

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No. 428 of 2018
&
C.M.P.No.3769 of 2018

1. The Chairman,
Board of Governors,
Indian Institute of Technology, Madras,
No.3, Jaswant Baug (Runwal Park),
Behind Akbarallys, Chembur Naka,
Chembur, Mumbai 400 071.
2. The Director,
Indian Institute of Technology, Madras,
Chennai 600 036.
3. The Registrar-cum-Secretary,
Board of Governors,
Indian Institute of Technology, Madras,
Chennai 600 036.

.... Appellants/
Respondents 1 to 3

-vs-

1. M.G.Narasimha Rao .. 1st Respondent/Petitioner
2. The Director
Indian Institute of Technology, Indore,
DAVV Campus, Khandwa Road,
Indore 452 017.
3. The Director,
National Geo-Physical Research Institute,
No.724, Uppal Road,
Hyderabad 600 007.
4. The Director General,
Council of Scientific and Industrial Research,
AnusandhanBhawan, No.2, Rafi Marg,
New Delhi 110 00.

.... Respondents 2 to 4/
Respondents 4 to 6

Prayer:-

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.8864 of 2012 dated 05.09.2017 on the file of the High Court of Judicature at Madras.

W.P.No.8864 of 2012:-

Praying to call for the records in the termination order dated 29.3.2012 in Letter No.F.R/150/03/2012/45 on the file of the 3rd respondent, and quash the same as arbitrary, illegal malafide and against the principals of natural justice and further direct the 3rd respondent to permit the petitioner to continue his services in the IIT, Madras as per his appointment order.

For Appellants : Mr.Vijay Narayan
Advocate General for Mr.Menon Karthik

For Respondent 1: Dr.A.Thiyagarajan
Senior Counsel
for Mrs.R.Gowri

For Respondents 3 & 4: Mr.T.Ravikumar

JUDGEMENT

[Judgment of the Court was delivered by P.T.ASHA,J.]

This Intra-Court appeal is at the instance of the respondents 1 to 3 in the Writ Petition and the challenge is to the order dated 05.09.2017, in W.P.No.8864 of 2012. The learned single Judge, by the impugned order, had allowed the Writ Petition by setting aside the order dated 29.03.2012 passed by the 3rd appellant and directed the 3rd appellant to reinstate the 1st respondent in service as Assistant Registrar with all attendant benefits including backwages. The said exercise was directed to be completed within a period of 8 weeks from the date of receipt of a copy of the order.

2.It is necessary to briefly narrate the dates and events leading to the filing of the above Writ Appeal.

3.Dates and Events:

Dates	Events
06.01.1999	The 1 st respondent (writ petitioner) was selected and appointed by direct recruitment by the Council of Scientific and Industrial Research (CSIR), the 4 th respondent Institute as an Assistant Grade - I and posted at the 3 rd respondent Institute.

Dates	Events
06.07.2010	The 1 st respondent was relieved from the services of the 3 rd respondent. Consequent to his appointment as the Assistant Registrar of the 2 nd respondent, the 1 st respondent requests retention of lien with the 3 rd respondent.
07.07.2010	The 1 st respondent joined as Assistant Registrar at the 2 nd respondent institute through proper channel.
16.07.2010	The documents, namely, the relieving order and service certificate in original was forwarded by the 3 rd respondent to the 2 nd respondent.
30.08.2010	The 1 st respondent requests the retention of his service with the 3 rd respondent, which is routed through 2 nd appellant to 3 rd respondent.
07.09.2010	There is a first financial upgradation on completion of 10 years of service in the post without promotion.
26.10.2010	Advertisement for direct recruitment of various positions including Assistant Registrar advertised by the appellants herein.
26.11.2010	Office memorandum issued by the 3rd respondent informing that the 1st respondent's period of lien is for one year with effect from 07.07.2010 tenable at the 2nd respondent institute. The Office memorandum makes it clear that during the period of lien, he will be governed by the leave and pension rules of the parent institute and he was also directed to continue to subscribe the provident fund contribution in his parent institute.

Dates	Events
21.12.2010	The 1st respondent submits his application with a declaration that all the particulars given in the form was correct to the best of his knowledge. In the column bearing No.10 with reference to experience, the 1st respondent had filled up that he was working as an Assistant General Grade - I at the 3rd respondent unit between the period January 1999 and July 2010 on a Scale of Pay of Rs.9,300/- - 34,800/- with Grade Pay of Rs.4,600/-. He has further stated that he was an Assistant Registrar in the 2nd respondent institute from July 2010 till date on a Scale of Pay of Rs.15,600/- to 39,100/- and Grade Pay was Rs.5,400/-.
19.04.2010	In response to the applicant's resume the appellants sends a letter stating that the 1st respondent shall appear before the Selection Committee at 8.30 a.m. on 29.04.2011 for interview. The 1st respondent was directed to bring all the relevant certificates/testimonials in original covering the service particulars with the Scale of Pay, Last Pay Drawn, No Objection Certificate from the present employer.
26.04.2011	The 2nd respondent would give a service certificate to the appellants certifying that the 1st respondent is on lien from the 3rd respondent and is working as an Assistant Registrar with effect from 07.07.2011 in a pay band of 15600-39100 (GP 5400) and drawing a basic pay of Rs.21,000/- per month. The 2nd respondent had given its no objection for relieving the 1st respondent.
05.05.2011	The appellants issued an appointment letter to the 1st respondent offering him the post of Assistant Registrar in the Institute and Terms and Conditions was also enclosed. The 1st respondent was to be on a probation for a period of one year.
18.05.2011	The 2nd respondent relieves the 1st respondent from its service and informs that he is on lien from the 3rd respondent institute with effect from 07.07.2010.
08.06.2011	The 1st respondent was provided Quarters inside the institute premises.

Dates	Events
16.06.2011	The 1 st respondent was transferred to the Administration Section
18.07.2011	The 1 st respondent was placed on probation for a period of one year with effect from 19.05.2011 in the appellant Institute.
05.09.2011	The appellants write a letter to the Administrative Officer of the 3 rd respondent asking them to transfer the 1 st respondent's balance amount of GPF available with the 3 rd respondent in order to admit him in the GPF (pension) Scheme at IIT, Madras.
07.09.2014	The 3 rd respondent sends a letter to the appellants informing them that the 1 st respondent was sent on lien basis to the 3 rd respondent and that he had applied to the appellant's organization without the consent of the 3 rd respondent. They would therefore contend that the appointment of the 1 st respondent with the appellants is unauthorized and not permissible. The letter further state that the 3 rd respondent was contemplating vigilance action against the 1 st respondent.
21.09.2011	The 1 st respondent request the 3 rd respondent to terminate the lien.
18.10.2011	Appellants relieve the 1 st respondent, since the 3 rd respondent had informed them that he was on lien with them. He was directed to vacate the premises.
21.10.2011	The 1 st respondent files W.P.No.24726 of 2011 for a Certiorarified Mandamus to quash the order dated 18.10.2011, issued by the appellants (relieving order) and consequently to permit the 1 st respondent to continue as the Assistant Registrar of the Appellant's Institute. Though a counter was initially filed the same was latter withdrawn.
16.11.2011	Withdrawal of the counter recorded and the Writ Petition was closed as the appellants had withdrawn the relieving order issued by them.

Dates	Events
28.11.2011	The appellants issued a Show Cause notice to the 1 st respondent to submit his explanation as to how he satisfies the shortlisting criteria of 8 years of experience in the post of Superintendent or equivalent with a Grade Pay of Rs.4,600/- as fixed by the screening committee to the Post of Assistant Registrar.
07.12.2011	Reply by the 1 st respondent stating that the appellants have acted on behalf of the 3 rd respondent and contending that the appellants cannot enter into correspondence with the 3 rd respondent. The 1 st respondent did not respond to the query raised. The 1 st respondent would request several documents and also demand a personal hearing as also permission to cross examine witnesses.
16.12.2011	Out of 16 documents that had been demanded by the 1 st respondent, the appellants had furnished copies of S.Nos.1, 2, 4, 5 and 11 which were already in the possession of the 1 st respondent. Remaining documents were totally unconnected with the issue raised in the Show Cause notice. The appellants extend the time to the 1 st respondent for submitting his explanation. The 1 st respondent had to submit his explanation on or before 23.12.2011, failing which, the appellants had submitted that they would construe that there was no explanation.
23.12.2011	The 1 st respondent forwards a reply
2/6 March 2012.	The appellants turns down the request of the 1 st respondent for forwarding his application for the post of Senior Executive, NFDB, Hyderabad.
20.03.2012	The 1 st respondent addresses the Chairman of the Board of Governors of the appellants stating that he had moved to IIT, Madras only for pensionary benefits as he is holding regular/permanent post - Assistant Registrar at IIT, Indore. He would further state that he can be terminated only after an enquiry and an opportunity given to him for a personal hearing. He would further state that his appointment was against a permanent post on absorption basis as per the offer letter of the appellants. However once again, nowhere did the 1 st respondent give an explanation to the query raised by the appellants.

Dates	Events
29.03.2012	The 1 st respondent was terminated with immediate effect as per clause 3 of the terms and conditions of the offer.
30.03.2012	W.P.No.8864 of 2012 was filed for a Certiorarified Mandamus to quash the order of termination dated 29.03.2012 of the 3 rd appellant and permit the 1 st respondent to continue his service in the IIT, Madras.
27.02.2014	Counter affidavit filed on behalf of the respondents 3 and 4.
05.09.2017	W.P.No.8864 of 2012 was allowed. The learned single Judge proceeds on the basis that the shortlisting norms of 8 years experience in the post of Supervisory Capacity fixed by the screening committee has been satisfied by the 1 st respondent.

4.Submissions:

(a) The learned Advocate General appearing on behalf of the appellants would contend that the 1st respondent had deliberately misled the appellants by claiming that he had satisfied the shortlisting norms. In the application filed by him in response to the advertisement dated 26.10.2010 the petitioner in column 10 had stated as follows:

10.Experience in Chronological order upto the present post:

Organization	Designation	From	To	Scale of Pay/ Grade Pay
NGRI (A Unit of CSIR)	Assistant General Grade - I	Jan 1999	July 2010	9300-34800/ GP 4600/-
IIT, Indore	Assistant Registrar	July 2010	Till Date	1500-39100/ GP 5400/-

(b) He would further draw the attention of the Court to the qualification that was prescribed in the advertisement for the post of Assistant Registrar, according to which, apart from the Masters Degree with atleast 55% marks or its equivalent Grade of B in the UGC 7 point Scale with a good academic record, a total of 8 years of relevant administrative experience in Supervisory Capacity in a Government Office/University/Technological Institutions or an organization of repute was prescribed.

(c) The learned Advocate General would further contend that even at the time of submitting the proforma when he was called for the interview, the 1st respondent claimed that he has been an

Assistant General Grade - I from 06.01.1999 to 06.07.2010 with the 3rd respondent in a Scale of Pay of 9300-34800 with a Grade Pay of Rs.4,600/-. The learned Advocate General also drew the attention of this Court to the counter affidavit filed by the appellants herein to the Writ Petition in which they have contended that the institute had received 155 applications and with a view to restricting the number of candidates for interview the screening committee of the Institute had evolved a shortlisting criteria/norms which are as follows:

"Eight years experience in the post of Superintendent or equivalent with GP of Rs.4,600/-"

(d) It was contended that after the shortlisting norms were evolved only 12 candidates had satisfied the above criteria and the screening committee had invited the 1st respondent for the interview. He would further argue that even when offering appointment it was made clear that the 1st respondent was on one year probation period and that during this period of probation he can be terminated at any time without any notice. The terms of the appointment particularly Clause 3 would read as follows:

"3.The post is permanent but you will be on probation for a period of one year from the date of appointment after which period, you will, if confirmed, hold office subject to the amendments to the provisions of the Institute Act & Statutes till the end of the month in which you attain the age of Superannuation. During the period of probation, the appointing authority has the power to extend the period of probation or to terminate your services without notice and without any cause assigned."

(e) The learned Advocate General would further argue that it was only when the appellants had received reply to their letter dated 05.09.2011 from the 3rd respondent that they had come to know that still he had a lien over the 1st respondent and that he had applied to the appellants Institute without the consent of the 3rd respondent. In the letter dated 07.09.2011, the 3rd respondent had requested the appellants to forthwith direct the 1st respondent to report to the 3rd respondent and for which purpose they had requested the appellants to terminate the services of the 1st respondent.

(f) It is also argued that considering the fact that the 1st respondent continued to be on lien with the 3rd respondent and he was only on probation with the appellants, the management had issued relieving order but however they were later advised to withdraw the relieving order and the same was also withdrawn. Thereafter, a showcause notice dated 28.11.2011 was issued to

the 1st respondent asking him to furnish details as to how he satisfied the shortlisting norms. In response to the said notice instead of providing the details the 1st respondent had got into offensive and alleged that the entire exercise was being done by the appellants at the behest of the 3rd respondent.

(g) Thereafter since the 1st respondent had not clarified the query raised by the appellants and considering the fact that he was only on probation, the appellants had issued the termination order simplicitor without making any allegations against the 1st respondent. The learned Advocate General would rely on the Judgement reported in (2007) 1 SCC 283 - Kendriya Vidyalaya Sangathan Vs. Arunkumar Madhavrao Sinddhaye, in support of his case that during the period of probation a termination simplicitor issued cannot be called in question.

(h) The learned Advocate General would contend that the learned Single Judge had totally misconceived the shortlisting criteria. He would submit that the learned Single Judge had presumed that the shortlisting criteria was either 8 years of experience in Supervisory Capacity or a Grade Pay of Rs.4,600/-. The learned Judge has wrongly applied the conjunction and this erroneous appreciation is the result of a misunderstanding of the shortlisting norms.

(i) The learned Judge, according to the learned Advocate General, has presumed that the 1st respondent was holding a Supervisory post since he was in the Scale of Pay in the pay band of Rs.9300 - 34800 which was qualified as Group B post and therefore it has to be presumed that the 1st respondent was in a Supervisory Capacity. The learned Advocate General would submit that the learned Single Judge has not appreciated that the Government Order regarding qualifying post had become operational only from the date of the order, namely, from 09.04.2009, whereas the shortlisting norms prescribed 8 years experience in a Supervisory Capacity with a Grade Pay of Rs.4,600/-. He would therefore contend that the order passed by the learned Single Judge is totally misconceived and deserves to be set aside.

5. (A) Dr.A.Thiyagarajan, Senior Advocate appearing on behalf of Mrs.R.Gowri for the 1st respondent would contend that the issue before this Court is whether the termination was simplicitor or punitive. The Senior Counsel would argue that the termination was punitive in nature and right from the beginning the appellants were keen on terminating the services of the 1st respondent as they had received information from the 3rd respondent that the 1st respondent had suppressed his lien with the 3rd respondent and further that he had not obtained the consent of the 3rd respondent before submitting application for

appointment.

(B) The learned Senior Counsel would contend that the sequence of events would clearly prove the above since the order relieving the 1st respondent has been passed by the appellants as soon as they received the letter from the 3rd respondent informing the appellants about the 1st respondent's lien with them. After he had moved this Court by way of a Writ Petition in W.P.No.24726 of 2011, highlighting the lacuna in the order, the appellants have withdrawn the said relieving order. This was immediately followed by the showcause notice and despite the request of the 1st respondent for personal hearing the same has not been given and the appellants have rushed to pass the order of termination.

(C) The learned Senior counsel would submit that right from the beginning the only intention of the appellants was to terminate the services of the 1st respondent. The learned Senior counsel would further argue that there has not been any false declaration by the 1st respondent since the Grade Pay of Rs.4,600/- had come into existence in the 6th pay commission that is with effect from 01.01.2006 and further as per the order of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 09.04.2009, a person employed in a Central Civil Post with a Grade Pay of Rs.4,600/- in a Scale of Pay of Rs.9300 - 34800 in Pay Band 2, would come under the Group B from which it can be inferred that the 1st respondent was engaged in a Supervisory Capacity.

(D) The learned Senior counsel would further argue that in response to the RTI query as to how the post is assessed as Supervisory Position for meeting the experience criteria, IIT, Indore has sent a reply dated 17.07.2017, stating that the experience in Group B/ GP 4,200/-/equivalent is considered to be Supervisory position. Therefore considering the fact that the 1st respondent was in the Grade Pay of Rs.9300-34800, he was definitely holding a supervisory post and hence he had not suppressed any details but had only furnished the actual details. The learned counsel would rely on the Judgement of the Honourable Supreme Court in (2016) 8 SCC 471 - Avtar Singh Vs. Union of India and others.

6. Discussion:

6.1. From the arguments advanced on either side the following issues arise for the consideration in this appeal:

- (a) Whether the 1st respondent had fulfilled the shortlisting norms?
- (b) Whether the termination is simplicitor or punitive?
- (c) Whether the appellants had given an opportunity to the

1st respondent to put forward his stand?

6.2. The admitted case is that the 1st respondent was originally selected and appointed by direct recruitment by the 4th respondent Institute as Assistant Registrar grade - I. He was posted at the 3rd respondent Institute from where he had shifted to the 2nd respondent Institute on his appointment as Assistant Registrar retaining a lien with the 3rd respondent. His request for retention of his service with the 3rd respondent has been acceded to by the 3rd respondent for a period of one year with effect from 07.07.2010 vide their office memorandum dated 26.11.2010.

6.3. It is also an admitted case that while the 1st respondent was in the service of the 2nd respondent, the appellants had issued an advertisement on 26.10.2010 calling for applications for direct recruitment to various posts including that of an Assistant Registrar and the 1st respondent had submitted his application for the same.

6.4. The Essential qualification prescribed for appointment to the post of Assistant Registrar as advertised by Indian Institute of Technology (IIT) as follows:

(a) Master's Degree with at least 55% marks or its equivalent grade of B in UGC 7 point scale with a good academic record; and

(b) A total of 8 years of relevant administrative experience in Supervisory Capacity in a Government Office/University/Technological Institutions or an organization of repute which may include activities related to Administration, Accounting, Purchase, Academics, R & D Examination, Student affairs etc.

6.5. It is further seen that since the IIT had received over 155 applications, with a view to restricting the number of candidates qualifying to attend the Interview, the appellants had evolved shortlisting norms. The advertisement had made it clear that the IIT would restrict the number of persons attending the interview on the basis of qualification and experience higher than the minimum prescribed in the advertisement and other academic achievements.

(a) The 1st issue for consideration is whether the 1st respondent had satisfied this shortlisting norms. One of the shortlisting norms provided the following criteria:

"Eight years of experience in the post of Superintendent or equivalent with Grade Pay of Rs.4,600/-"

It is this qualification which is the bone of contention between the appellants and the 1st respondent.

6.6. In the application submitted in response to the

advertisement and the proforma given at the time of the interview the 1st respondent has given a declaration with reference to his experience that he was in the pay band of Rs. 9300 - 34800 from January 1999 to July 2010 with a grade pay of Rs.4,600/-. From a perusal of the service certificate dated 29.07.2009 issued by the 3rd respondent to the 1st respondent it is clear that from the date of his employment with the 3rd respondent on 06.01.1999, he was in the pay band of Rs.9300 - 34800 together with a grade pay of Rs.4,200/-. Therefore it is clear that till the date of the issue of this service certificate i.e; 29.07.2009 the grade pay of the 1st respondent was only Rs.4200/-. Further under the office memorandum of the 3rd respondent bearing No.NGRI - 7/68/2010 - Rect dated 07.09.2010 it is seen that under the 1st Financial Upgradation under the Modified Assured Career Progression Scheme (MACPS) the 1st respondent was upgraded to the grade pay of Rs.4,600/- with effect from 06.01.2009. Therefore it is clear that the 1st respondent did not have a grade pay of Rs.4,600/- eight years prior to his application.

6.7. An argument was put forward by the learned Senior Counsel appearing on behalf of the 1st respondent that as per the standing order S.O.No.946 (E) of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 09.04.2009 a Central Civil Post carrying the following Grade Pay of Rs.5,400/-, Rs.4,800/-, Rs.4,600/- and Rs.4,200/- in the Scale of Pay of Rs.9300 - 34800 in Pay Band - 2 was a group B post and therefore a Supervisory Post and therefore the 1st respondent was in the pay band of Rs.9300 - 34800 since 06.01.1999 and he satisfied the shortlisting norms.

6.8. At first blush, the argument appears attractive. However, on a deeper analysis of the norms it is evident that the shortlisting norms contemplated the following 8 years of experience in the post of (a) Superintendent with a Grade Pay of Rs.4600/- or (b) equivalent post with a Grade Pay of Rs.4,600/-.

7. The learned Single Judge has erroneously interpreted the shortlisting norm as being 8 years of experience in the post of Superintendent/equivalent or a Grade Pay of Rs.4,600/-. Such an interpretation is not possible since the conjunction 'or' appears before the word 'equivalent' and not after the word 'equivalent'. The shortlisting norms was evolved to have a candidate who not only has 8 years of experience as a Superintendent or its equivalent post but the post should also carry the Grade Pay of Rs.4,600/-. Therefore the argument of the learned Senior counsel for the 1st respondent that since the 1st respondent was in the Pay Band of Rs.9300 - 34800, which is a group B post right from 06.01.1999 automatically proves that the

1st respondent qualified the shortlisting norms is totally erroneous. The 1st respondent had put in a Supervisory post of Superintendent or equivalent together with a Grade Pay of Rs.4,600/- only with effect from 01.01.2006. Therefore the 1st respondent does not qualify the shortlisting norms as he falls short of the 8 years prescribed therein.

8. The next argument which has been put forward by the learned senior counsel was that termination was not simplicitor but was punitive in nature. This argument has to be examined taking into account the fact that the 1st respondent was on probation. It is seen that the appellants had issued a showcause notice to the 1st respondent on 28.11.2011, calling upon him to submit his explanation as to how he satisfied the shortlisting norms. In response to the showcause notice the 1st respondent had sent a reply dated 07.12.2011, wherein he had taken exception to the fact that the IIT was acting on behalf of the 3rd respondent and he had also demanded certain documents as well as a personal hearing and permission to cross examine the witnesses. The 1st respondent refused to give the explanation sought for.

9. It is seen that the appellants have responded to the request for providing documents vide their letter dated 16.12.2011. Once again, a reply was sent by the 1st respondent on 23.12.2011, but however, without any explanation to the query raised in the appellant's letter dated 28.11.2011. The 1st respondent has also addressed the Chairman of the Board of Governors of the appellants on 20.03.2012, where again there is no explanation to the query raised by the appellants. The 1st respondent instead of replying with the necessary documents to show that he has satisfied shortlisting norms has failed to respond to the query for over 4 months and it was only thereafter that his service has been terminated vide letter dated 29.03.2012.

10. A perusal of the termination order would clearly indicate that it was only as per Clause 3 of the terms and conditions of the appointment, as the 1st respondent was only on probation and his services had not been regularised. Further, the termination of the 1st respondent was not on the basis of any adverse entries or on the basis of an assessment of his work.

11. The Honourable Supreme Court in the Judgement reported in (1999) 2 SCC 21 - Radhey Shyam Gupta Vs. U.P.State Agro Industries Corporation Ltd. and another, after relying upon a few earlier Judgements including the two Constitution Bench Judgements reported in AIR 1958 SC 36 - Parshotam Lal Dhungra Vs. Union of India and AIR 1960 SC 689 - State of Bihar Vs. Gopi

Kishore has observed as follows:

"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 case. 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 inquiry is held because the purpose of a preliminary inquiry is to find out if there is prima facie evidence or material to initiate a regular departmental inquiry. It has been so decided in Champaklal case. 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 inquiry 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 case and in Benjamin case. In the latter case, the departmental inquiry 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 Gujrat Steel Tubes case, 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."

12. In another Judgement reported in (2001) 3 SCC 117 - H.F.Sangati Vs. Registrar General, High Court of Karnataka, which was a case of the discharge of a Probationary Munsif, the Honourable Supreme Court has held as follows:

"The impugned order does not cast any stigma on the appellants. All that has been said in the impugned order is that the appellants were unsuitable to hold the post of Munsif. The impugned order of discharge has been passed in strict compliance with the requirements of Rule 6. It does not cast any stigma on the appellants nor is it punitive. There was, thus, no requirement to comply with the principles of natural justice, much less to hold any formal proceedings of inquiry before making the order."

13. This Judgement has been cited with approval in a later Judgement of the Honourable Supreme Court reported in (2005) 2 SCC 382 - Municipal Committee, Sirsa Vs. Munshi Ram.

14. Therefore it can be safely conclude that the termination of the 1st respondent without any allegations is purely a termination simplicitor and not one of punitive. It is also seen that though the appellants had requested the 1st respondent to furnish details about his qualifications to prove that he had fulfilled the shortlisting norms, he had not come forward to disclose the facts. The declaration given in the application form as well as proforma at the time of the appointment is definitely misleading.

15. From the records it is evident that the appellants had given enough opportunity spread over a period of 4 months to the 1st respondent to respond to their query. However, the 1st respondent failed to come forward with the true details. None of these vital factors have been considered by the learned Single Judge. The order is therefore liable to be set aside.

16. The Writ Petition is dismissed. The Intra Court appeal is allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kan

To,

1. The Chairman,
Board of Governors,
Indian Institute of Technology, Madras,
No.3, Jaswant Baug (Runwal Park),
Behind Akbarallys, Chembur Naka,
Chembur, Mumbai 400 071.
2. The Director,
Indian Institute of Technology, Madras,
Chennai 600 036.
3. The Registrar-cum-Secretary,
Board of Governors,
Indian Institute of Technology, Madras,
Chennai 600 036.
4. The Director
Indian Institute of Technology, Indore,
DAVV Campus, Khandwa Road,
Indore 452 017.
5. The Director,
National Geo-Physical Research Institute,
No.724, Uppal Road,
Hyderabad 600 007.
6. The Director General,
Council of Scientific and Industrial Research,
AnusandhanBhawan, No.2, Rafi Marg,
New Delhi 110 00.

+lcc to Mr.T.Ravikumar, Advocate, S.R.No.71097

+lcc to Dr.R.Gowri, Advocate, S.R.No.71324

+lcc to M/s.Menon Karthik, Advocate, S.R.No.72021

W.A.No.428 of 2018 &
C.M.P.No.3769 of 2018

NMI (CO)
CS/30/08/2019

WEB COPY