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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 22.02.2019

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Judgment delivered on: 29.04.2019

+ **W.P.(C) 10451/ 2017**

MEDICAL COUNCIL OF INDIA

.....Petitioner

Through: Mr. Vikas Singh, Senior Advocate
along with Mr. T. Singhdev, Ms. Puja
Sarkar, Mr. Tarun Verma, Ms.
Biakthansangi Das, Ms. Amandeep
Kaur and Mr. Abhijit, Advocates.

versus

SANGEETA SHARMA AND ANR.

.....Respondents

Through: Mr. Adit S. Pujari, Ms. Vriti Anand
and Ms. Surabhi Dhar, Advocates for
respondent No.1.
Mr. Kirtiman Singh, CGSC and
Mr. Waize Ali Noor, Advocate for
respondent No.2/ UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

VIPIN SANGHI, J.

1. The Medical Council of India (hereinafter referred to as 'MCI') has preferred the present writ petition to assail the order dated 09.11.2017 passed

by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1256/ 2012 preferred by respondent 1- Sangeeta Sharma. The Tribunal has allowed the said Original Application and directed the petitioner to re- induct respondent- 1 as the Secretary, MCI within a period of one month from the date of receipt of the copy of the order.

2. Respondent 1- Dr. Sangeeta Sharma was initially recruited as Junior Resident, Department of Pharmacology, in Maulana Azad Medical College, Delhi on 02.08.1987. She worked as Senior Resident in the same Department from 01.08.1991 to 06.01.1995, and thereafter, as Research Associate from 07.01.1995 to 14.11.1995. Respondent 1 was further appointed as Manager (Medical Services) in Panacea Biotech Ltd., New Delhi on 15.11.1995 and served there till 23.09.1996. She was, thereafter, recruited as Assistant Professor Neuropsychopharmacology in the Institute of Human Behaviour and Allied Sciences (IHBAS), Delhi. She served in the said post from 24.09.1996 to 30.06.2001. She was promoted as the Associate Professor Neuropsychopharmacology in the same institution from 01.07.2001 to 31.10.2001. She was then promoted as Associate Professor Neuropsychopharmacology on 01.11.2002 where she served up till 2005. She was appointed as Additional Professor in IHBAS on 01.07.2005 and as the Medical Superintendent on 27.11.2008 in IHBAS. Thereafter, she came to be appointed as Professor & Head Neuropsychopharmacology on 12.10.2009 in IHBAS.

3. The post of Secretary, MCI had fallen vacant on account of the superannuation of the previous incumbent. An advertisement was issued in

the newspapers on 13.10.2010 inviting applications from eligible candidates for being appointed to the post of Secretary, MCI. Considering herself to be eligible for the said post, respondent no. 1 submitted her application for appointment to the said post vide her application dated 27.10.2010.

4. On 09.11.2010, interviews for the post of Secretary, MCI were conducted in which, respondent 1 appeared along with 17 others. The applicant was found to be eligible and was, thus, issued letter of appointment dated 08.03.2011. The appointment letter, insofar as it is relevant, read as follows:

“1. You will be on probation for a period of one year from the date of joining the post. The probation period may be extended at the discretion of the appointing authority. During the probation period, the appointment will be liable to termination without assigning any reasons on one month’s notice period and thereafter on three month’s notice or pay with allowances in lieu thereof. Continuance in the service after the probation period is subject to satisfactory performance. For resignation you will be liable to give one month’s notice during probation period and three month’s notice thereafter or pay with allowances in lieu thereof. However, the council reserves the right not to accept the resignation, if the circumstances so warrant.

4. Your service in the Council will be subject to the Service Rules and Regulations, including the Conduct, Control and Appeal Rules, Standing Orders or any other such orders of the Council. You will be bound and governed by such rules as may be framed and enforced from time to time and shall not challenge these rules on any ground. Decision of the Competent Authority shall be final and binding.” (emphasis supplied)

5. Respondent 1 was thereafter, relieved from IHBAS vide office order dated 24.03.2011, while retaining her lien to the post of Professor & Head of Department of Neuropsychopharmacology for one year. She joined as Secretary, MCI on 25.03.2011. However, vide its office order dated 30.03.2012, the MCI terminated the services of respondent 1 in terms of the aforementioned appointment letter.

6. Being aggrieved by this state of affairs, respondent no. 1 preferred the Original Application, i.e., O.A. No. 1256/ 2012 before the Tribunal.

7. The applicant/ Respondent 1 claimed that the termination order dated 30.03.2012 was in violation of all canons of justice and fair play. She claimed that having completed one year's probation on 24.03.2012, she became a deemed confirmed permanent employee of the MCI and the termination of her services without cause, and without holding an inquiry was illegal. She further alleged that her termination was actuated by bias and *mala-fides* and was in violation of principles of natural justice. She claimed that her termination was against the standing orders and the statutory rules of MCI.

8. On the other hand, the petitioner- Medical Council of India (original respondent before the Tribunal), claimed that the respondent was a probationer and the service of the applicant/ respondent was terminated in terms of her appointment letter dated 08.03.2011. The terms and conditions contained in her appointment letter were accepted by the respondent when she joined the MCI on 25.03.2011. One of the stipulations in the appointment letter was that the applicant would be on probation for a period

of one year from the date of joining on the post which was extendable. At the time of termination, the applicant continued to be on probation as she was never confirmed.

9. The petitioner- MCI claimed that there was no concept of deemed confirmation to the post of Secretary, MCI as the rules governing the service conditions of the respondent did not provide for any maximum period of probation, beyond which the probationer could be treated as a deemed confirmed employee. Thus, the original applicant could not be said to have been deemed confirmed.

10. The Tribunal allowed the Original Application vide the impugned order dated 09.11.2017. The Tribunal held that the office order dated 30.03.2012, terminating the services of the Respondent 1 is illegal, unwarranted and in violation of principles of natural justice. It held that the services of the applicant had been terminated without any lawful or valid reasons in an arbitrary and perfunctory manner. Having completed the one year stipulated period of probation, respondent No.1 became a deemed confirmed employee of the petitioner – MCI. As per the appointment letter dated 08.03.2011, if the appointment of the probationer had to be terminated within the period of probation, only one month's notice was required to be served on the probationer. However, upon the expiry of the probation period, three months' notice had to be served on the probationer for terminating his/her services. In the present case, admittedly, three months' notice was served. Thus, the petitioner treated respondent No.1 as its deemed confirmed employee, having successfully completed the period of probation. The

Tribunal further held that the services of the applicant were not terminated on account of disclosed unsatisfactory performance.

11. Mr. Vikas Singh, Id. Senior Counsel for the petitioner has limited his arguments before us to the aspect as to whether the tribunal was right in concluding that respondent no.1 was not a probationer, and that he was a deemed confirmed employee in the light of the governing Rules and as per the appointment letter dated 08.03.2011 issued to the respondent. If she was a probationer, her services could be terminated by a non-stigmatic termination order – as done by the petitioner.

12. Ld. Senior Counsel for the petitioner submits that the terms of offer of appointment dated 08.03.2011 did not stipulate that the probationer would stand automatically confirmed upon the expiry of her probation period of one year. He submits that the Recruitment Rules did not provide for any maximum period of probation, beyond which it was not permissible for MCI to extend the probation period. There is no obligation cast on the petitioner MCI to pass an express order, extending the probation of the respondent, failing which she would be deemed to be confirmed. Thus, merely because respondent 1 completed one year period of probation before she was terminated, and there was no express order intending her probation, it does not lead to the conclusion that she acquired the status of a deemed confirmed employee. In this regard, Id. Senior counsel has placed reliance on ***Head Master, Lawrence School, Lovedale vs. Jayanthi Raghu And Anr.***, (2012) 4 SCC 793 and ***VK Mittal vs. Registrar General, Delhi High Court***, (2017) 3 SLR 418.

13. Mr. Singh points out that in terms of respondent No. 1's offer of appointment, MCI was entitled to extend the period of probation of an appointee at its own discretion. He submits that the non-confirmation of respondent- 1 after one year of probation period, was an implied extension of her probation. Thus, he submits that respondent 1 was still on probation when her services were terminated vide office order dated 30.03.2012. Ld. Senior Counsel referred to the Rules i.e., *MCI Recruitment (Amendment) Rules, 2003*, for appointment to the post of Secretary, MCI to submit that appointment to the post of Secretary, MCI was subject to one- year period of probation under the recruitment rules itself.

14. Lastly, Mr. Singh submits that the termination order was non-stigmatic in nature and, thus, it did not warrant any inquiry as respondent- 1 was merely a probationer when the order was passed.

15. On the other hand, Mr. Adit Pujari, learned counsel for respondent- 1 supports the view taken by the Tribunal in the impugned order. He submits that respondent- 1 was deemed to be confirmed when her probation period expired. Thus, she could not have been terminated without holding a proper inquiry.

16. Mr. Pujari further submits that the use of the phrase "*thereafter on three months' notice*" signified that in respect of a confirmed employee, three months notice was required to be given. In the present case, the petitioner issued the notice of termination of three months. He submits that respondent no. 1 was admittedly given three months' notice, as well as pay

and allowances in lieu thereof. Thus, respondent no. 1 was treated as a deemed confirmed employee by the MCI itself.

17. Mr. Pujari submits that the services of respondent 1 could not have been terminated without holding a proper inquiry. He submits that the order terminating the services of respondent 1 was stigmatic in nature, and hence the same could not have been passed without holding a proper inquiry. In this regard, he referred to the letter written by one Y.K. Gupta – on whose opinion, the MCI had issued the order of termination of services of respondent- 1, to argue that the said letter showed the stigma cast against respondent- 1. Thus, he submits that the order dated 30.03.2012, terminating the services of respondent- 1 was palpably illegal and therefore, respondent- 1 is entitled to be reinstated as the Secretary, MCI. In this regard, he places reliance on *VP Ahuja vs. State of Punjab and Ors*, (2002) 2 SCR 130; and *Govt. of NCT of Delhi vs. Naresh Kumar*, ILR (2011) 1 Delhi 132.

18. Having heard learned counsels and considered the facts of the case as well as the decisions relied upon, we are of the opinion that the view taken by the Tribunal is laconic in as much, as, the Rules and the terms governing the service of respondent 1 are abundantly clear to conclude that the service of respondent 1 was not confirmed, or deemed to have been confirmed, by the petitioner- MCI. She continued to remain on probation when her services were terminated, and the termination is a simplicitor termination and non-stigmatic.

19. In *Head Master, Lawrence School, Lovedale* (supra), the respondent/probationer was appointed on the post of a Mistress in the Petitioner School.

It was stipulated in her letter of appointment that she would be on probation for a period of two years which may be extended for one year, if necessary. An order of termination simplicitor was passed against the respondent-probationer. The said termination order was assailed before the High Court and was set-aside by the Id. Single Judge. The LPA preferred against the said order was also dismissed. The appeal preferred against the judgment of the Division Bench of the High Court was ultimately allowed by the Supreme Court, wherein it was held that the status of confirmation of employment had to be earned and conferred. The Supreme Court held that there was nothing in the terms of the letter of appointment from which it could be construed that after the expiry of the period of probation, the probationer could have been treated as a deemed confirmed employee. Had the rule making authority intended that the probationer would be entitled for automatic confirmation upon the expiry of the period of probation, the recruitment rules would have been couched in such specific language. Supreme Court further went on to hold that confirmation of employment does not occur with efflux of time. An affirmative or positive act is the requisite by the employer to confirm a probationer which had not been done in the present case. The Supreme Court considered several earlier decisions in this judgment. The relevant excerpts of ***Head Master, Lawrence School, Lovedale*** (supra) read as follows:

*“11. To appreciate the rivalised submissions raised at the Bar, we have carefully perused the letter of appointment and on a plain reading of the same, it is apparent that the first respondent was appointed as a Mistress in the School on probation for a period of two years with a stipulation that it may be extended by another year. **There is nothing in the***

terms of the letter of appointment from which it can be construed that after the expiry of the period of probation, she would be treated as a deemed confirmed employee. In this factual backdrop, the interpretation to be placed on Rule 4.9 of the Rules assumes immense significance.

12. The said Rule reads as follows:

“4.9 All appointments to the staff shall ordinarily be made on probation for a period of one year which may at the discretion of the Headmaster or the Chairman in the case of members of the staff appointed by the Board be extended up to two years. The appointee, if confirmed, shall continue to hold office till the age of 55 years, except as otherwise provided in these Rules. Every appointment shall be subject to the conditions that the appointee is certified as medically fit for service by a Medical Officer nominated by the Board or by the Resident Medical Officer of the School.”

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16. In *G.S. Ramaswamy v. Inspector General of Police* [AIR 1966 SC 175] , another Constitution Bench, while dealing with the language employed under Rule 486 of the Hyderabad District Police Manual, referred to the decision in *Sukhbans Singh* [AIR 1962 SC 1711] and opined as follows: (*G.S. Ramaswamy case* [AIR 1966 SC 175] , AIR p. 179, para 8)

“8. ... It has been held in that case that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of a service, unless of course the Rules under which he is appointed expressly provide for such a result. Therefore even though a probationer may have continued to act in the post to which he is appointed on

probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the rules of service which govern him specifically lay down that the probationer will be automatically confirmed after the initial period of probation is over. It is contended on behalf of the petitioners before us that the part of Rule 486 (which we have set out above) expressly provides for automatic confirmation after the period of probation is over. We are of opinion that there is no force in this contention. It is true that the words used in the sentence set out above are not that promoted officers will be eligible or qualified for promotion at the end of their probationary period which are the words to be often found in the Rules in such cases; even so, though this part of Rule 486 says that 'promoted officers will be confirmed at the end of their probationary period', it is qualified by the words 'if they have given satisfaction'. Clearly therefore the Rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under this Rule if he has given satisfaction."

17. *In State of U.P. v. Akbar Ali Khan [AIR 1966 SC 1842]* another Constitution Bench ruled that: (AIR p. 1845, para 6)

"6. ... If the order of appointment itself states that at the end of the period of probation ... in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post

without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation.”

18. *In State of Punjab v. Dharam Singh [AIR 1968 SC 1210] the Constitution Bench, after scanning the anatomy of the Rules in question, addressed itself to the precise effect of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. The said Rule stipulated that the total period of probation including extensions, if any, shall not exceed three years. This Court referred to the earlier view which had consistently stated that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. Under these circumstances, an express order of confirmation is imperative to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is difficult to hold that he should be deemed to have been confirmed.*

19. *In Dharam Singh [AIR 1968 SC 1210] (AIR p. 1212, para 5) when the service rules fixed,*

“a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he

cannot be deemed to continue in that post as a probationer by implication”.

It is so as such an implication is specifically negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it.

20. *In Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] the seven-Judge Bench was dealing with the termination of services of the probationers under Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and Rule 7(3) of the Punjab Civil Services (Judicial Branch) Rules, 1951. In the said case, the law laid down by the Constitution Bench in Dharam Singh [AIR 1968 SC 1210] was approved but it was distinguished because of the language of the relevant rule, especially the Explanation to Rule 7(1), which provided that every Subordinate Judge, in the first instance be appointed on probation for two years and the said period may be extended from time to time either expressly or impliedly so that the total period of probation including extension does not exceed three years. The Explanation to the said Rule stipulated that the period of probation shall be deemed to have been extended if a Subordinate Judge is not confirmed on the expiry of the period of probation. Be it noted, reliance was placed on the decision in Dharam Singh [AIR 1968 SC 1210] .*

21. *The larger Bench discussed the principle laid down in Dharam Singh case [AIR 1968 SC 1210] and proceeded to state as follows: (Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] , SCC pp. 852-53, para 70)*

“70. ... In Dharam Singh case [AIR 1968 SC 1210] the relevant rule stated that the probation in the first instance is for one year with the proviso that the total period of probation including extension shall not exceed three years. In Dharam Singh case [AIR 1968 SC 1210] he was allowed to continue without an order of confirmation and therefore the only possible view in the absence of

anything to the contrary in the service rules was that by necessary implication he must be regarded as having been confirmed.”

22. After so stating, the Bench referred to Rule 7(1) and came to hold as follows: (Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] , SCC p. 853, para 71)

*“71. ... the Explanation to Rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation. This implied extension where a Subordinate Judge is not confirmed on the expiry of the period of probation is not found in Dharam Singh case [AIR 1968 SC 1210] . This Explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. **The Explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh case [AIR 1968 SC 1210] and that a probationer is not in fact confirmed till an order of confirmation is made.**”*

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27. After referring to the decisions in Dharam Singh [AIR 1968 SC 1210] , Sukhbans Singh[AIR 1962 SC 1711] and Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and other authorities, the three-Judge Bench expressed thus: (Satya Narayan Jhavar case [(2001) 7 SCC 161 : 2001 SCC (L&S) 1087 : AIR 2001 SC 3234] , SCC p. 169, para 11)

“11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions

and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the Rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.'” (emphasis supplied)

20. This Court in *VK Mittal* (supra) culled out law on deemed confirmation of employment upon successful completion of probation period, as follows:

“64. The legal position on “deemed confirmation” can be summarised as under:

(a) If in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed. At the end of such probation he becomes merely qualified or eligible for substantive permanent appointment.

(b) There is the other line of cases where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The presumption about continuation, beyond the period of probation, as a probationer stands negated by the fixation of a maximum time-limit for the extension of probation. In such cases the officer concerned must be deemed to have been confirmed.

(c) A third line of cases is where though under the rules maximum period of probation is prescribed, it requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired, and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

(d) While there could be some other cases where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties. Even in those cases, there would be no ‘deemed confirmation’.”
(emphasis supplied)

21. Thus, whenever a person is appointed as a probationer for a specified period, he does not automatically stand confirmed upon the expiry of such probation period, unless the maximum period of probation is prescribed and the person is allowed to continue even after the expiry of such maximum period of probation. Unless and until the relevant recruitment rules or the terms of appointment specifically provide for either deemed confirmation – by providing for a maximum period of probation, or confirmation is effected by passing an order to that effect, merely because the express probation period has expired, it cannot be said to confer on the probationer the status of deemed confirmed.

22. In the present case, the probationer- respondent 1 was appointed as the Secretary, MCI vide appointment letter dated 08.03.2011. The appointment letter stipulated that she will work on probation for a period of one year from the date of her joining on the said post i.e., from 25.03.2011. As per the appointment letter, the MCI was given the discretion to extend the probation period without providing for a specific maximum period of probation beyond which, respondent 1 would have stood deemed confirmed. Pertinently, even the Rules do not specify any maximum period of probation beyond which respondent no. 1 would have been deemed confirmed. Thus, we hold that respondent 1 could not be said to have become a deemed confirmed employee of the petitioner, when the Rules or the terms of appointment letter did not specify, firstly, a maximum period of probation or, secondly, no order confirming the services of respondent 1 had been passed.

23. In fact, the present case squarely falls within clause (a) of para 64 of *VK Mittal* (supra). As per *V.K. Mittal* (supra), upon expiry of the initial probation period, respondent 1 merely became eligible for consideration for confirmation to the post of Secretary, MCI, or extension of her probation. She cannot be heard to say that she stood “deemed confirmed”. Thus, in view of the aforesaid decisions in *Head Master, Lawrence School, Lovedale* (supra) and *V.K.Mittal* (supra), we find that respondent 1 did not acquire the status of a deemed confirmed employee.

24. Learned counsel for respondent 1 has further submitted that the notice of termination of service served to the respondent was for three months. Thus, the petitioner- MCI considered the respondent as a deemed confirmed employee.

25. This argument of Id. Counsel for respondent 1 is completely fallacious. The notice period prescribed is the minimum period for which notice – or pay in lieu thereof, is required to be given. It does not follow that if notice for a longer period is served, it will have a bearing on the status of the employee. The status of an employee – whether he/she is a probationer, or not, is determined by examination of the relevant Recruitment rules and terms of engagement, apart from the communications issued by the employer on that subject. It is not to be inferred or determined on the basis of the length of the notice period. It is a well settled principle of law that there cannot be an estoppel against the law. (See, *Maharshi Dayanand University Vs. Surjeet Kaur*, (2010) 11 SCC 159). This submission of the respondent is, therefore, rejected.

26. Learned counsel for the respondent has tried to make a case that the termination order of the respondent was stigmatic in nature. He has relied upon ***Naresh Kumar*** (supra) and ***VP Ahuja*** (supra) to argue that even if the respondent was to be considered as a probationer, her termination order being stigmatic in nature, was liable to be set- aside.

27. We may reproduce the termination order dated 30.03.2012 of respondent 1, insofar as it is relevant, it reads as follows:

“

OFFICE ORDER

1. *The Board of Governors of the Medical Council of India have decided to terminate the services of Dr. Sangeeta Sharma, Secretary, Medical Council of India, in terms of Condition No. (1) of the Council's letter No. MCI-151(2)/2010-Estt/74049 dated 08.03.2011, and consequently she stands relieved from the services of the Council with effect from 30.03.2012 (Afternoon).*
2. *Dr. Sangeeta Sharma shall be paid pay with allowances equivalent to her three months Pay, in lieu of three months' period.*

.....”

28. It is a well settled principle that a simple termination order, terminating the services of probationer, cannot be said to be stigmatic. There is not even an iota of stigma cast upon respondent No.1 in the aforesaid order. When the said termination order would be placed before any other prospective employer, that employer would have no reason to infer that the services of the respondent – a probationer, were terminated for cause. In ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences***,

(2002) 1 SCC 520, the Supreme Court, while determining as to what language in a termination order would amount to a stigma, observed as follows:

*“29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. **In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.**” (emphasis supplied)*

29. Ld. Counsel has vehemently tried to urge that the stigma could be found by digging deep, and reading into various documents filed on record, particularly, the letter of Mr. Y.K. Gupta addressed to the Chief Vigilance Officer of the MCI.

30. We cannot agree with this submission of the respondent. From the plain reading of the termination order, it is apparent that it does not cast any stigma whatsoever against respondent No.1- Dr. Sangeeta Sharma. It does not even state that she was found to be unsuitable for the jobs. The petitioner has not referred to any material, much less the letter of Mr. Y.K. Gupta, in the termination order. Thus, it would not be permissible to even look at the said letter to determine whether the order of termination is

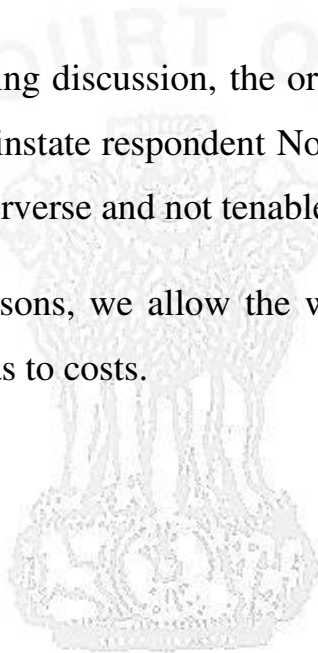
stigmatic. The terminated employee cannot himself/herself refer to materials/documents not referred to, or forming part of the termination order, and on that premise, create a plea of stigma in termination. The exercise undertaken by the Tribunal of looking into correspondence and file notings and, on that basis to create a ground of “Stigma” was neither permissible, nor called for.

31. In any event, the letter written by Mr. Y.K. Gupta addressed to the Chief Vigilance Officer, MCI, merely gave an opinion that Dr. Sangeeta Sharma’s experience was not in accordance with the requirements of the Recruitment Rules. He opined that though she had served as faculty member in an Institution which was a recognised teaching institution by University of Delhi, however, she had not been involved in any regular teaching activities either to Undergraduate or any recognised Post Graduate courses. Thus, the occasional teaching assignments as guest faculty in other institute could not be considered as regular teaching assignment as per the MCI. The termination order, however, does not state that it is founded upon the said letter of Mr. Y.K. Gupta. In any event, in order to amount to a stigma, the termination order must be in a language which imputes something over and above mere unsuitability for the job. (see *Pavanendra Narayan Verma* (supra)). However, respondent 1 has not been able to show the existence of that “something”, over and above mere unsuitability for the job. In fact, she has even failed to show anything to indicate that petitioner- MCI considered her to be unsuitable for the job. It is thus, in our view, fallacious to contend that the termination order is stigmatic in nature.

32. The decision in *VP Ahuja* (supra), relied upon by respondent 1 is not apposite to the facts of the present case, because in that case, the termination order was set- aside for the reason that it was stigmatic in nature. On the other hand, *Naresh Kumar* (supra) is a case wherein, the termination order was upheld on the ground that the order was non- stigmatic in nature. Likewise, the termination order in the present case is also ex-facie non-stigmatic and thus, we see no reason to set it aside and hold it as illegal.

33. In view of the foregoing discussion, the order passed by the Tribunal directing the petitioner to reinstate respondent No.1, in our considered view, cannot be sustained being perverse and not tenable in law.

34. For the foregoing reasons, we allow the writ petition and quash the impugned orders. No order as to costs.



(VIPIN SANGHI)
JUDGE

(A.K. CHAWLA)
JUDGE

APRIL 29, 2019