st respondent postulates that the service of an employee on probation (on first appointment) can be terminated by one month's notice in writing on either side or by paying one month's salary in lieu of notice and this condition has been complied with. Reference is also made to explanation (vi) (a) of Rule 23 of NMDC Employees (Conduct, Discipline and Appeal) Rules which provides for termination of service of employee appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment. It also states that such termination shall not amount to penalty within the meaning of the said rule.

23. It is stated that the petitioner obtained his engineering degree on 27-12-2008 and claimed to have joined as ISD (Systems) Probation Officer in M/s.Hari Constructions and Associates Private Limited on 02-01-2009 and continued up to 15-07-2010, but the said company itself was registered with Registrar of Companies only on 07-08-2009 and therefore the petitioner cannot claim that he was employed therein from 02-01-2009 and the experience certificate produced by the petitioner is therefore false.

24. The 3rd respondent contended that the petitioner played fraud and that was why after the vigilance enquiry, petitioner's services were terminated. Reference is made to certain findings in the vigilance investigation done against the petitioner and it is further alleged that he misused his father's position as a public servant.

25. It is contended that petitioner's services as probationer can be terminated before the expiry of period of probation without holding any departmental enquiry as per conduct and disciplinary rules on the ground of his unfitness or ineligibility for the post and such a removal would not give the petitioner any enforceable right or cause of action for a Writ of Mandamus.

26. It is stated that the appointing authority had the option whether to hold an enquiry or not and the petitioner cannot insist that the appointing authority should hold an enquiry and give employee an opportunity to controvert the grounds on which his services were

terminated. It is reiterated that the respondents did not attach any stigma to the petitioner or bar his future employment since the impugned order was an order of termination *simpliciter* and no rights of the petitioner were affected.

27. It is stated that furnishing of a false and fabricated certificate is contrary to the terms and conditions of the appointment order and clause 9 of the appointment order empowers termination of services of the petitioner on such a ground and it does not contemplate issuance of any notice or conduct of any departmental enquiry.

28. It is stated that fraud vitiates everything and the petitioner having obtained appointment by playing fraud on the respondents, his very order of appointment is a nullity; and because he committed illegality or offence, his services were discharged and principles of natural justice would not therefore apply. A reference is made to the following judgments of the Supreme Court:

Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and others⁴, Parshotam Lal Dhingra Vs. Union of India⁵, State of Bihar Vs. Gopi Kishore Prasad⁶, ONGC Vs. Dr. Md.S.Iskender Ali⁷, Registrar, High Court of Gujarat Vs. C.G.Sharma⁸, Municipal Committee, Sirsa Vs. Munshi Ram⁹, H.F.Sangati Vs. Registrar General, High Court of Karnataka and

⁴ (1987) 1 S.C.C. 424

⁵ AIR 1958 S.C. 36 (paras 2 and 8)

⁶ AIR 1960 S.C. 689

⁷ (1980) 3 S.C.C 428

⁸ (2005) 1 S.C.C. 132

⁹ (2005) 2 S.C.C. 382

others¹⁰, Khub Ram Vs. Dalbir Singh and others¹¹, Chaitanya Prakash and another Vs. H.Omkarappa¹², Mathew P.Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and others¹³, Kendriya Vidyalaya Sangathan and others Vs. Ram Ratan Yadav¹⁴, Kamal Nayan Mishra Vs. State of Madhya Pradesh and others¹⁵ and Avtar Singh Vs. Union of India¹⁶

29. Sri K.Raghava Charyulu, Standing Counsel for 1st respondent-Corporation, reiterated these submissions and sought for dismissal of the Writ Petition.

Reply contentions of the petitioner

30. The petitioner filed a reply affidavit refuting the contentions of the respondents.

31. He contended that the respondents were not correct in taking a stand that petitioner's services were terminated by an order of termination *simpliciter* and that no stigma was attached. According to him, a very reading of the impugned order would show that it is not an order terminating his services *simpliciter*, that the language employed shows that it is clearly stigmatic in nature and therefore it could not have been passed without affording him an opportunity to prove his innocence.

¹⁰ (2001) 3 S.C.C. 117

¹¹ (2015) 8 S.C.C. 368

¹² (2010) 2 S.C.C 623

¹³ (2003) 2 S.C.C. 263

¹⁴ (2003) 3 S.C.C. 437

¹⁵ (2010) 2 S.C.C. 169

¹⁶ (2016) 8 S.C.C. 471

32. He denied that he produced any false experience certificate and asserted that the experience certificate produced by him is genuine. According to him, M/s.Hari Constructions, the concern with whom he had worked from 02-01-2009, was a partnership firm as on that date and subsequently on 07-08-2009 a company by name M/s.Hari Constructions and Associates Private Limited was incorporated under the provisions of Companies Act, 1956 in the place of the said firm and the petitioner continued to work therein till 15-07-2010. Reference is made to a letter dt.29-09-2009 addressed by M/s.Hari Constructions Associates Private Limited to M/s.L&T Ltd, that the said Company was formed with a main object to take over and acquire the business of the firm M/s.Hari Constructions and that this was done to further expand the business of the firm and improve the quality of administration by converting the firm into a private company. Copies of work orders raised by M/s.Hari Constructions on M/s.L & T Ltd., right from 2006 are also filed in the material papers.

33. It is therefore contended that the stand taken by the respondents that M/s.Hari Constructions Associates Private Limited came into existence in August, 2009 and that the petitioner therefore could not have been employed therein from 02-01-2009, is incorrect; and that the firm M/s.Hari Constructions was already in existence and was a sub contractor of M/s. L & T Ltd even from 2006. It is also stated that the concern M/s.Hari Constructions paid him salary from

02-01-2009 till December 2009 in cash and from January 2010, salary was paid to him through his account in Axis Bank till 15-07-2010 and a statement of account issued by the said bank to him was filed.

34. It is contended that the vigilance department enquiry against him by respondents was a slipshod enquiry and the respondents had even suppressed the *e mail* sent by M/s. L&T Ltd after passing of the order of termination and has falsely taken a plea that they did not receive any reply from the said company.

35. Petitioner made a reference to a letter dt.20-12-2015 issued by M/s.L&T Ltd Construction that it was implementing ERP system at site and questioned the findings in the vigilance enquiry being relied upon by the respondents. Petitioner asserted that he handled the ISD system and ERP system during his employment with M/s.Hari Constructions and Associates Private Limited and M/s.L & T Ltd. whose business is managed by the ERP system.

36. He also denied the allegation that the application form filed as annexure along with Writ Petition was not a true copy of the form submitted to the respondents and that the photograph, experience and period of service on the application are not matching. He contended that the photograph was submitted at the time of application in 2012 while the interview was held in 2014 after a lapse of two years; so there could be some dissimilarities; and the

discrepancy in experience pointed out by the respondents was only an oversight and it had no bearing on the issue. It was also denied that the petitioner had obtained the experience certificate by misusing or abusing his father's position as another public servant.

The point for consideration :

37. From the respective contentions of the parties, the following question arises for consideration :

“whether the termination of the petitioner's probation by the respondents is valid or not? If so, whether the petitioner is entitled to any relief?”

The consideration by the Court :

38. From the facts narrated above, it is clear that the petitioner was appointed as Assistant Manager (C&IT) by the respondents on 27-08-2014. The petitioner was put on probation for one year and by letter dt.08-06-2015, the respondents have stated that his Performance Annual Rating for the year ending 31-03-2015 was very good. A certificate dt.08.06.2015 to that effect was admittedly issued to the petitioner 16 days prior to the termination of his probation by the impugned order. Therefore, it cannot be said that the services rendered by the petitioner were not satisfactory and that on that account his probation was terminated.

39. The impugned order of termination dt.24-06-2015 specifically referred to clause 1 (i) and clause 9 of the appointment letter.

40. Clause 1 (i) states:

“(i) Your appointment will be temporary for the present. You will be on probation for a period of one year from the date of your appointment, which may be extended or curtailed at the discretion of the Management. Failure to complete the period of probation to the satisfaction of the Management will render you liable to discharge from the service.”

Clause 9 states:

“9. If any declaration given or information furnished by you proves to be false or if you are found to have willfully suppressed any material information, you will be liable for removal from service and such other action as the Corporation may deem necessary.”

41. The question is whether the impugned order is an order of termination *simpliciter* or it casts a stigma.

42. In **Parshotam Lal Dhingra** (5 supra), decided in 1958, a Constitution Bench of the Supreme Court considered the case of an employee who was working in a higher post in an officiating capacity whose appointment was terminated and who was reduced in rank. It held that one has to see two things – whether the order in terms of the appointment gave a right to termination and whether the order was punitive in nature. The Court held that if misconduct was the *motive*, the order was not punitive, but if it was the *foundation*, it was punitive. It explained that if misconduct, negligence, inefficiency or other disqualifications might be the *motive* or the *inducing factor* which influenced the Government to take action *under the terms of* the contract of employment or the specific service rule, the *motive* was

irrelevant. But, if the termination was *founded* on misconduct, negligence, inefficiency or other disqualification, it would have to be treated as a punishment and the use of the word “termination” or “discharge” was not conclusive. It held that in spite of use of such innocuous expressions, the Court could still hold it to be punitive. In that case, it was held that the termination of the officiating appointment, though based upon certain adverse remarks, was not by way of punishment.

43. In **Gopi Kishore Prasad** (6 supra) decided in 1959, the Court dealt with the case of a probationer where the Government had come to a conclusion *on enquiry* that he was unsuitable for the post. The Court held that because of the enquiry, the termination of his probation was by way of punishment, and the Government cannot brand him dishonest and incompetent without enquiry. It held that termination (without notice) but after holding an enquiry into the alleged misconduct or inefficiency or some similar reason would be punitive because it casts a stigma on his competence and thus affects his career. It held that in such case, if the probationer is discharged on any of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it would amount to removal from service within the meaning of Article 311 (2) of the Constitution and would be liable to be struck down. It however explained that 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, a 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. It thus laid down a test of “enquiry”.

44. Krishna Iyer J. in **Samsher Singh v. State of Punjab**¹⁷, and in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha**¹⁸, clarified as to what was “motive” or “foundation” and declared that terminology used by the employer is not conclusive and *the Court would find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is.* It held that if on such scrutiny, it is found that the order has a punitive flavour in cause or consequence, it would be construed as a dismissal and if it falls short of this test, it would not be called a punishment. The Court thus explained :

“53. 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 processes 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 the termination is. If, thus scrutinised, the order has a punitive flavour 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

¹⁷ (1974) 2 SCC 831

¹⁸ (1980) 2 SCC 593

desirability of terminating the service of the delinquent servant, 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 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.

54. 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 punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.”

45. In the **Dr. Md.S.Iskender Ali** (7 supra), the Court reiterated that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, and if such power is possessed under the terms of appointment, it cannot be termed as penalty or punishment. On the facts of that case, it was held that the order of termination *simpliciter* of a probationer did not involve any stigma since it merely recorded that the service of the respondent “*is hereby terminated with effect from the date of service of this order on him*”.

46. In **Radhey Shyam Gupta** (2 supra), decided in 1999, the Court explained more in detail the principles governing the

termination of services of probationer and how to distinguish cases where it is punitive or non-punitive. It also explained the earlier decisions of the Supreme Court and stated that *it will be a case of "motive" if the master, after gathering some facts, does not really wish to go into their truth but decides merely not to continue a dubious employee and he 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.* It gave illustrations as to in which circumstances the allegations could be said to be only a *motive* and consequently the termination would be non-punitive **and** in what circumstances the allegations could be said to be *foundation* for the termination making it punitive in the following words :

"33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case¹⁹. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in

¹⁹ AIR 1961 SC 177

*Champaklal case*²⁰. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in *Sukh Raj Bahadur*²¹ case and in *Benjamin case*²². In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in *Gujarat Steel Tubes case* (18 *supra*) the 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. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the

²⁰ AIR 1964 SC 1854

²¹ AIR 1968 SC 1089

²² (1967) 1 L.L.J. 718 (SC)

employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee — even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.”

47. Further clarity on the issue was given by the Supreme Court in **Dipti Prakash Banerjee** (1 supra).

The Supreme Court laid down therein that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration and that the Supreme Court in **Samsher Singh** (17 supra) had observed that if a simple order of termination was passed, it would enable the officer to “make good in other walks of life without a stigma” and that it was stated in **Bishan Lal Gupta v. State of Haryana**²³ 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.”

It reiterated the principles laid down in **Radhey Shyam Gupta** (2 supra) and highlighted the 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” and also considered the question whether even if the words used in the order of termination are innocuous, the Court can go into

²³ (1978) 1 SCC 202

the words used or the language employed in other orders or proceedings referred to by the employer in the order of termination.

It held that it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the services of a probationer to judge whether the words employed amount to a stigma or not.

It observed that the word “stigma” was explained in **Kamal Kishore Laxman v. Pan American World Airways Inc.**²⁴ as something that detracts from the character or reputation of a person, a mark, sign, etc., indicating that something is not considered normal or standard; that it also means blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame.

After referring to other cases of the Supreme Court, it noted that while the use of the words “unsatisfactory work and conduct” in the termination order will not amount to a stigma, use of words about an officer’s bad reputation or doubting his integrity or suggesting that he is corrupt and unreliable would be clear cases of “stigma”.

It declared 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; and that such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of

²⁴ (1987) 1 SCC 146

termination would stand vitiated on the ground that no regular enquiry was conducted. This decision was applied in **V.P. Ahuja** (3 supra).

48. In **H.F. Sangati** (10 supra), decided in the year 2001, followed the decision in **Dipti Prakash Banerjee** (1 supra), the Supreme Court declared that the termination of a probationer's services, if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination, it cannot be termed punitive and would be valid.

49. In **Mathew P. Thomas** (13 supra), decided in 2003, the Court again reiterated that the façade of the termination order may be *simpliciter*, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases, it becomes necessary to travel beyond the order of termination *simpliciter* to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process, it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct.

50. In **Registrar, High Court of Gujarat and another** (8 supra), decided in 2005, the Court again reiterated that the order of termination is a termination *simpliciter* and not punitive in nature on the facts of that case and therefore no opportunity needed to be given to the respondent therein.

51. In **Municipal Committee, Sirsa** (9 supra) also decided in 2005, the Court held that the mere fact that there was a misconduct on the part of the respondent which was not enquired into *ipso facto* does not lead to a conclusion that the order of termination is colorable and is in fact punitive, and that if the order of termination indicates that it is a termination *simpliciter* and does not cast any stigma on the employee, the mere fact that there was an enquiry into his conduct earlier would not by itself render the termination invalid. It held that in such cases, even the principles of natural justice do not apply and there is no need for formal proceedings of enquiry before making such order.

52. Thus, from the above decisions, the following principles of law emerge :

- (a) an order of termination of services of probationer *simpliciter* without involving any stigma is not punitive and no opportunity need be given to the probationer;
- (b) misconduct, negligence, inefficiency or other disqualification may be the *motive* or the inducing factor which influences the employer to take action under the terms of the contract of employment or the specific service rule and if a right exists under the contract or the rules, to terminate his service, the *motive* operating in the mind of the employer is irrelevant;

(c) a termination of services of a probationer on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the said facts are merely the *motive* and not the *foundation* since the assessment is not done with the object of finding out any misconduct;

(d) in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of an officer on probation and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punishing and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as *based or founded upon misconduct* and will be punitive;

(d) an order of termination of a probationer is considered to be stigmatic if it affects his future prospects of employment or causes him a substantial loss of reputation which may affect his future prospects;

(e) The material which amounts to stigma need not be contained in the order of termination of a probationer but might

be contained in any document referred to in the termination order or in its annexures. Such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted.

53. In the instant case, admittedly the impugned order dt.24.06.2015 terminating the probation of the petitioner refers to clause No.1(i) and clause No.9 of the appointment letter dt.27.08.2014.

54. I have already noticed that Clause No.1(i) refers to discharge of service by the Management if the services of the petitioner are not satisfactory. It is not denied that the respondents had issued a letter dt.08.06.2015, 16 days before the issuance of the impugned order terminating his probation that his P.A.R. rating for the year ending 31.03.2015 was “very good”. Therefore, it cannot be said that the *foundation* of the order of termination is the unsatisfactory service of the petitioner.

55. Clause no.9 of the appointment order dt.27.08.2014 states that if any declaration given or information furnished by petitioner is proved to be false or if he is found to have willfully suppressed any material information, his services are liable to be terminated

56. No doubt, the entire clause no.9 is verbatim not reproduced in the impugned order, but any prospective employer of

the petitioner could ask for the appointment order and notice the contents of clause no.9 and come to the conclusion that petitioner's probation was terminated doubting his integrity. Thus, it will cause a substantial negative impact on his future prospects to secure employment and therefore has to be construed to be "stigmatic".

57. This conclusion is further fortified by the stand taken in the counter-affidavit by the respondents that a vigilance enquiry conducted by the respondents showed that petitioner produced "false experience certificate". The findings of the vigilance enquiry are also set out in para no.7 of the counter. It is stated in para no.6 of the counter that the petitioner played fraud and committed abuse of process. In para no.8 it is stated that he obtained the alleged false experience certificate by misusing and abusing the office of his father, another public servant.

58. From the above it is clear that the alleged misconduct is not merely the *motive* for the termination of his services but is in fact the *foundation*.

59. Therefore, as held in **Dipti Prakash Banerjee** (1 supra) and **Radhey Shyam Gupta** (2 supra), and in other decisions of the Supreme Court, the termination of the probation of the petitioner cannot be said to be a termination *simpliciter* and has to be termed as punitive. So principles of natural justice are undoubtedly attracted and it was incumbent on the part of the respondents to conduct a

regular disciplinary enquiry after issuing a charge-memo to the petitioner, invite his explanation, giving him opportunity to lead evidence to dispute the allegations against him and then pass a reasoned order.

60. It may be that proviso (a) to regulation no.14 of the NMDC Service Regulations empowers the respondents to terminate the service of an employee on probation by giving one month's notice in writing or by paying one month's salary in lieu of notice, and explanation to Rule 23 of the NMDC Employees' (Conduct, Discipline and Appeal) Rules, 1978 states that termination of service of an employee while on probation in accordance with the terms of his appointment would not amount to penalty. But, these provisions can be relied upon only if the order of termination of probation of the petitioner was a termination *simpliciter* and not like in the instant case where it is a punitive termination. Therefore, reliance on these provisions by the respondents is misplaced.

61. I am also of the opinion that the respondents cannot place any reliance on the judgments in **Khub Ram** (11 supra) or **Kendriya Vidyalaya Sangatan** (14 supra) or **Kamal Nayan Misra** (15 supra) or **Avatar Singh** (16 supra) to justify the termination of probation of the petitioner.

62. In **Khub Ram** (11 supra), the Court went into the allegation against the employee of producing a false experience

certificate and held that he committed fraud in securing appointment. But, in the instant case, I am not inclined to go into the correctness of the allegations leveled in the counter-affidavit against the petitioner since in my opinion such a conclusion adverse to the petitioner can only be drawn after a full-fledged departmental enquiry is conducted by the respondents in accordance with the principles of natural justice and the applicable regulations.

63. In **Kendriya Vidyalaya Sangatan** (14 supra) also the Court went into the question whether the employee had given correct details of his involvement in a criminal case on the date he applied for employment and came to the conclusion that he did not give correct information on that aspect and in fact he gave a false declaration. So, this judgment also cannot be relied upon for the same reason as **Khub Ram** (11 supra).

64. **Kamal Nayan Misra** (15 supra) was a case relating to a confirmed employee holding a civil post under the State but was not a case of a probationer and therefore it also does not apply.

65. The decision in **Avatar Singh** (16 supra) is not a decision dealing with probationers though the issue relating to suppression of material facts or submitting false information was considered there. Since I am not expressing any opinion on the allegations leveled against the petitioner by the respondents in the counter-affidavit and I am of the view that the order of termination of

the petitioner's probation is punitive and stigmatic and a departmental enquiry is warranted, I am of the view that this decision also is inapplicable.

66. For the aforesaid reasons, I hold that merely because there is no reference to the vigilance enquiry conducted against the petitioner or the findings of the vigilance enquiry (that the petitioner allegedly submitted a false experience certificate) in the impugned order of termination, it cannot be said that it is a termination *simpliciter* without stigma. I hold that it is punitive and stigmatic and therefore the respondents are obligated to conduct a departmental enquiry in accordance with the NMDC Employees' (Conduct, Discipline and Appeal) Rules, 1978 and after complying with principles of natural justice take appropriate action in law.

67. Consequently, the impugned order No.4(285)/PE/2015/124/03 dt.24.06.2015 terminating the probation of petitioner is set aside; the respondents are directed to re-instate the petitioner into service as a probationer and pay him salary and other benefits from that date till he is reinstated; and the respondents are given liberty to conduct a departmental enquiry in accordance with the NMDC Employees' (Conduct, Discipline and Appeal) Rules, 1978 and principles of natural justice and take appropriate action in law.

68. The Writ Petition is accordingly allowed with costs of Rs.5,000/- (Rupees Five Thousand only).

69. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-01-2017
Kvr/Ndr/*

