

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

+ **W.P.(C) No. 6287/2015**

% **9th March, 2017**

SH. SATISH JOSHI Petitioner

Through: Mr. K. Vankataraman, Advocate with
petitioner in person.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Rakesh Kumar, Advocate for
UOI.

Mr. Rishi Kant Singh, Advocate for
R-2 and 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, petitioner seeks the relief of quashing of the order dated 6.5.2015 whereby the petitioner's contractual services with the respondent no. 2/The Central Medical Service Society were terminated on the ground of unsatisfactory service/performance.

2. Petitioner was appointed with the respondent no. 2 to the post of General Manager (Finance and Administration) in terms of the letter dated 19.7.2013. This appointment was in terms of the recruitment rules for

the post in question and which recruitment rules provided for the appointment being for a period not exceeding five years. As per the relevant recruitment rule review was to take place of performance after an year for extension of the period of appointment with the condition that the services can be terminated by serving of two months notice in case of unsatisfactory performance.

3. Petitioner was issued a show-cause notice dated 20.4.2015 asking the petitioner to show cause as to why petitioner's services should not be terminated on account of unsatisfactory performance. The show-cause notice dated 20.4.2015 also referred to the fact that in the earlier Governing Body Meeting of the respondent no. 2 held on 8.8.2014 the performance of the petitioner was discussed and it was decided to watch the performance and review the same after a period of six months.

4. Petitioner replied to the show-cause notice by the petitioner's reply dated 29.4.2015. Petitioner's services were, however, terminated by the respondent no. 2 in terms of the impugned letter dated 6.5.2015 and which reads as under:-

“Central Medical Services Society
1, Red Cross Road, New Delhi – 110001
Tel: 011-237736186, Fax: 011-23730120

New Delhi
Dated: 06/05/2015

To,
Shri Satish Joshi,

GM/Finance,
Central Medical Services Society.

Subject: Termination of the contract by serving two months notice on account of unsatisfactory performance

That a show-cause notice dated 20 April 2015 was served to you on account of your unsatisfactory performance. In response to the show-cause notice you vide letter dated 29.4.2015 have responded to this show cause notice.

2. In your reply you have highlighted your contribution in the organization and you have also claimed 5% increment as well. While highlighting your contributions you have stated that you must be one among CMSS officials with maximum number of reportable accomplished crucial tasks to your credit. While citing the instances of your accomplishment you have stated that your contribution has affected the society's recognition in public domain and enabled us to get registered as income tax exempted entity. TDS exemption on fixed deposit interest and also made society eligible to exemption of tax on donation under section 80G of Income Tax act. You have further stated that you were instrumental in office renovation, CMSS web site domain registration, initiating the CAG audit priority, countering the IRCS demand for reimbursement of propriety tax. You also stated that you have planned and executed the office shifting, contributing in policy formulation, tender processing, etc. Apart from these, you have also claimed that you have been instrumental and effected may other changes in the CMSS. You have also stated that the minutes of 9th meeting of the Governing Body were not made available to you.
3. Content of your response has been looked into and observations made in this regard are as follows:-
 - i. You have tried to take credit of all the achievements making it appear that you only have been instrumental in establishing CMSS to its present form. This itself shows lack of team spirit.
 - ii. While addressing the show-cause notice to DG&CEO you have also marked copy to Chairman of the CMSS. This is noted as violation of proper channel.
 - iii. That CMSS got exemptions from Income Tax authorities because such provisions are available in the Income Tax Act and Rules.
 - iv. With respect to your contention on performance in CMSS, it is observed that these talks which you performed were of routine nature and related to day to day working of CMSS. Even in these routine and day to day matters you caused delays on frivolous issues. Your contribution to these day to day work has been found not upto the mark as you have been in the habit of returning the files without assigning any substantial reason and with conditional remarks.
 - v. Your handling of work relating to other agencies such as IRCS, CPWD, MoHFW often led to complaints from them on account of delays.
 - vi. It has been observed that no result was achieved in recruitment of AGM and Warehouse staff when this area of work was directly under you.
 - vii. You have not complied with the target given. You didn't contribute in the negotiation process with CWC and even now you have caused delay in submitting Bank Guarantee and payment of rent to them.

viii. You have not contributed in opening of tenders at warehouses as a result other 3 GMs had to cover 6 to 7 locations each.

4. It has been observed that you had show little interest in the orientation training programme provided at Delhi and Chennai and had even tried to avoid participating in it at Chennai. You consistently ignored the priorities for which you had been apprised about deficiencies in your performance and conduct and still you paid no attention to such advises for improvement.
5. It has been noted on more than one occasion you have exhibited on attitude of non-compliance and insubordination such as resistance to signing forms of returns of Income Tax, your letter of criticism of minutes of meeting of GB, sending of representation directly to AS&DG and MoHFW.
6. In view of the above it is concluded that you didn't contribute in the growth of CMSS, followed your own views and agenda at the cost and interest of organisation and not complied with the targets. Your unnecessary comments on the files, returning of files with unnecessary objections/remarks resulted in delays thus defeating the overall objective of CMSS. Your often indulged in insubordinations and non compliance of the directions of the GB delayed the execution of work approved by the GB. You often acted in the interest prejudicial to the interest of CMSS. You had been counselled time and again to improve your performance but of no avail and therefore your performance and contribution still remain unsatisfactory. Hence your service have been found to be unsatisfactory.
7. In view of the aforesaid it has been decided that your retention/contribution in the CMSS is not required and accordingly your services are hereby terminated with a notice period of two months on account of unsatisfactory performance. Accordingly, your contractual employment with CMSS shall stand terminated from 5th July 2015.

Sd/-
(Navneet Verma)
DG&CEO"

5. Learned counsel for the petitioner argues that the impugned order is a stigmatic one and therefore such an order could not have been passed without a full-fledged inquiry. Hence the impugned order/letter is argued to be illegal and hence prayed to be quashed.

6. In the opinion of this Court the argument urged on behalf of the petitioner is misconceived because principles of natural justice are not in a straight jacket. The principles of natural justice are flexible as per the

requirement of a case. For a contractual employee there is no provision in the service rules, and nor need it so be, that a full-fledged inquiry is to be held and Inquiry Officer has to give a report and which has to be accepted by a disciplinary/departmental authority holding the petitioner guilty, and only thereafter the petitioner's services could be terminated. Petitioner was a contractual employee and the contract in question provided for termination of services by serving two months notice in case of unsatisfactory performance and which has been done. This Court cannot substitute its view for that of the employer with regard to satisfactory performance because employer is the best judge to decide the nature of services of an employee (such as the petitioner), and as to whether they are satisfactory or unsatisfactory.

7. I also cannot agree with the argument that the impugned order is stigmatic, inasmuch as, when an order gives reasons, such reasons are only reasons and when reasons give the factual position it cannot be held that the order giving reasons is a stigmatic order. The Supreme Court has held in many judgments that reasons given for an order for terminating a probationary officer cannot be held to be stigmatic in nature. The ratios of the judgments with respect to termination of services of probationary officer will equally apply to an officer who is a contractual appointee. The judgments of the Supreme Court with respect to reasons given for

termination ought not to read as holding the termination order as stigmatic, and that principles of natural justice need not be followed for terminating the services of a probationary employee, have been considered by this Court in the recent judgment in the case of ***Gurvinder Singh Saini Vs. Director of Education 2016 (10) AD Delhi 368***. The relevant paragraphs of this judgment are paragraphs 5 to 7 and which paragraphs read as under:-

5. That the probationer need not be confirmed in services and in fact if 'reasons' are given for terminating of services of a probationer, then, merely because the reasons may in some way show lack of efficiency or any other negative aspect as regards the employee, would not mean that services are terminated by a stigmatic order. The services of a probationer can be terminated by a non-stigmatic order is clear from the ratios of the judgments of the Supreme Court in the cases of ***Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava & Another (2007) 1 SCC 491***, ***State of W.B. and Others Vs. Tapas Roy (2006) 6 SCC 453***, ***Chaitanya Prakash and Another Vs. H. Omkarappa (2010) 2 SCC 623***, ***Rajesh Kumar Srivastava Vs. State of Jharkhand and Others (2011) 4 SCC 447*** and ***Abhijit Gupta Vs. S.N.B.National Centre, Basic Sciences & Others (2006) 4 SCC 469***. All these judgments have been considered by me in the case of ***Rajeev Khurana Vs. Principal, Saraswati Bal Mandir & Ors.*** in W.P.(C) No.4968/2008 decided on 26.8.2013 wherein the relevant paras of the judgments of the Supreme Court in the aforesaid cases have been referred to in paras 2 to 6, and which paras 2 to 6 of the judgment in the case of ***Rajeev Khurana (supra)*** read as under:-

"2. Petitioner was appointed on a probation for a period of two years in terms of the appointment letter dated 3.9.1997 and was terminated within the first year of service by the letter dated 30.4.1998. Though there are various reasons given for considering the termination of services of the petitioner as a probationer, and which includes the issue of direction to the petitioner to improve his teaching practices, I may note that it is settled law that principles of natural justice have not to be followed before terminating the services of the probationer. This is so held by the Supreme Court in the judgment reported as ***Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava & Anr. (2007) 1 SCC 491***. In this judgment the Supreme Court has held that if the termination order says that the performance is unsatisfactory, even then, it cannot be said that the order is stigmatic. Paras 44 to 46 of the said judgment read as under:

"44. Also in the case of ***Registrar, High Court of Gujarat and Anr. v. C.G. Sharma*** it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.

45. This Court's decision in the case of *P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences* can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in *State of Madhya Pradesh v. Virendera Kumar Chourasiya* also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of *audi alteram partem* are not applicable.

46. We are also of the view that the award of the Labour Court is perverse as it had directed grant of back wages without giving any finding on the gainful employment of respondent No.1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of respondent No.1 was in any manner stigmatic. The decision in the case of *MP State Electricity Board v. Jarina Bee (Smt)* (supra), this Court held that payment of full back wages was not the natural consequence of setting aside an order of removal. In the instant case, though the termination was as far back as in 1983, the Industrial Adjudicator has not given any finding on unemployment. This Court in a recent case of *State of Punjab v. Bhagwan Singh* (2002)9SCC636 has held that even if the termination order of the probationer refers to the performance being "not satisfactory", such an order cannot be said to be stigmatic and the termination would be valid."

3. The Supreme Court in the judgment in the case of *State of W.B. and Others Vs. Tapas Roy* (2006) 6 SCC 453 has held that where the discharge order mentions instances of unauthorized absence of the probationer and concluding that he was not interested in training and had no respect for discipline, making of such remarks in the termination order cannot be said to make the termination order a stigmatic one. Paras 4,5 7 and 8 of the judgment in the case of *Tapas Roy* (supra) read as under:-

"4.The High Court allowed the writ petition holding that Rule 10 of the Rules did not apply in the facts of the case. It was also of the view that the statement, quoted below; in the order of discharge casts a stigma on the respondent. Since no opportunity of hearing had been granted to the respondent, therefore, the order could not be sustained. The decision of the Tribunal was, accordingly, set aside and the appellants were given liberty to take appropriate action against the respondent on the same grounds in accordance with law.

5. The particular passage from the order of discharge which the High Court found to be stigmatic reads as follows:

"I am convinced that he is not likely to make an efficient constable and is unsuitable for the Police Department. His frequent unauthorised absence from training centre also indicates his lack of interest in training and his scant respect for discipline."

7. The order of discharge has, as we have already indicated, set out several instances of the respondent absenting himself unauthorisedly from the training centre. These facts have been relied upon for the purpose of concluding that the respondent was not interested in the training and had no respect for discipline. This conclusion was a ground for holding that the respondent was unsuitable for the Police Department.

8. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in *Pavanendra Narayan Verma v. Sanjay Gandhi Post Graduate Institute Medical Sciences* 2002(92)FLR349(SC) that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that a stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. In our view, the language quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly, of the view that the appeal must be allowed. It is, accordingly, allowed and the impugned order is set aside.” (underlining added)

4. The Supreme Court in the judgment reported as ***Chaitanya Prakash and Anr. Vs. H. Omkarappa (2010) 2 SCC 623*** has again held that there is no need for following the principles of natural justice while terminating the services of a probationer and even if the termination order refers to the unsatisfactory service of the probationer, the order is not stigmatic. Paras 18 and 21 of this judgment read as under:-

“18. It is no longer res integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In this connection, we make a reference to the decision of the decision of the Supreme Court in ***Abhijit Gupta v. S.N.B. National Centre, Basic Sciences*** (supra), wherein also a similar letter was issued to the concerned employee intimating him that his performance was unsatisfactory and, therefore, he is not suitable for confirmation. We have considered the ratio in light of the facts of the said case and we are of the considered opinion that the basic facts of the said case are almost similar to the one in hand. There also, letters were issued to the concerned employee to improve his performance in the areas of his duties and that despite such communications the service was found to be unsatisfactory. In the result, a letter was issued to him pointing out that his service was found to be unsatisfactory and that he was not suitable for confirmation, and, therefore, his probation period was not extended and his service was terminated, which was challenged on the ground that the same was stigmatic for alleged misconduct. The Supreme Court negated the said contention and upheld the order of termination.

21. In ***Abhijit Gupta*** (Supra.), this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination i.e whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in ***Allahabad Bank***

Officers Assn. v. Allahabad Bank (1996) 4 SCC 504; where it is stated thus:

“14. ...As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.”

5. In the case of **Rajesh Kumar Srivastava Vs. State of Jharkhand and Ors. (2011) 4 SCC 447** Supreme Court has held that while taking a decision to terminate the services of the probationer, no notice is required to be given to the probationer nor is the probationer required to be given any opportunity of hearing. Para 10 of the said judgment reads as under:-

“10. The aforesaid decision to release him from service was taken by the Respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the Appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the Appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.”

6. In the case of **Abhijit Gupta Vs. S.N.B.National Centre, Basic Sciences & Ors. (2006) 4 SCC 469** the Supreme Court has held that even when a termination order of a probationer referred to earlier letters which called the probationer a person of “perverted mind” and “dishonest, duffer having no capacity to learn” yet, the order would not be stigmatic one, and merely that if such an order was read by a prospective employer would prejudice the probationer’s future employment, the same is not a correct test to determine the termination order as stigmatic. Paras 4,5,8,10,13, 15,16 and 17 are relevant which read as under:-

“4. On 20th November 1995 the appellant was served with a letter informing him that his performance during the probationary period was "far from satisfactory" and that it had been observed that he lacked drive, imagination and initiative 'in the performance of his duties'. He was informed that, despite being told time and again to improve performance in the said areas, but with no effect. He was advised to improve "in order to enable us to consider your case for confirmation favourably". He was issued several such letters drawing his attention to the fact that his services left much to be desired. His probationary service came to be extended from time to time, the last such extension being granted till 9th April 1998. Finally, by the letter dated 7.4.1998 the petitioner was informed that his service was "unsatisfactory in the areas of drive, initiative, promptness and leadership" and that despite advised verbally and through letter, what were deficiencies in his work he had shown no improvement. His attendance, office work and attention to the academic work and the affairs of the guest house were also

unsatisfactory. The first respondent, therefore, said "your performance, ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have to. The governing body is of the view that your performance was unsatisfactory and you are not suitable for confirmation". For these reasons the appellant's probationary period was not extended on the expiration of his probation period on 9th April 1999.

5. The appellant challenged the order of termination of his service on the ground that it was a stigmatic termination by way of punishment for alleged misconducts. The learned single Judge of the High Court allowed the writ petition and quashed the order of termination and directed re-instatement of the appellant with full back- wages. The Division Bench of the High Court, however, allowed the letters patent appeal and held that the letter dated 7th April 1998 was not stigmatic and that it was a legitimate exercise of assessment of probationer's service by the employer, and, therefore, there was no scope for judicial interference therewith. In this view of the matter, the Division Bench allowed the appeal, set aside the judgment of the learned single Judge and dismissed the writ petition. Hence, this appeal.

8. Heavy reliance was placed on ***Dipti Prakash Banerjee v. Satyendra Nath Bose National center for Basic Sciences, Calcutta and Ors.*** [1999]1SCR532, where this Court held that the termination of service of the employee in similar circumstances amounted to misconduct. We may mention here that it is common ground that while the matter was pending before the learned single Judge, sometime in the year 2005, the appellant attained the age of superannuation. The learned Counsel for the appellant contended that in the letter dated 7.4.1998 there is reference to certain earlier letters in which the appellant had been called a person of "perverted mind" and "dishonest, duffer having no capacity to learn". A reading of all the letters referred to in the letter of 7.4.1998 would clearly make out a case of allegations of misconduct against the appellant, in the submission of the learned Counsel.

10. In ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Anr.*** (2002)ILLJ690SC this Court considered what should be the best to determine whether a letter of termination of service was termination simpliciter or stigmatic termination. After referring to a number of authorities including the judgment in ***Parshotam Lal Dhingra v. Union of India*** (1958)ILLJ544SC and ***Dipti Prakash Banerjee*** (supra) the Court observed (vide para 19):

“Courts continue to struggle with semantically indistinguishable concepts like motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.”

13. In the case of the appellant before us, the record in uncertain terms makes it clear that every time the appellants attention was drawn to his deficiencies and he was repeatedly advised to improve his behavior, conduct

and discharge of work. True, that in some of the letters there was intemperate language used (the appellant was also equally guilty of doing that). Notwithstanding the intemperate language, we are unable to accept the contention of the appellant's counsel that the letter dated 7.4.1998 indicates that the appellant was being charged with the misconduct and, therefore, being removed from service. Read as a whole, the letter gives the impression that the removal of the appellant from service was only because the respondents, after giving a long rope to the appellant, had come to the conclusion that the appellant's service was unsatisfactory and there was no hope of his improvement.

15. The learned Counsel for the appellant, however, strongly contends that the "stigma" cast on the employee may not be confined to his personal character but may also affect his capacity to work. The test, learned Counsel for the appellant submitted, is that, if what is stated in the order of termination is read by a future employer, it prejudices the future employment of the employee. In the face of the law laid down in the judgment just referred, we are unable to accept this as the correct test.

16. In *Ravindra Kumar Misra v. U.P. State Handloom Corporation Ltd. and Anr.* (1988)ILLJ73SC this Court pointed out that in a large corporation administration is bound to be impersonal and in regard to public officers assessment of service has got to be in writing for purposes of record, though it cannot be assumed that such an assessment recorded and the order of termination made with reference to that record would automatically take a punitive character.

17. The High Court has carefully considered all the circumstances placed before it and arrived at the conclusion that the respondent's work was under observation during the probationary period and that he was given repeated opportunities to improve his performance for which purpose his probation was extended from time to time. The fact that the authority did not find him fit for confirmation was also brought to his notice several times and yet he was given opportunities of improving by extending his probationary service. The High Court has correctly found that the letter dated 7.4.1998 was not punitive in nature and stated, albeit in prolix fashion, that the service of the appellant were unsatisfactory. The High Court points out, and we agree, that detailed reference to all other correspondence was not necessary, but it did not reflect any malice or bias. Finally, as this Court pointed out in P.N. Verma's case (supra) "a termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic" (emphasis is mine)"

6. It is seen that termination of the petitioner was by a non-stigmatic order of termination dated 25.11.1997, and therefore, the petitioner cannot argue that services of the petitioner were terminated by a stigmatic order. In fact, ratios of the judgments of the Supreme Court show that even if reasons are given showing as to why the services are not satisfactory, and which may result in some sort of observations as to lack of potential or character of a probationary employee, even then, such language has been held by the Supreme Court to be not stigmatic. This is clearly stated in the judgment in the

case of *Tapas Roy (supra)* wherein the Supreme Court has said that in a wider sense stigma is implicit in an order of termination during probation but it is only when something is more than imputing unsuitability for the post in question that order may be considered as stigmatic. In that case, it was also observed that the probationer was guilty of frequent unauthorised absence from training centre and which indicates his lack of interest in training and his scant respect for discipline and which observations have been held by the Supreme Court to be not stigmatic.

7. In the case of *Chaitanya Prakash and Another (supra)*, Supreme Court has relied upon the observations made by it in an earlier judgment in the case of *Allahabad Bank Officers Association and Another Vs. Allahabad Bank and Others (1996) 4 SCC 504* wherein it was stated that expressions like "want of application", "lack of potential" and "found not dependable" would not be sufficient to attract the charge that they are stigmatic. I therefore hold that the petitioner has been terminated from services by a non-stigmatic order."

8. In view of the above discussion, it is clear that not only the principles of natural justice have been followed as required for terminating the services of a contractual employee, and further that for termination of services of a contractual employee there is no law that principles of natural justice have to be followed by conducting a detailed inquiry for holding an employee such as the petitioner, guilty of unsatisfactory performance and that only thereafter the contractual services can be terminated. Also, as per the judgments of the Supreme Court, referred to hereinabove, giving reasons for termination of services of an employee will not mean that the reasons given will result in a stigmatic order of termination.

9. The writ petition is accordingly dismissed.

MARCH 09, 2017

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VALMIKI J. MEHTA, J