

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

and

The Hon'ble Justice Saugata Bhattacharyya

G.A. No. 861 of 2020

A.P.O.T. No. 21 of 2020

W.P. No. 204 of 2019

The University of Calcutta & Ors.

vs.

Dr. Biswarup Sarkar & Anr.

For the Appellant	: Mr. Kishore Dutt, Adv. General, Mr. Jishnu Chowdhury, Adv., Mr. Chayan Gupta, Adv., Mr. Sandip Dasgupta, Adv., Mr. Ayan De, Adv.
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For the respondent	: Dr. Chapales Bandyopadhyay, Adv., Ms. Gargy Basu, Adv., Ms. Anandamayee Dutta, Adv.
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Heard on	: 08.12.2020 & 10.12.2020
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Judgment on	: 23.12.2020
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Soumen Sen, J.:- The precedence of “substance over form” in scrutinising an administrative order of dismissal in relation to the service of a probation officer is the subject matter for consideration in this appeal.

The appeal is arising out of an order dated 19th June, 2020 passed by the learned Single Judge in a writ petition filed by the respondent/writ petitioner challenging, inter alia, a resolution adopted by the Syndicate of

the University of Calcutta on 20th March, 2019 and communicated to the petitioner by a memo dated 20th March, 2019 issued by the Registrar (Acting) of the University of Calcutta.

Shorn of unnecessary details, the facts are that the writ petitioner was appointed on probation to the post of Deputy Controller of Examinations in the University for a period of one year from the date of the petitioner joining the post, which could be terminated with one month's notice from either end. The probation period, however, could be extended for a further period of one year, if necessary, and the confirmation of the service would be considered, subject to the satisfactory completion of the probationary period by the writ petitioner.

The respondent was entrusted with the responsibility of looking after examination-related matters in the month of February, 2018. On 15th June, 2018 a show-cause notice was issued to him in terms of Ordinance 74 of Chapter XV of the Calcutta University First Ordinance, 1979 (in short "the Ordinance 74") in view of wrong question papers being printed and distributed in the Journalism and Mass Communication (JORG) Paper II examination. The respondent replied to the same on 28th June, 2018. By a letter dated 20th July, 2018, he was asked to appear before the Enquiry Officer on 27th July, 2018 and on the same date a charge-sheet was handed over to him. He replied to the said charge-sheet on 3rd August, 2018. On 6th August, 2018 he attended a hearing fixed before the Enquiry Officer, but no enquiry report was served upon him and the proceeding was kept pending.

On 12th September, 2018 the respondent submitted a representation to consider his claim towards confirmation. The University thereafter extended the petitioner's probationary period for six months by a letter dated 10th October, 2020, with retrospective effect from 22nd September, 2018. One day prior to the expiry of the extended period, a memo dated 20th March, 2019 was issued to the petitioner discontinuing his services by the Registrar (Acting) of the University enclosing a copy of the resolution of the Syndicate dated 20th March, 2019.

Record reveals that the writ petition was admitted on 21st June, 2019, with a direction towards exchange of affidavits. It was also directed that the petitioner's claim would abide by the result of the writ petition. Subsequent thereto, the affidavits were exchanged by the parties.

The post of Deputy Controller of Examinations for SC category in which the petitioner was appointed on probation is still vacant.

The contention of the respondent/writ petitioner, before the learned Single Judge appears to be that after considering the respondent's reply to the show-cause notice dated 15th June, 2018, a charge-sheet was issued on 20th July, 2018, to which the respondent duly replied and also appeared before the Enquiry Officer on 6th August, 2018. But subsequent thereto, no enquiry report was supplied to him and no final decision was taken. Prior to conclusion of the disciplinary proceeding, the University could not have discontinued the service of the writ petitioner on the foundation of the charges alleged in the said proceeding and without granting any opportunity of hearing. The acts constituting misconduct as

alleged against the writ petitioner in the impugned resolution dated 20th March, 2019 were within the knowledge of the authorities on 10th October, 2018 when the respondent's probationary period was extended for a period of six months, w.e.f. 22nd September, 2018. The only reason for such extension of the period of probation for a period of six months on and from 22nd September, 2018 was to take a final decision in the pending disciplinary proceeding. Having failed to complete the proceeding within the said extended period, the authorities abruptly took a decision a day prior to expiry of the extended period of probation to deny further extension and such action is ex facie unreasonable and unjust. Such haste speaks of the intent of the authorities to forcibly oust the respondent from the concerned post.

Moreover in the letter of appointment dated 1st September, 2017 the period of probation was for a period of one year, and it was indicated therein that such probationary period may be extended for a further period of one year, if necessary. However, the period of probation was extended for a further period of only six months with effect from 22nd September, 2018. The authorities, thus, acted in derogation to the conditions stipulated in the letter of appointment dated 1st September, 2018. Prior to expiry of the extended period of probation, the respondent was stripped of his duties on and from the month of March, 2019. The Assistant Controller of Examinations was asked to discharge the duties of the respondent with retrospective effect from 8th March, 2019 vide memo dated 19th March, 2019 issued by the Deputy Registrar (Acting), being

oblivious of the earlier direction towards distribution of duties of the respondent vide memo dated 27th February, 2019 issued by the Controller of Examinations.

Before the learned Single Judge, Dr. Bandyopadhyay appeared and argued that although the writ petitioner appeared before the Enquiry Officer on 6th August, 2018, no enquiry report was supplied to the writ petitioner and no final decision was taken. Prior to conclusion of the disciplinary proceeding, the University could not have discontinued the service of the petitioner on the foundation of the charges alleged in said proceeding and without granting any opportunity of hearing.

It further appears from the impugned order that Dr. Bandyopadhyay had drawn the attention of the learned Single Judge to the fact that the Senior Assistant in the Department of Controller of Examinations, namely, Sri Shibaji Das was responsible for wrong coding of the question papers and such fact was admitted by Shibaji Das himself in his reply to the show-cause notice dated 15th June, 2018. Considering such a reply, the authorities imposed a punishment by way of censure and withholding of one increment, as would be explicit from the memo dated 26th September, 2018 issued by the Registrar (Officiating) of the University. In view thereof, the charges of misconduct as alleged against the petitioner and the findings in the impugned resolution that owing to carelessness and lackadaisical attitude of the petitioner the University examination had to be cancelled, do not survive. The finding in the impugned resolution that the petitioner had admitted his errors is

absolutely perverse. It was submitted that the respondent would thus be entitled to reinstatement and back wages.

In support of this argument, reliance was placed upon the judgments delivered in the case of ***Samsher Singh v. State of Punjab & Anr.***, reported in **1974(2) SCC 831**, ***Smt. S.R. Venkataraman v. Union of India & Anr.***, reported in **1979(2) SCC 491**, ***Comptroller and Auditor-General of India, Gian Prakash, New Delhi & Anr. v. K.S. Jagannathan & Anr.***, reported in **1986(2) SCC 679** and an unreported judgment delivered in the case of ***Vijay Raj v. Union of India & Ors.***

The learned Advocate General appeared before the learned Single Judge on behalf of the University and submitted that there is no dispute in regards the fact that wrong question papers were printed and distributed in the Journalism and Mass Communication (JORG) Paper II examination. In place of Paper '2nd' it was erroneously printed as Paper '3rd'. Similar anomalies and discrepancies were noted in the 3rd Paper as well and, in view of such anomalies, the examination in Journalism and Mass Communication had to be cancelled which led to tremendous inconvenience to the examinees and loss of reputation for the University, and, as such, an innocuous decision was taken not to extend the respondent's probationary period as his service was not satisfactory.

The learned Advocate General, it appears, referred to Section 33 of the Calcutta University Act, 1979 (hereinafter referred to as "the Act of 1979") to state that the University has been conferred the jurisdiction to exercise discretion and consideration as to whether the probationer's work

is satisfactory. In view thereof, the decision of the University adopted on 20th March, 2019 does not suffer from any jurisdictional error. The suitability perception varies from person to person and, according to the competent authority, the petitioner was unsuitable for the post of Deputy Controller of Examinations. Such a decision does not cast any aspersion upon the respondent warranting interference of this Court in exercise of its discretionary jurisdiction.

The learned Single Judge on consideration of the materials on record and after taking into consideration Section 33 of the Act of 1979 and the Ordinance 74 under Chapter X, which deals with discipline and conduct, held that the service of the petitioner after the expiry of the first period of one year could not have been extended for six months only. His Lordship held that the order of termination in the instant case has visited the writ petitioner with evil consequences and is stigmatic and, as such, the impugned resolution cannot be construed to be an order of simple discharge. The learned Single Judge, accordingly, directed reinstatement of the writ petitioner to the post of Deputy Controller of Examinations and payment of the full back wages for the period he was not paid the salaries with a further direction for disbursement of the back wages within a period of four weeks from the date of communication of the impugned order.

The learned Advocate General appearing on behalf of the appellant has reiterated the submission he had made before the learned Single Judge. It is strenuously argued that the writ petitioner in his reply to the

charge-sheet has admitted his mistake and due to such culpable negligence on the part of the writ petitioner, the reputation of the University has suffered. The reply to the show-cause notice was found to be inadequate, and his lack of care and diligence towards his duties was clearly established. Such conduct and attitude was not expected from the Deputy Controller of Examinations of a reputed University and, accordingly, due to his unsuitability and unsatisfactory performance his service was not renewed. It is submitted that the learned Single Judge did not appreciate the fact that a probationer does not have any right to the post and he is not entitled to be confirmed to the post due to his unsatisfactory performance. It is submitted that the order is purely administrative in nature and not capable of judicial review as it does not fall foul of **Wednesbury** principles.

It is argued that in the case of a probationer, the employer has an unfettered right to determine the suitability of the probationer to continue further and the letter of his appointment cannot give him more than what he was enjoying as a probationer. The learned Advocate General has emphasized on the words “oblivion mistake” used by the writ petitioner in the reply to the show cause and submits that such mistake has resulted in cancellation of examination and tarnish the reputation of the University. In view of such negligent conduct of the petitioner, he cannot be trusted. The trust and faith between the employer and employee has to be assessed by the employer and a view taken by the employer in the facts of the instant case cannot be substituted by the Court. It is submitted

that abandonment and/or discontinuation of the disciplinary proceeding would not be a relevant consideration while deciding the extension of service of the writ petitioner for the remaining period of probation or for his absorption as a permanent employee.

It is further submitted that there is a clear and manifest mistake committed in the impugned order by the learned Single Judge in construing Section 33 of the Act of 1979, as the said section in subsection 2 has clearly given a discretion to the appropriate authority of the University to extend the period of probation for a further period not exceeding one year, which necessarily means that it can be less than one year. In this instant case, service was extended by six months. In view of the wrong interpretation of Section 33, the finding of the learned Single Judge that the University does not have any power to extend the period of probation for less than one year is unsustainable.

The learned Advocate General has also submitted that during the pendency of the writ petition, the writ petitioner was appointed as a Controller of Examinations of University of Gour Banga, a fact that was suppressed before the learned Single Judge and in view of such appointment, this application has become infructuous. In support of this submission, reference has been made to paragraph 20 of the stay petition, where it is alleged that during the course of hearing of the writ petition documents relating to his appointment as the Controller of Examination, University of Gour Banga were made over to the Hon'ble Court.

Dr. Bandyopadhyay has seriously refuted this argument and it is submitted that, in the affidavit-in-opposition affirmed by the Registrar of the Calcutta University, a false statement has been made that a new Deputy Controller of Examinations is now occupying a post which could not have been done in view of the letter dated 8th March, 2019 of the University showing that the post of Deputy Controller of Examination for SC category was lying vacant. Dr. Bandyopadhyay has further submitted that no document was handed over to the learned Single Judge on/or after September 2019 during the time of hearing of the writ petition and no copy of any document showing his appointment was made over to the writ petitioner.

We have called for the original record and we find that Dr. Bandyopadhyay is correct as no document showing discharge of duties by the writ petitioner as a Controller of Examination, University of Gour Banga was handed over to the learned Single Judge. However, Dr. Bandyopadhyay, in all fairness, has submitted that the writ petitioner was appointed as a Controller of Examinations on 20th August, 2019 and since then he is discharging his duties as Controller of Examinations, University Gour Banga. The learned Counsel has also submitted that he has not suppressed any fact about his employment and, in the affidavit-in-reply, the petitioner has categorically stated that he was in service.

This ancillary issue with regard to his appointment during the pendency of the writ petition shall not unnecessarily pre-occupy our thoughts, as a more important issue as to the propriety of the order of

discharge or “dismissal”, the word the writ petitioner would prefer, of the petitioner by the University is required to be gone into.

The record reveals that on 27th July, 2018 a charge-sheet was issued against the writ petitioner putting forth three articles of charge, they are:

Article of Charge I

That the said Shri Biswarup Sarkar, while functioning as Dy Controller of Examination, University of Calcutta have committed neglect of duty for which wrong question papers have been printed and distributed in JORG Paper II

Article of Charge II

That while functioning in the aforesaid office, the said Shri Biswarup Sarkar, has not been diligent in the performance of duties for which wrong question papers were printed and distributed in JORG paper II.

Article of Charge III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Biswarup Sarkar, has not supervised and managed his department due to which wrong question papers were printed and distributed in JORG paper II.

The writ petitioner was supplied with the following documents based on which articles of charge was framed.

1. *Top sheet of the Question Paper JORG Paper II*
2. *Top sheet of the Question Paper JORG Paper III*

Contemporaneously, a disciplinary proceeding was also initiated against Sri Sibaji Das, Senior Assistant of the Press Confidential Section. In reply to the charge-sheet, Sri Das categorically stated that:

"I have done wrong coding (in JORG Paper two and three) which is absolutely unintentional, I have not done this with any malafide intention. I shall remain always alert absent (sic) such mistake in future".

Upon considering such reply, the authorities imposed a punishment by way of censure and withholding of one increment.

Although a disciplinary proceeding was initiated against the writ petitioner, the authorities however, did not pursue it and the proceeding was ultimately dropped. Curiously enough, on the same set of facts, the service of the writ petitioner was not extended by the University. In this background it is now necessary to consider the contents of the impugned letter dated 20th March, 2019 and the impugned resolution of the University dated 20th March, 2019, in juxtaposition to the charge-sheet dated 27th July, 2018 to appreciate the true purport of the order of discharge.

The relevant portions of the letter dated 20th March, 2019 are reproduced below:

"You are aware that you have been appointed on probation in the post of Deputy Controller of Examinations, University of Calcutta on and from 1st September, 2017, which probation comes to an end on 21st March, 2019.

However, serious anomalies during the course of your probation in the performance of your duties have been detected. It has come to light that the examination pertaining to Journalism and Mass Communication, Paper-2 for the 2nd Year (General Students) scheduled to be held on 15th June 2018 had gross anomalies where though in the Question Paper it was mentioned

as the 2nd Paper, the questions were of the 3rd Paper. Such anomaly has been noted for both second paper and third paper. In view of such discrepancies, the examination had to be cancelled leading to tremendous inconvenience of the examinees and loss of reputation of the University. Moreover, printing order regarding the quantity which was to be printed was written in red ink without any signature of any official. You claimed no knowledge of the state of affairs of your department and tried to shed your responsibility by putting blame on your subordinate staff. Owing to gross neglect and lackadaisical attitude such grave confusion ensued and anomalies crept it.

Being the Deputy Controller of Examinations, you were responsible for the working of your department and ought to have taken responsibility of the actions of your subordinate staffs.

Considering the above the Syndicate of the University unanimously resolved at the meeting the Syndicate held on 20th March, 2019 that your probation, which is due to expire on 21st March, 2019 would not be extended any further, as your service could not meet the high standards of the office of Deputy Controller of Examinations.

A copy of the Resolution of the Syndicate dated 20th March, 2019 is attached herewith.”

The resolution of the Syndicate as relied upon in the aforesaid letter reads:

“Dr. Biswarup Sarkar was originally appointed on probation as the Deputy Controller by letter dated 1st September, 2017 of the University. His probation comes to an end on 21st March, 2019 and a decision is now to be taken in this regard after considering his performance during probation period.

The Syndicate was informed and notes in this regard that the examination in Journalism and Mass Communication, Paper-2 for the 2nd Year (General Students) scheduled to be held on 15th June 2018 had gross anomalies where, though in the question paper it

was mentioned as the 2nd paper, the questions were of the 3rd paper. Similar anomalies and discrepancies were noted for the 3rd paper as well.

In view of such gross anomalies, the examination had to be cancelled which led to tremendous inconvenience of the examinees and loss of reputation of the University. The matter was widely reported and this kind of sheer negligence was taken very seriously by the authorities. Accountability for this gross negligence had to be fixed. The students were subjected to unnecessary harassment. Consequently, it had financial ramifications. This has also led to lowering of the esteem of the University of Calcutta in the eyes of society.”

Dr. Biswarup Sarkar admitted such errors by his letter issued in reply to notice dated 15th June, 2018 issued on to him to explain these laches. The reply was found inadequate and his lack of care and diligence to his duties was clearly established.

Such conduct and attitude does not do justice to the post of Deputy Controller of Examinations of this esteemed University.

As a matter of fact such responsibility and culpability is to be shared with his superior and reporting officer, the Controller of Examinations, Dr. Jayanta Sinha, who was held also liable for such lapses and the probation of such officer expiring on 7th March, 2019 was not renewed vide resolution of the Syndicate dated 27th February, 2019.

It is, therefore, unanimously resolved that the probation of Dr. Biswarup Sarkar, Deputy Controller of Examinations which is due to expire on 21st March 2019 would not be extended any further as he is found unsuitable for the post of Deputy Controller of Examinations of such a reputed and esteemed organization as this University. The Registrar will inform him accordingly with a copy of this resolution.” (emphasis supplied)

The reason for his discharge appears to be lack of care and diligence.

In ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences***, reported in **2002(1) SCC 520** the Hon'ble Supreme Court after examination of the various authorities concerning the right of a probationer to question an order of discharge at paragraphs 28 and 29 of the report has stated that:

“28. Therefore, whenever a probationer challenges his termination the court’s first task will be to apply the test of stigma or the “form” test. If the order survives this examination the “substance” of the termination will have to be found out.

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)

An examination of the text of the resolution of the Syndicate and the letter of termination is required to find out if the order of discharge is stigmatic. The acid test is whether the words seem to go over and above merely stating that the probationer is unsuitable to see if there is ex facie stigma and a visitation of evil consequences on the probationer (See:

Pavanendra Narayan Verma (*supra*) at paragraph 31 of the report, Cf.: **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.**, reported in **1999(3) SCC 60**).

It appears that there is *ex facie* stigma in the wording of both the letter of termination and the resolution of the Syndicate. The petitioner has been described as grossly neglectful and lackadaisical, he is accused of having shrugged off responsibility and of trying to put the blame for his work on officers working under him. The resolution and the letter do not merely deem the petitioner unsuitable—they deem him unworthy of the high post and clearly imply that he is responsible for loss of reputation to the University. It would be clear to any reasonable person that the dismissal of the petitioner in its language and form seeks not to merely terminate but also to punish and visit him with dire consequences so far as his employment is concerned.

Even though this should suffice to conclude that the impugned letter and resolution are stigmatic, a dispositive conclusion based on all the circumstances would be apt, given the circumstances of the dismissal, the carrying out of an enquiry, as already mentioned, and the allegations of gross negligence truly illuminate whether the dismissal is founded on the probationer's misconduct or motivated by the same (See: **Pavanendra Narayan Verma** (*supra*) at paragraph 19 of the report). In this regard as well, the dicta in **Pavanendra Narayan Verma** (*supra*) at paragraph 31 of the report is thoroughly instructive:

“One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.”

Needless to say, this is not a quasi-statutory or water tight test, but one of many tests. For example, in ***Union of India & Ors. v. Mahaveer C. Singhvi***, reported in **2010(8) SCC 220**, a probationary officer of the Indian Foreign Service was dismissed apparently due to his inability to join a language course and posting on time. Later, however, it appeared that his dismissal was also due to certain complaints made against him to the Minister of External Affairs, which led to some enquiries but no adverse finding against the officer. However, an inquiry report was prepared and after a hearing, various approvals, it was decided that the officer’s services should be terminated. A three-Judge Bench of the Supreme Court held that due to these surrounding circumstances the order of dismissal was in substance a stigmatic order since the order of dismissal was founded on a an inquiry that yielded no adverse result, evincing prejudice, especially since the record showed that an official of the Ministry had noted that the officer would blacken the country’s name. This goes to show that even if an enquiry does not reach its logical endpoint and a finding of guilt, it can, on the facts, lead to a stigmatic order of dismissal, if the conduct of the enquiry evinces prejudice and the

enquiry serves as the foundation for the order of dismissal despite no finding of guilt.

In his reply to the charge-sheet, the writ petitioner has categorically stated that the mistake was committed by the examining agency (Saraswati Press Limited), as the said agency was newly assigned with the job of printing for the first time, and the said agency was unaware of the gravity of printing a question paper well before examination and distributing the same to different centres located in different districts of West Bengal. This stand of the writ petitioner is adequately reflected from the following paragraph of the reply to the charge-sheet:

“It is being pointed out that the external agency (Saraswati Press Ltd.), which has been newly assigned with the job of printing has also been working for the first time were also unaware of the gravity of printing well before examination and distribution of question paper to different centers located in different districts of West Bengal.”

Sri Shibaji Das, as stated earlier has accepted his unintentional mistake for which he was given a minor punishment. Following the petitioners reply to the charge-sheet, the University did not pursue the disciplinary proceeding, which clearly shows that the petitioner was exonerated of all the charges, and the proceeding was dropped. However, on 27th February, 2019, Dr. Jayanta Sinha, Controller of Examinations (Acting) of the University issued a memo titled ‘*Distribution of duties amongst Officers attached to Controller of Examinations*’.

Following the said memo, a roster was prepared and published on 13th March, 2019 which curiously omitted the name of the writ petitioner. This memo shows that the writ petitioner was not assigned any duty on 13th March, 2019 by the Controller of Examinations (Acting). On 19th March, 2019, the Deputy Registrar (Acting), University of Calcutta issued a notice by which Dr. Jayeeta Dutta Gupta, Assistant Controller of Examinations, University of Calcutta was entrusted the whole charge of the Office of the Controller of Examinations (Acting) in addition to her normal duties, with retrospective effect from 8th March, 2019, until further orders. This shows that even prior to the order of dismissal dated 20th March, 2019 the University was contemplating the removal of the writ petitioner from service. The impugned letter dated 20th March, 2019 and the decision of the Syndicate dated 20th March, 2019 are thus premeditated and evince prejudice. The impugned letter and resolution explicitly identify the unfinished enquiry which shows no finding of guilt against the petitioner to be the foundation for his dismissal/discharge making it clear that substantive stigma exists here.

It is beyond the cavil of any doubt that the termination of service of the probationer under the rules of his employment or in exercise of contractual right is neither *per se* dismissal nor removal. Without pre-occupying ourselves with the semantics, it can be said that when there is removal, dismissal or discharge of a probationer, there cannot be any doubt that it leads to cessation of an employer-employee relationship.

The discharge or a dismissal of a probationer is not on the same footing as that of a regular permanent employee. The rules of employment are different. However, unfettered rights are bestowed upon an employer in relation to discharge or termination of a probationer. Yet, in the event the order of dismissal is stigmatic, based on allegation of misconduct the law permits a probationer to challenge such order in view of the fact that the letter of termination is in effect a punishment, which the probationer would have to carry throughout his life without an opportunity being given to the probationer to challenge and/or refute the basis of such a stigmatic order. This would be a clear violation of the principles of natural justice, and the law extends a benevolent hand to a probationer suffering such ignominy.

In the instant case, the narration of events and the intemperate language used both in the impugned letter dated 20th March, 2019 and the resolution of the Syndicate dated 20th March, 2019 exhibit a glaring intent to punish and carry a stigma. In this regard, we agree with the following observation and findings of the learned Single Judge at paragraphs 14 to 15 and 18 of the impugned judgment which read:

14. The impugned resolution adopted by the Syndicate on 20th March, 2019 appears to have been adopted since according to the Syndicate the petitioner had "admitted such errors by his letter issued in reply to notice dated 15th June, 2018 issued on to him to explain these laches". However, the records do not reveal that there was any such admission on the part of the petitioner. The Syndicate was of the considered opinion that "the Deputy Controller of Examinations (who alongwith the Controller of

Examinations are responsible in this regard) should have taken utmost care in the matter of finalization of question papers and should have ensured that no discrepancy creeps into such question papers" and that the petitioner "was responsible to know the working of his department and take responsibility for the actions of his subordinate staff". It was also observed and that the petitioner's conduct and attitude does not do justice to the post of Deputy Controller of Examinations of the University and that "as a matter of fact such responsibility and culpability is to be shared with his superior and reporting officer". Question of sharing of such culpability would have occasioned had the petitioner been found guilty in the disciplinary proceeding. The authorities, themselves, abandoned the said proceeding and issued the impugned resolution founded on alleged misconduct which renders the same to be punitive and stigmatic and the same cannot be construed to be an order of simple discharge. The desirability towards issuance of the order of discharge is based on an allegation of misconduct. The same visits the petitioner with evil consequences.

15. Going by the tenor of the impugned resolution it is incomprehensible as to how the same can be construed as termination simpliciter. The form and language of the impugned resolution clearly indicates that it is punitive in nature. In the said resolution it has categorically been stated that "owing to his carelessness and lackadaisical attitude, grave confusion and anomalies crept in the second and third papers which resulted in cancellation of the examinations". The words "carelessness and lackadaisical attitude" cast aspersions upon the petitioner and are stigmatic and as such the impugned resolution cannot be construed to be an order of simple discharge.

18. There is no dispute as regards the proposition of law that the termination of services of a probationer under the rules of his employment or in exercise of contractual right is neither per se dismissal nor removal. However, if the order visits the employee with evil consequences or casts aspersions against his character or

integrity, it would be an order by way of punishment and the Court can certainly interfere. The scope and ambit of the disciplinary proceeding initiated was pertaining to an alleged misconduct and not for determination of suitability of the probationer. The desirability towards issuance of the order of discharge is based on an allegation of misconduct. The intemperate language used in the impugned resolution gives the impression that the petitioner had been discharged by the employer being satisfied about his misconduct without concluding the regular inquiry. On this conclusion, the petitioner would stand reinstated.

However, we agree with the submission made by the learned Advocate General that the University is not bound to extend the period of probation for one full year in view of Section 33(2) of the Act of 1979, which reads as follows:

“A Teacher or an officer or an employee appointed against a permanent vacancy shall be on probation ordinarily for a period of one year from the date of such appointment and such period of probation may, at the discretion of the appropriate authority of the University, be extended for a further period not exceeding one year.”

The discretion to extend the time beyond one year is limited for a further period not exceeding one year, and it appears that the learned Single Judge has overlooked the adverb ‘not’ in arriving at a finding that the service of the writ petitioner could not have been extended for a period six months only. We also find substance in the argument of the learned Advocate General with regard to the reinstatement of the petitioner and payment of full back wages for the period he was not paid the salaries in view of issuance of the impugned resolution dated 20th March, 2019. There cannot be any dispute that the petitioner was out of employment

from 13th March, 2019 till 20th August, 2019. The writ petitioner would be certainly entitled to payment of full back wages for the aforesaid period and not beyond that period in view of his employment on probation in the University of Gour Banga on and from 20th August, 2019. We cannot also ignore that under Section 33(3) of the Act of 1979 read with the letter of appointment of the petitioner, it can be seen that if, at any time during the period of probation, the work of the probationer is found unsatisfactory, the probationer can be discharged by the authority. However, in terms of Section 33(4) read with the letter of appointment he would be entitled for confirmation with effect from the date of his appointment on probation of satisfactory completion of the period of probation. This shall be of the University and to that extent we feel that on completion of period of probation the University has the right to review his performance for his confirmation to the substantive post. Accordingly, we modify the impugned order of the learned Single Judge by directing the University of Calcutta to make payment of salary from 13th March, 2019 till 19th August, 2019 and to consider the petitioner's case for confirmation, if the petitioner is willing to join the said post of Deputy Controller of Examinations, on assessment of his performance during the period of probation, without taking into consideration the charges forming the basis and foundation of the charge-sheet, the impugned letter dated 20th March, 2019 and the resolution of the Syndicate dated 20th March, 2019 respectively. The writ petitioner must convey his willingness for the said post within ten days from date and the appellant University shall take a decision within two weeks thereafter and shall communicate its decision

to the writ petitioner within one week from the date of the decision. The University shall not fill up the vacancy till a final decision is taken in terms of this order. However, in the event, the writ petitioner fails to communicate his willingness within ten days from date the University may proceed to fill up the vacancy in accordance with law.

The appeal succeeds in part. However, there shall be no order of costs.

Urgent Xerox certified copy of this judgment, if applied for, be supplied to the parties on an usual undertaking.

(I agree)

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)