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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14.07.2020

Pronounced on: 04.08.2020

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W.P.(C) 3113/2020 & C.M. APPL. 10813/2020

SAVITA GUPTA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Sunder Khatri,
Advocate with Petitioner in person

versus

INDIA POST PAYMENTS BANK LIMITED (IPPB BOARD)

..... Respondent

Through: Mr. Rajesh Gautam & Mr. Anant
Gautam, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. By this Writ Petition Petitioner impugns the letter dated 27.03.2020 issued by Respondent, whereby her services have been terminated from the post of General Manager (Finance), on the ground of not meeting the mandatory eligibility criteria of having minimum three years experience in Heading the Finance and Accounting Department of a Bank or one level below the Head of Finance and Accounting Department in a Bank.
2. The facts as set out by the Petitioner are that she is a qualified Chartered Accountant and worked with IDBI Bank for about 26 years, since 21.05.1990. Respondent, which is a wholly owned Government of India Undertaking under the Department of Posts, Ministry of Communication, invited applications for various posts in scale VII, in

2016, which included the post of Chief Financial Officer/General Manager (Finance). In response thereto, Petitioner on 14.10.2016 made an online application. The interview was held on 10.11.2016 during which she provided all the documents sought by the Respondent viz., documents relating to Educational Qualifications, detailed Resume, Experience and No Objection Certificates from the erstwhile employer/ IDBI and the latest salary slip. On successful completion of the interview, an Offer Letter dated 16.12.2016 was received by the Petitioner. Petitioner vide letter dated 19.12.2016 sought clarification regarding emoluments etc., payable to her on assuming office to the post of Chief Financial Officer (CFO)/ General Manager (Finance). On receiving a response vide letter dated 26.12.2016 from the Respondent, Petitioner sent her acceptance on 30.12.2016. On 01.03.2017, Petitioner assumed office, after resigning from her previous job in IDBI Bank.

3. As per the terms in Clause 3 of the Offer Letter, period of probation was one year and thus ended in March, 2018. However, Petitioner received no communication regarding confirmation or extension of period of probation for another year. Two years being the maximum period of probation, grievance was raised by the Petitioner against her non-confirmation, but there was no response from the Respondent.

4. After 2½ years of joining the Respondent, letter dated 13.09.2019 was sent by the Respondent seeking clarification regarding Petitioner's Pay Scale in IDBI Bank and its equivalency with the other Public Sector Banks (hereinafter referred to as 'PSBs'), as well as her work experience. Vide letter dated 19.09.2019 Petitioner clarified that she had fulfilled the

eligibility criteria required by the Respondent and had been duly selected by the Selection Committee, followed by exercise of due diligence by the Respondent in scrutiny of her documents, experience and credentials and it was only thereafter that the offer letter was issued to her. No clarification was sought thereafter and Petitioner continued to work, attending to her routine duties.

5. To the utter shock of the Petitioner, during the Nationwide Lockdown on account of COVID-19, services of the Petitioner were terminated vide letter dated 27.03.2020, with immediate effect, invoking Clause 5(a) of the Offer Letter dated 16.12.2016. Termination was on the directions of the Board and on the ground that the Petitioner did not meet the mandatory eligibility criteria of minimum 3 years of experience in Heading the Finance and Accounting Department of a Bank or one level below, at the time of applying for the post with the Respondent.

6. Soon thereafter, Petitioner filed the present Petition challenging the Termination Order. On 13.05.2020, Petition was listed before the Court. After hearing the parties, Court declined to grant a stay of the Termination Order but on account of the prevailing situation because of Pandemic COVID-19, directed Respondent Bank to pay to the landlord, lease amount for the months of April, May and June, 2020 for the premises which had been taken on lease by the Petitioner, as a part of her perks. Payment was without prejudice to the rights of the Respondent and subject to the final outcome of the Writ Petition. With the consent of the parties, the interim order has been extended from time to time and is continuing.

7. Learned Senior Counsel for Petitioner contends that it is incorrect to allege that Petitioner does not have the minimum 3 years experience required as per the Advertisement. IDBI Experience Certificate dated 7.11.2016 mentions the experience in both Finance and Accounts and Central Accounts. Petitioner is a rank holder Chartered Accountant and had joined IDBI as a Management Trainee on 21.05.1990 and was confirmed as Industrial Finance Officer w.e.f. 01.07.1991. IDBI, at that time, was having a staff strength of less than 2000 employees out of which, 70% was the clerical staff. Petitioner was reporting to the Tax Advisor who was Ex-Director General of Income Tax and was on the Board of the IDBI with emoluments equivalent to that of the Chief General Manager Grade. Petitioner was reporting to the Manager on the Administrative Side as there was no General Manager in the Central Accounts, in those days. In the Union Budget of 1991, tax exemption of IDBI was withdrawn and within a few days, Taxation Cell in the Central Accounts Department was formed with 3 Chartered Accountants, including the Petitioner, by IDBI Top Management. Administrative reporting was to the Department Head of Central Accounts who was the Manager. Petitioner was also responsible for finalization of Annual Accounts – Balance Sheets, Profit & Loss Accounts, Notes to Accounts, dealing with Statutory Auditor Firms, supervising inter-office reconciliation, taxation work and re-looking at a whole gamut of policies etc. Petitioner was the only General Manager in Finance and Accounts with more than 75 team members, including In-Charge of Central Accounts Processing Group and In-Charge of Accounts, looking after Annual Accounts and as such, both the In-Charge were directly reporting

to the Petitioner. An additional affidavit was filed by the Petitioner in which the following was stated:-

“7. That as already mentioned in the writ petition, the Petitioner has extensively worked in the Finance and Account Department from May 1991 to August 1993 to successfully makeover from a Tax exempt IDBI for 27 years (IDBI was incorporated in 1964) to a tax compliant entity, which had a direct impact on the Finance and Accounting Department functioning as also on cash flow position due to increased complexity and substantial cash outgo on account of Income tax and interest tax. To facilitate seamless makeover, Ex-Director General of Income Tax –Sh. P.B. Desai was on boarded by IDBI as Chief General manager with petitioner and two other Chartered Accountants reporting to him. The petitioner and those 2 other chartered accountants were also administratively reporting to Dy General Manager- Head of the Finance & Accounts Department at that time.

The functional responsibilities of the Petitioner during this period inter alia included the following:

- (a) Applicability of Income tax provision on IDBI Accounts and its various heads of Income and expenditures in accounts and advise on the same.*
- (b) To ensure that the system of recording expenditure in accounts is modified in line with Income Tax provision to ensure that the same are tax deductible to avoid any disallowance on account of manner of recording of expenditure in the accounts at a later date.*
- (c) Detailed impact report on different heads of accounts was prepared on different segment of IDBI keeping in view the Income Tax and Interest Tax applicability.*
- (d) Advising on switching over from floating provisioning on loan accounting, which is disallowed under*

Income Tax to tax compliant write off and provisioning on loan accounts thereby to determine the overall provision to be made in the accounts.

- (e) The Petitioner, having established and worked on the Accounts of IDBI and making the same tax compliant was also handling finalization of Balance Sheet, Profit & Loss Account, Notes to Accounts and submission of the same to Board of IDBI.*
- (f) Accounts related activities for finalization of Annual Accounts of IDBI in line with RBI guidelines and institute of Chartered Accountants of India and other applicable regulation of Government and dealing with statutory auditors.*
- (g) Facilitated adoption of 'Income Deemed Not to Have Accrued' concept introduced by RBI on loan accounts in the organization and disseminated and imparted knowledge to the field staff across different officers of IDBI.*

8. That on 01.08.2008, the Petitioner became the General Manager in IDBI Bank and worked as General Manager with IDBI Bank till 20.02.2017 before joining the Respondent Bank on 01.03.2017.

9. That from 20.09.2008 to 07.11.2010, the Petitioner worked as General Manager in 'Finance and Accounts' of IDBI Bank dealing inter-alia with the following work:

- (a) Supervision of IDBI Bank Accounts- A Deputy General Manager was in-charge of Accounts, who was directly reporting to the Petitioner. The function involved supervision of preparation of monthly financial report for perusal of Chairman and Managing Director, preparation of quarterly, half yearly and annual financial statement, viz., Balance Sheet, Profit & Loss Account, preparation of Cash*

Flow statement, preparation of Notes to Accounts and compliance with Disclosure requirements of Reserve Bank of India (“RBI”).

- (b) Ensure compliance of RBI guidelines, Accounting Standard of Institute of Chartered Accountant of India, Securities Exchange Board of India (“SEBI”) regulations in preparation and presentation of IDBI Bank’s financial and operational results to Audit Committee of Board of Directors, Board of Directors and Stock Exchanges.*
- (c) Regulatory Reporting: A Deputy General Manager was in-charge of Regulatory Reporting who was reporting to the Petitioner. The function involved submission of financial regulatory reporting to RBI on an ongoing basis.*
- (d) Supervision of handling of Corporate ledger account which was called Central Account Processing Group (“CAPG”). A Deputy General Manager was the in-charge of CAPG, who was directly reporting to the Petitioner.*
- (e) Appointment of statutory auditors for the Bank and seeking their approval for appointment from Audit Committee of Board, Board of Directors, RBI and Institute of Chartered Accountants of India. Dealing with the statutory auditors on regular quarterly audits of accounts.*

Notably, the Petitioner was overseeing a team of more than 75 officials consisting of Assistant General Managers, Managers and Assistant Managers besides 3 (three) Deputy General Managers.”

8. It is also argued that it is not the case of the Respondent that the Experience Certificate has been forged or fabricated by the Petitioner and nor is it the stand of IDBI before the Respondent, in any correspondence, that the Certificate was forged and not issued by the IDBI.

9. It is next contended by Learned Senior Counsel that Petitioner had correctly stated in her Online Application that as on 01.09.2016, she had the requisite 3 years experience. In the Application Form, no space was provided to give details against the condition relating to work experience except to answer in “Yes” or “No”. In Para 11 (ii) of the Recruitment Notice, it was clearly mentioned in “General Instructions” that candidates should satisfy themselves about their eligibility for the post applied for and that IPPB would admit to test all the applicants but the eligibility will be determined only at the time of interview. The argument is that the said Clause in the Advertisement, conclusively puts the onus to determine eligibility of a candidate on the Respondent Bank, at the time of Interview. Petitioner had furnished, as per requirement of the Interview Call Letter dated 03.11.2016, her detailed Resume providing the details of all Departments in which she had worked in IDBI Bank during her 26 years tenure. Experience Certificate was also submitted to the Interview Committee, which comprised of Senior Officers and it was after careful scrutiny of the documents and satisfying themselves on the experience required that the Committee recommended her candidature and she was offered the post. It goes without saying that if the Petitioner was ineligible, she would have been rejected at the outset instead of being recommended for the job.

10. In this context, Learned Senior Counsel for Petitioner further argues that on 26.12.2016, Respondent before confirming the offer of appointment, categorically wrote to the Petitioner that her consolidated pay had been finalized and approved by the Appointing Authority i.e. IPPB Board, after due diligence on her experience and that she was being offered the top of the Pay Scale. On this representation, Petitioner resigned from her previous employment with IDBI Bank and it is not open to the Respondent to even raise the issue that she lacks the minimum experience.

11. Learned Senior Counsel further argues that Petitioner honestly disclosed all facts relating to her past employment, which stood corroborated by Experience Certificate issued by the Bank and even till date, IDBI Bank has not alleged that the letter is false or not issued by them. Reliance is placed on the judgment of Supreme Court in *Avtar Singh vs. Union of India & Ors. [(2016) 8 SCC 471]*, to argue that if certain information is not asked for but is relevant and comes to the knowledge of the employer, the same can be considered in an objective manner, but no action can be taken by alleging suppression or submission of false information as to the facts which were not even asked for.

12. The next contention of the Learned Senior Counsel is that at the time of termination, Petitioner was no longer a probationer as her services stood confirmed prior thereto. The first issue in this regard raised by the Petitioner is that the Recruitment Advertisement qua the post of the Petitioner did not describe a probation period unlike other posts, against which it was applicable and the advertisement specifically mentioned that there would be a probation period. Probation Clause was inserted for the

first time in the Offer Letter and on inquiry by the Petitioner, she was informed that termination will be as per Service Rules of the Respondent. Without prejudice, it is argued that assuming that Petitioner was placed on probation for a period of one year, having joined on 01.03.2017, Probation Period ended on 01.03.2018 and she became due for confirmation. Clause 6.3 of the Service Rules enables the Respondent to extend period of Probation, at its discretion but provides a rider that it will not be extended for more than one year, save for exceptional reasons, to be recorded in writing. No material has come forth on record citing exceptional reasons, in writing, if the period was extended and Petitioner never received any communication about extension of her Probation Period. It is argued that there was no reason, in fact, for extending Probation Period as, during the said period Petitioner's Performance Appraisal was "Outstanding", as reflected from her APAR for the year 2017-2018, in which Petitioner has received an "Outstanding" Final Rating. To add to the argument, Learned Senior Counsel submits that Respondent has admitted that the Standing Operating Procedure for confirmation was delayed up till September 2018, due to which no Officer in Respondent was confirmed. Respondent is a Government of India Undertaking and dealing in confirmation of Officers ostensibly due to delay in approval of SOP only shows inept approach and laxity on their part. Due to the unusual delay in confirmation, Recruitment Advisory Committee (RAC) in its 7th Meeting held on 18.03.2019 approved confirmation of all employees who had completed one year in service, as is evident from the Minutes, part of which is extracted in the Counter Affidavit and shared during the hearing in the Court. The fact that

Petitioner was confirmed is reflected from the Minutes and is substantiated by the fact that Respondent has given Vigilance Clearance to the Petitioner, for her Application for a different post in the Ministry of Finance on 24.05.2019. Board of Respondent in its Meeting dated 27.05.2019, approved the issue of NOC for forwarding the Petitioner's application certifying that no penalty had been imposed on her and there is nothing adverse against her in the Records. Again on 12.06.2019, Respondent certified her Application and forwarded the same to the Ministry of Finance with due clearances. Since Petitioner was confirmed in the Records of Respondent, mere non-issuance of a communication to her in this regard will not take away the factum of confirmation and it cannot be argued by the Respondent that the Petitioner continued to be a Probationer. No doubt the confirmation was subject to background verification, but this would only connote that the antecedents etc. could be verified and in the present case there was nothing against the Petitioner in the background check and this implies that the Petitioner stood confirmed.

13. Learned Senior Counsel contends that once the Petitioner was a confirmed employee, Respondent could not have invoked Clause 5(a) of the Offer Letter to terminate her services. A bare reading of the said Clause reflects that Termination under the said Clause can be resorted to, by giving one month's notice or pay in lieu thereof, without assigning any reasons, only during the period of probation. Since Petitioner was a confirmed employee, the resort to the said Clause was *per se* illegal and the Termination Order deserves to be set aside on this ground alone. Attention of the Court is drawn to Clause 5(b) which specifically

provides that after probation and upon confirmation, services could only be terminated in accordance with IPPB Service Rules.

14. Without prejudice to the said argument, Learned Senior Counsel argues that even assuming for the sake of argument, that the Petitioner was a Probationer, her services could not be terminated without holding an inquiry, as per Rules, giving the Petitioner a chance to prove her case and defend the allegations, by leading evidence. It is argued that law on Termination of Service of a probationer is no longer *res integra*. Courts have repeatedly held that an Order of Termination of a Probationer can be said to be punitive if allegations are the foundation of the cause of action for Termination. There is a difference between ‘motive’ and ‘foundation’. Courts can lift the veil, even though the Order of Termination may be a simple Order of Termination on the face of it, in order to determine whether the allegations are a ‘foundation’ or a ‘motive’ for the action. Thus in any case Respondent could not have invoked Clause 5(a) to terminate the services of the Petitioner.

15. Learned Senior Counsel relies on a recent judgment of the Supreme Court in ***Vijayakumaran C.P.V vs. Central University of Kerala, 2020 SCC OnLine SC 91***, where the Court has drawn a distinction between an order of Termination simplicitor and a stigmatic/punitive order and held that in the latter case, termination will be flawed in case the same has been passed without subjecting the employee to a regular inquiry as per Service Rules. Reliance is placed by the Supreme Court in an earlier Judgement of the Court in ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences [(2002) 1 SCC 520]***, wherein Court laid down judicially evolved tests to determine,

whether in-substance an Order of Termination is punitive. Argument is that the Impugned Order is stigmatic and punitive as it casts aspersions on the Petitioner, though impliedly, that the appointment was without fulfilling eligibility conditions. This, according to the Petitioner, will adversely affect her future prospects and she will be unable to secure any job, despite being a rank holder Chartered Accountant with 30 years of exceptional service, out of which 26 years were with IDBI Bank.

16. Learned Senior Counsel contends that Termination Order, in terms of various judgements on the subject, was clearly founded on an anonymous/pseudonymous complaint received by the Chief Vigilance Officer (CVO) of the Respondent. In fact, Petitioner for the first time, came to know of this from a Note dated 06.01.2020 of the Board Meeting. The Minutes record that there were two pseudonymous complaints, one by Shri Gupta and the second by one Shri Naik, complaining of irregularities in the recruitment of the Petitioner. The Note also refers to these complaints having been forwarded by two offices of the Government of India. Complaints were also notably marked to the CAG, who conducted an audit and issued a Memo on 23.05.2018 to the Respondent. On the basis of a reply by the Respondent, apparently the CAG inquiry is closed. As is evident from the Note of the CVO, Shri Naik denied filing any such complaint. The CVO has no authority to recommend any action on anonymous/pseudonymous complaints. This is clear from reading of Para 2.14 of Chapter II of the Vigilance Manual. This Clause at best gives power to the CVO to look at the violations, if any, in the Rules and Procedures of recruitment and report the same to CVC. It is not open to the CVO to examine the Experience Certificate or

reach a conclusion by comparing and ascertaining the equivalence of scales of IBA and IDBI Bank. Further, the complaint not having been shared with the Petitioner, she was not afforded an opportunity to present her case. But *de hors* these facts, once the starting point is a Vigilance Angle and the inquiry is done to find out the truth of the Complaint and the veracity of experience of Petitioner, this action becomes the foundation for the Termination Order and it becomes punitive. Therefore, Petitioner ought to have been subjected to an inquiry to defend herself and an Order of Termination by invoking Clause 5(a) is illegal and unlawful.

17. It is also argued that the CVO was deputed as a full time CVO of the Respondent on 28.06.2019 and the next two days were holidays, being Saturday and Sunday. On 03.07.2019 itself, a Note was put up by him on the basis of an old anonymous complaint dated 07.06.2018. It is not understood how within less than a week from his joining, he took cognizance of an old complaint and *suo-motu* raised a question mark on the Experience Certificate of the Petitioner.

18. Learned Senior Counsel further contends that action of the Respondent is tainted with malafide which is evident from the fact that even before sending its request through letter dated 17.12.2019 to IDBI Bank, seeking information with regard to the experience of the Petitioner, Board had taken a decision on 17.10.2019 in its 33rd Meeting and had directed initiating appropriate administrative action, amounting to termination. Board had observed that Petitioner had “misrepresented” herself by declaring that she had the requisite experience. The argument is two-fold viz., that the aspersions of misrepresentation make the

impugned order stigmatic upon lifting of the veil and the intent is clearly revealed that, post the decision to terminate, Respondent was looking for material/grounds to strengthen the said decision. Only to take this forward, a letter was written to IDBI Bank seeking information with regard to experience of the Petitioner.

19. With respect to IDBI letter dated 06.01.2020, it is argued that first and foremost, the said letter was never brought to notice of the Petitioner before terminating her employment. If the decision was tilted against the Petitioner on the basis of the contents of this letter, no decision could have been taken till the letter was put to the Petitioner and she had been given a chance to explain the same. Secondly, the letter only answers half the queries raised and does not refer to the experience of the Petitioner during the period 1991-1993, at one level below the Head of Department in Finance and Accounts. A reading of the letter dated 17.12.2019 of the Respondent, in response to which IDBI had sent its letter dated 06.01.2020 shows that Respondent had sought information for the entire profile with IDBI Bank whereas they have selectively answered only the queries at points 'A.' and 'B.' in the second part of the letter. It is significant to note that in the letter sent by IDBI, it has not denied issuance of the Experience Certificate. Petitioner should, therefore, have been given a chance to explain her case qua this letter of IDBI, in a full-fledged inquiry.

20. Learned Senior Counsel lastly seeks to argue that on the directions of Court, Petitioner has filed a detailed Additional Affidavit wherein she has brought out her profile, functions and responsibilities in the Finance and Accounts Department of IDBI and has also annexed thereto, a

detailed Resume which was given to the Interview Board and each of the two documents are a pointer to the fact that Petitioner meets the eligibility criteria of experience as required under the Advertisement. It is also argued that Petitioner had worked as one level below Head of the Department in Finance and Accounts, which was called Central Accounts in IDBI during 1991 to 1993. This experience is reflected in the Experience Certificate given by IDBI. Advertisement nowhere required the experience to be for a particular period and therefore taking the total experience during the entire tenure, between 1991 and 1993 and between 2008 and 2010, experience of the Petitioner is beyond the minimum requirement of three years. It is argued that Petitioner has not specifically indicated the years in the Resume but the nature of her functions/responsibilities were mentioned. Had the Respondent confronted the Petitioner with the IDBI letter dated 06.01.2020 whereby part of the experience is mentioned, Petitioner would have clarified the position. In any case, this is categorically averred in Para 3 of the Writ Petition and there is no denial to the same by the Respondent.

21. Finally, Learned Senior Counsel relies on judgement of Supreme Court in ***Kamal Nayan Mishra vs. State of Madhya Pradesh [(2010) 2 SCC 169]***, where the Court has held that termination without any inquiry is illegal and invalid and deserves to be set aside by directing reinstatement with consequential benefits, reserving the liberty to the employer to initiate disciplinary proceedings.

22. *Per contra*, Learned Counsel for Respondent argues that when the Respondent had called for applications for the post of General Manager (Finance) and CFO, which is the topmost position in the Finance

Department of the Respondent Bank, it was clearly mentioned therein that an experience of minimum 3 years of Heading a Finance and Accounting Department of a Bank or one level below the Head of Department, was a mandatory condition. This clearly implied that the candidate should have held the designated topmost position in the erstwhile Department and one level below implies a person, in the capacity of taking decisions in absence of the Head of Department and not just a person attached to the Head of the Department for any other purpose. Petitioner is interpreting words of the Advertisement to suit her convenience, whereas it is settled law that author of the Advertisement is the best person to judge the meaning and interpretation of the terms of the Advertisement. Reliance is placed on judgement of the Supreme Court in ***Ritu Bhatia vs. Ministry of Civil Supplies, Consumer Affairs and Public Distribution & Ors. (2019) 3 SCC 422*** to strengthen this argument.

23. It is further argued that Respondent Bank received certain complaints alleging that Petitioner did not meet the mandatory requirement of the 3 years experience. Accordingly, CVO by its Note dated 03.07.2019 advised the Bank to review the appointment and take further Administrative action, as deemed fit. The advice was given in view of the powers of the CVO in Para 2.14, Chapter 2 of the Vigilance Manual. Relevant Paras of the Note dated 03.07.2019 are as under:

“3. In view of above, there is no specific cause to warrant a formal enquiry into the complaint. However, one of the duties cast upon the CVO in the category of punitive vigilance functions is as follows: “To monitor and to take up for necessary action any case of recruitment in violation of the laid down rules and procedure and wherever necessary

to report the matter to the Commission” (Para 2.14 Chapter 2 Vigilance Manual 2017).

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5. In the light of our observations about the appointment of Ms. Savita Gupta as General Manager- Finance, as based on available documents, it would be advisable to review the said appointment. Further, administrative action, as deemed fit, may be taken based on the review.”

24. Based on this Respondent vide its letter dated 13.09.2019 sought clarification from the Petitioner regarding her experience and also asked her to furnish documentary evidence, in support thereof. Petitioner, however, did not give any satisfactory reply and instead only responded by stating that eligibility had been assessed at the time of Interview and was not open to being questioned at this stage. On account of this, Respondent was left with no other option but to approach her previous employer IDBI Bank and seek clarification. Through letter dated 17.12.2019, Respondent sought answers to two pointed queries from IDBI, regarding Petitioner’s experience as a Head or one level below the Head in the Finance and Accounting Department and the equivalence of Pay Scale of the post on which the Petitioner was last employed in IDBI, with Scale VI of a PSB. Based on the reply received from the IDBI that Petitioner had not worked as Head and her experience at one level below the Head was less than 3 years, i.e. from 20.09.2008 to 07.11.2010, it was decided by the Board of Directors in the 35th Board Meeting held on 19.02.2020 to terminate Petitioner’s appointment on account of lacking the mandatory eligibility criteria. The decision was taken after detailed examination of the matter and application of mind and based on the

response of IDBI. Petitioner, even at this stage, does not dispute the veracity of the letter written by IDBI, which is evident from the Pleadings on record. It is settled law that once it is found that an employee does not possess the essential eligibility conditions services can be terminated.

25. Learned Counsel draws attention of the Court to Para 13 of the Advertisement, wherein a clear Disclaimer was provided that in case it is detected at any stage of Recruitment that a candidate does not fulfill the eligibility norms or furnishes incorrect or false information or suppresses any material, candidature will stand cancelled. If any of these shortcomings are detected even after appointment, service is liable to be terminated. In light of this Disclaimer, it is not open to Petitioner to even argue that having been selected by the Interview Board, her services are not liable to be terminated, even though it is subsequently discovered that she lacks the essential eligibility conditions.

26. Mr. Gautam, learned Counsel for Respondent, taking the argument forward submits that in the Online Application, against the Columns requiring her to answer if she fulfilled the condition of experience, Petitioner had stated “Yes”. Even against the column requiring to answer if she was working in Scale VI of a PSB or equivalent in a Private Bank, her answer was in the affirmative. Later, it was found that this was an incorrect information and action was taken to terminate her appointment. Learned Counsel also submits that at the end of the Application Form, Petitioner had signed on a ‘Declaration’ that she understood that in the event of any information being found to be untrue/ incorrect at any stage, or if she did not satisfy any eligibility criteria, her candidature was liable

to be cancelled. Mr. Gautam relies on judgement of the Supreme Court in *State of Orissa & Anr. vs. Mamata Mohanty [(2011) 3 SCC 436]*, wherein it was held that appointment of a person lacking eligibility cannot be cured at any stage and the appointment being illegal, the person has no right which it can enforce through a Court. In *Rakesh Kumar Sharma vs. State (NCT of Delhi) & Ors. [(2013) 11 SCC 58]* and before that in *M.S. Patil (Dr.) vs. Gulbarga University & Ors. [(2010) 10 SCC 63]*, Supreme Court has held that such a person cannot claim equity.

27. On the aspect of confirmation of Petitioner, it is argued that Petitioner is misreading the Board Note dated 06.01.2020 and there is no confirmation by the decision dated 18.03.2019, as alleged. It is sought to be explained that the Board Note was in respect of issues relating to non-eligibility of the Petitioner and the clarification sought from her in that regard. Board was apprised that there were complaints received against appointment of the Petitioner, on which the CVO found prima facie that she was not eligible for appointment. Reading of the relevant Para clearly shows that in fact her confirmation was not initiated and guidance of the Board was sought for further course of action. Finally, the Board decided that Order of Termination passed in 33rd Meeting held on 17.10.2019 should not be acted upon and appropriate order will be passed after re-examination of the matter. It was further directed that once a reply was received from IDBI Bank, the same was to be placed before the Board for necessary action. Board directed that till the outcome of the above, Petitioner was not to be confirmed. Insofar as the RAC Meeting held on 18.03.2019 is concerned, Learned Counsel sharing the Minutes of the

Meeting during the hearing, argued that confirmation was subject to due verification process. It is thus wrong for the Petitioner to argue that she had been confirmed by the RAC Meeting of 18.03.2019.

28. Additionally, it is argued that, in law, there is no concept of deemed confirmation and in any case, in the present case, the Rule position as well as terms of the Offer of Appointment clearly provide that in the absence of issuance of a formal Letter of Confirmation, the employee will be on Probation and Extended Probation. Mr. Gautam relies on Para 3 of the Offer of Appointment Letter and Service Rules 6.4 and 6.5 in this regard. Reliance is placed on the judgement of the Supreme Court in *Durgabai Deshmukh Memorial Sr. Sec. School & Ors. vs. J.A.J. Vasu Sena [2019 (11) SCALE 353]* and *Headmaster Lawrence School, Lovedal vs. Jayanti Raghu & Anr. [2012 (4) SCC 793]*.

29. Summing up this argument, it is contended that since Petitioner was not a confirmed employee, she has no right to insist on holding of a Departmental Inquiry, as envisaged in the Service Rules. As far as the argument of the equivalence of pay scale in IDBI and Respondent Bank is concerned, in view of the stipulation in the Advertisement requiring the candidate to be working in Scale VI of PSB or equivalent scale, Learned Counsel for the Respondent points out that IDBI, in its letter dated 06.01.2020, informed the Respondent that Petitioner was a General Manager in Grade 'E', in a hierarchy ranging from Grade 'A' to Grade 'G'. A comparative table of the Grade/Scale Structure brought out by the Respondent in its Counter Affidavit shows that Grade 'E' in IDBI is

equivalent to Scale V in a PSB/ Respondent Bank. This is amply clear and needs no interpretation and thus Petitioner does not satisfy the second condition of eligibility as well.

30. On the action of CVO, Mr. Gautam submits that the CVO had himself observed in his Note that the complaint being pseudonymous, it could not be examined from a Vigilance Angle but in view of the duty cast upon him under the Vigilance Manual, to monitor and take up for necessary action, any violations, in cases of recruitment, he gave the necessary advice. In any case, Division Bench of this Court in ***Union of India vs. Vineet Ohri [2009 SCC OnLine Del 1881]***, has held that in case an anonymous/ pseudonymous complaint contains verifiable details, they can be enquired into.

31. It is finally submitted by Mr. Gautam that the Termination Order is a termination simplicitor and not punitive or stigmatic. Appointment of Petitioner has been terminated merely on account of lacking the eligibility conditions and no inquiry is required to be held. Judgements which mandate an inquiry into the action of a Probationer, where the foundation is a misconduct, are completely distinguishable. The Impugned Order, on a plain reading, reflects no stigma and cannot be a hurdle in way of the Petitioner getting any future employment. He prays that the Termination order be upheld and the present Petition be dismissed.

32. Arguing in Rejoinder, Learned Senior Counsel for Petitioner reiterates the earlier arguments. Additionally it is argued that it is not open to the Respondent to even argue the ineligibility of the Petitioner on

the ground of not meeting the requirement of the Pay Scales. Reason for termination, as reflected from the Termination Order, is allegedly lack of 3 years experience and the Learned Counsel for the Respondent had at the initial stages of arguments conceded that the ground of Pay Scale would not be pressed. It is argued that in view of the settled law that in case allegations or misconduct is the foundation of a Termination Order then the inquiry is a mandate and Clause 5(a) of the offer of appointment cannot be thus invoked.

33. I have heard Learned Senior Counsel for the Petitioner and Learned Counsel for the Respondent.

34. The first issue that arises in the case is whether the Petitioner continued to be a probationer or she was a confirmed employee in terms of the RAC Minutes dated 18.03.2019, prior to the termination. The law on probation and confirmation is no longer *res integra*. It has been held by several Courts repeatedly that a probationer does not at the end of expiry of the probationary period automatically acquire the status of a confirmed employee, unless the Rules under which he is appointed expressly provide for such an eventuality. Even where a maximum period is provided beyond which probation cannot be extended and a probationer continues in the said status beyond the said period or continues beyond the initial period of probation, he does not get confirmed by period ending by mere efflux of time, unless the Rules governing the employment categorically provide so. Law as enunciated in several judgements is that a specific order of confirmation is required to be passed by the employer to give an employee a substantive right to the

post and this would apply with a greater vigour where the Rule governing probation/confirmation provides a mandate of a specific order of confirmation to be passed by the employer, in writing, confirming the employee. In ***State of U.P. v. Akbar Ali Khan, AIR 1966 SC 1842*** Constitution Bench of the Supreme Court had clearly held that an express order of confirmation was necessary to give the employee a substantive right to the post. Relevant Para reads as under:

“6. ...If the order of appointment itself states that at the end of the period of probation, the appointee will stand confirmed 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 case, 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.”

35. In ***State of Punjab vs. Dharam Singh, AIR 1968 SC 1210*** another Constitution Bench of the Supreme Court was analyzing a Rule position which stipulated that the total period of probation shall not exceed 3 years. Court referred to the earlier consistent view of the Supreme Court that when an appointment is made on probation for a specific period and the employee continues after the expiry of the period without a specific order of confirmation, he would be deemed to continue in the post as a

probationer only in the absence of any indication to the contrary in the order of appointment or the Service Rules.

36. Referring to decisions in ***Dharam Singh (supra)*** and ***Shamsher Singh vs. State of Punjab, 1974 (2) SCC 831***, a Three Judge Bench of the Supreme Court in ***High Court of Madhya Pradesh thru. Registrar and Ors. v. Satya Narayan Jhavar, (2001) 7 SCC 161*** held as under:

“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.”

37. In a recent judgement in the case of ***Durgabai (supra)***, Supreme Court was examining an order passed by the Division Bench of the High Court where the High Court had held that under Rule 105 (1) read with First Proviso of the Delhi School Education Rules, 1973, the maximum period of probation being two years, there shall be a deemed confirmation of the services of a probationer who continued in service beyond the maximum period even in the absence of an order of confirmation by the Appointing Authority. Relying on several earlier judgements, some of which have been alluded to above, the Supreme Court in as many words observed that it is only when the Appointing Authority is satisfied with the performance that an order of confirmation may be issued. Rule 105(2) contains an explicit stipulation requiring the issuance of a confirmation order and therefore, a mere continuation of the services of a probationer would not lead to deemed confirmation in service and the issuance of the order of confirmation will give right to a substantive appointment. Relevant Paras read as under:

“46. Admittedly, the appointment letter does not stipulate that the first respondent shall be confirmed upon the expiry of the probationary period. Rule 105(2) stipulates that an order of confirmation may be issued “if the work and conduct of an employee during the period of probation is found to be satisfactory”. Rule 105(2) lays down a condition precedent to the issuance of an order of confirmation. It is only if the appointing authority is satisfied with the performance of the probationer that an order of confirmation may be issued. Rule 105(2) contains an explicit

stipulation requiring the issuance of an order of confirmation by the appointing authority upon its assessment that the performance of the probationer has been satisfactory. The mere continuation of the services of a probationer beyond the period of probation does not lead to a deemed confirmation in service. It is only upon the issuance of an order of confirmation by the appointing authority that probationer is granted substantive appointment in the post.

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51. It emerges from the consistent line of precedent of this Court that where the relevant rule or the appointment letter stipulates a condition precedent to the confirmation of service, there is no deemed confirmation of service merely because the services of a probationer are continued beyond the period of probation. It is only upon the issuance of an order of confirmation that the probationer is granted substantive appointment in that post. Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. The argument advanced by the learned counsel for the first respondent that there is a deemed confirmation upon the continuation of service beyond the expiry of the period of probation is negated by the express language of Rule 105(2). In this view, the continuation of services beyond the period of probation will not entitle the probationer to a deemed confirmation of service. The High Court has erred in holding that there is a deemed confirmation where the services of a probationer are continued beyond the expiry of the probationary period.

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56. In the view that we have taken, the High Court has erred in concluding that the case of the first respondent falls within the second category of cases enumerated in Satya Narayan Jhavar. Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. Admittedly, no order

of confirmation was issued by the appointing authority. The case of the first respondent falls squarely within the third category of cases enumerated in Satya Narayan Jhavar wherein though the rules prescribe a maximum period of probation and the probationer is continued beyond the expiry of the probationary period, the substantive appointment of the probationer is subject to a specific act on the part of the appointing authority of issuing an order of confirmation. In the absence of an order of confirmation, the first respondent did not acquire the status of a confirmed employee.”

38. What thus emerges is that in law there is no deemed confirmation of a probationer. As a General Rule save as expressly provided by a particular Rule, to the contrary, an order of confirmation will be required for the employee to acquire the status of a confirmed employee. Applying the law in the present case, it needs to be first examined if the applicable Rules envisage a specific act by the Respondent, as a pre-requisite to confirmation. The relevant Rules of probation and confirmation are as under:

“A. Service Rules

6. Probation and confirmation: Unless otherwise provided in the terms of appointment or any other agreement or award, the following rules shall govern the probation and confirmation of an Officer:

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6.4 Unless exempted under these rules, every Officer appointed in the Bank’s service will be issued a formal order of confirmation on satisfactory completion of probationary period or the extended period of probation, as

may be applicable. The Officer will be deemed to be on probation until so confirmed in writing.

6.5 An order relating to confirmation or extension of probation will normally be communicated within one month from the date of completion of the probationary period or extended period of probation. Non-compliance with this stipulation will not, however, result in automatic confirmation of the Officer.”

39. A plain reading of the Rules shows that they provide that an officer will be deemed to be in probation until so confirmed in writing. Order relating to confirmation or extension of probation will be communicated within one month from the date of completion of probationary or extended period of probation. Rules further read to state that even though there is no communication of extension of probation within the time stipulated therein, it will not result in automatic confirmation of the officer. Useful it would be at this stage to allude to the offer of appointment of the Petitioner, relevant part of which reads as under:-

“3. Probation and Confirmation:

You shall be placed on probation for a period of one year, during which your performance will be monitored with a view to determining your suitability for confirmation as envisaged and expected for the post you have been employed at. The period of probation may be extended as deemed fit and as per the discretion of the Competent Authority. You shall be issued a formal letter of confirmation on satisfactory completion of probationary period or the extended period of probation, as the case may be. You will be deemed to be on probation until so confirmed in writing.”

40. Petitioner was clearly informed before joining that the probation period may be extended at the discretion of the Competent Authority and that she would be deemed to be on probation until so confirmed in writing. Reading of the Rules juxtaposed with the offer of appointment leaves no doubt that a specific act on the part of the employer was imperative as a pre-requisite and only when the letter of confirmation was issued in writing, Petitioner would have acquired a substantive right to the post as a confirmed employee. In my view, therefore, Petitioner continued as a probationer till she was terminated by the Respondent and there is no force in the submission of the Learned Senior Counsel that the Petitioner was confirmed.

41. Reliance, in my view, on RAC Minutes dated 18.03.2019 cannot inure to the advantage of the Petitioner for two-fold reasons. Firstly, the Minutes do not indicate that Petitioner was confirmed without a rider and to the contrary indicate that the confirmation was subject to background verification and secondly, the Board Notings subsequent thereto dealing with the issue of a termination also note that her confirmation was put in abeyance once the complaints were received. It is admitted by the Petitioner that no letter of confirmation was communicated to her by the Respondent. Examined thus, this issue is decided against the Petitioner and in favour of the Respondent.

42. In view of the finding of the Court that the Petitioner continued as a probationer till she was terminated, the second question that begs an answer is whether the Termination Order was a termination simplicitor or it was a punitive and stigmatic order entailing an inquiry before the

Petitioner could have been terminated. This law also in my view is no longer *res integra* and there is a plethora of judgements which have dealt with the tests to determine whether an order is an order simplicitor or stigmatic.

43. In ***Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, AIR 1980 SC 1896***, a Three Judge Bench of the Supreme Court dealt with the concept of ‘motive’ and ‘foundation’ and held as under:

“The anatomy of a dismissal order is not a mystery, once we agree that that substance, not semblance, governs the decision. Legal criteria is not so slippery that verbal manipulations may outwit the court. Broadly stated, the face is the index to the mind and an order fair on its face may be taken at its face value. But there is more to it than that, because sometimes words are designed to conceal deeds by linguistic engineering. So it is beyond dispute that the form of the order or the language in which it is couched is not conclusive. The court will lift the veil to see the true nature of the order. Many situations arise where courts have been puzzled because the manifest language of the termination order is unequivocal or misleading and dismissals have been dressed up as simple termination. And so, judges have dyed into distinctions between the motive and foundation of the order and a variety of other variations to discover the true effect of an order of termination. Rulings are a maze on this question but, in sum, the conclusion is clear. If two factors coexist, an inference of punishment is reasonable though not inevitable. What are they? If the severance of service is effected, the first condition is fulfilled and if the foundation or causa causans is the servant's misconduct the second is fulfilled. If the basis or foundation of the order of termination is clearly not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and vice versa. These canons run right through the disciplinary

branch of master and servant jurisprudence, both under Article 311 and in other cases including workmen under managements....

Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic process but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The court will find out from other proceedings or documents connected with the formal order of termination what the true ground for termination is. If, thus scrutinize, the order has a punitive flavor in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the services of a delinquent servant, it is a dismissal, even if he had right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal even if full benefits as on simple termination, are given and non-injurious terminology is used. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simplicitor, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is then not the moving factor in the discharge. We need not chase other hypothetical situations here. What is decisive is the plain reason for the discharge, not the strategy of a non-enquiry or clever avoidance of

stigmatizing epithets. If the basis is not misconduct, the order is saved.”

44. In ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others***, (1999) 3 SCC 60, Supreme Court considered and answered the following three questions:

“(i) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?”

(ii) When can an order of termination of a probationer be said to contain an express stigma?

(iii) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?”

45. Question No. (i) was answered by the Supreme Court in the following words:-

“If findings were arrived at an inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations will be bad. But if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

46. Question No. (ii) was answered as follows:

“Thus, it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to judge whether the words employed amounts to stigma or not.”

47. With respect to Question No. (iii) and which is relevant to the controversy in the present case, Supreme Court observed as under :-

“On this point, therefore, we hold that the words amounting to “stigma” need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto and would vitiate the order of termination.”

48. Useful it would be to refer to another Judgement of the Supreme Court in ***Shamsher Singh (supra)*** where the Court emphasized as under:

“No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.”

“The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct

involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside.”

49. In the case of ***Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others, (2015) 15 SCC 151***, the Appellant before the Supreme Court had been appointed pursuant to an Advertisement and thereafter on the recommendations of a Selection Committee. While the Appellant was on probation, a complaint was received by the Vigilance Department of the State Government alleging that his appointment was illegal. Police conducted the inquiry and submitted a report which triggered the issuance of a show cause notice and culminated into the termination of the Appellant. The controversy before the Supreme Court centred around the issues whether the order of termination was stigmatic or not and whether a regular inquiry was required to be conducted prior to the termination. To appreciate the controversy, Supreme Court referred to several judgements on the issue, more particularly, ***Shamsher Singh (supra)*** and ***Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd., (1999) 2 SCC 21***, and held that it was crystal clear that on the basis of a complaint made by Member of Legislative Assembly that the Appellant did not possess the requisite qualification, a report was submitted by the Vigilance Department which eloquently also referred to the conduct and character of the Appellant, which inquiry was behind the back of the Appellant and a stigma has thus been cast. Court held that the allegations made in the Report were such that it could not be accepted that it was termination

simplicitor and thus set aside the order of termination with the relief of reinstatement. Supreme Court also relied on the judgement in ***Chandra Prakash Shahi v. State of U.P., (2000) 5 SCC 152 : 2000 SCC (L&S) 613***, relevant Para of which reads as under:

“29. ‘Motive’ is the moving power which impels action for a definite result, or to put it differently, ‘motive’ is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.”

50. Very recently in 2020, Supreme Court had the occasion to consider the issue yet again in ***Vijayakumaran (supra)***. While reiterating the principles earlier laid down, Supreme Court significantly emphasized that the material which amounts to stigma need not be contained in the Termination Order but could be in any other document referred to in the order. Such reference would inevitably affect the future prospects and must be construed as ex-facie a stigmatic order. Relevant Paras are as under:

“8. Accordingly, the moot question before us is: whether the order dated 30.11.2017 can be regarded as order of termination simplicitor or is ex-facie stigmatic? Going by the

tenor of the stated order, it is incomprehensible as to how the same can be construed as termination simplicitor when it has made the report of the inquiry conducted by the Internal Complaints Committee and the decision of the Executive Council dated 30.11.2017 as the foundation, in addition to the ground of academic performance. Had it been a case of mere unsatisfactory academic performance, the situation would have been entirely different. The stated order not only adverts to the report of the Internal Complaints Committee, but also the decision taken by the Executive Council, which in turn highlights the fact that the appellant had to face an inquiry before the Committee in reference to the allegations of serious misconduct committed by him. Notably, the appellant has been subjected to a formal inquiry before the Committee constituted under statutory regulations to inquire into the allegations bordering on moral turpitude or misconduct committed by the appellant and that inquiry culminated in a finding of guilt against the appellant with recommendation of the Executive Council to proceed against the appellant as per the service rules. In such a situation, it is unfathomable to construe the order as order of termination simplicitor.

9. It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in “any document referred to in the termination order”. Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex-facie stigmatic order of termination. A three-Judge Bench of this Court in Indra Pal Gupta v. Managing Committee, Model Inter College, Thora¹ had occasion to deal with somewhat similar situation. In that case, the order of termination referred to the decision of the Managing Committee and subsequent approval by the competent authority as the basis for termination. The resolution of the Managing Committee in turn referred to a report of the Manager which indicated serious issues and that was made

the basis for the decision by the Committee to terminate probation of the employee concerned. Relying on the aforementioned decision, the Court in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta, observed as follows:—

“32. The next question is whether the reference in the impugned order to the three earlier letters amounts to a stigma if those three letters contained anything in the nature of a stigma even though the order of termination itself did not contain anything offensive.

33. Learned counsel for the appellant relies upon Indra Pal Gupta v. Managing Committee, Model Inter College (1984) 3 SCC 384 decided by a three-Judge Bench of this Court. In that case, the order of termination of probation, which is extracted in the judgment, reads as follows: (SCC p. 386, Para 1)

“With reference to the above (viz. termination of service as Principal), I have to mention that in view of Resolution No. 2 of the Managing Committee dated April 27, 1969 (copy enclosed) and subsequent approval by the D.I.O.S., Bulandshahr, you are hereby informed that your service as Principal of this Institution is terminated....”

Now the copy of the resolution of the Managing Committee appended to the order of termination stated that the report of the Manager was read at the meeting and that the facts contained in the report of the Manager being serious and not in the interests of the institution, that therefore the Committee unanimously resolved to terminate his probation. The report of the Manager was not extracted in the enclosure to the termination order but was extracted in the counter filed in the case and read as follows: (SCC p. 388, Para 3)

“It will be evident from the above that the Principal's stay will not be in the interest of the

Institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e., for termination of his period of probation, too, the approval of the D.I.O.S. will be necessary. Accordingly, any delay in this matter may also be harmful to our interests.

Accordingly, I suggest that instead of taking any serious action, the period of probation of Shri Inder Pal Gupta be terminated without waiting for the period to end."

It was held by Venkataramiah, J. (as he then was) (p. 392) that the letter of termination referred to the resolution of the Managing Committee, that the said resolution was made part of the order as an enclosure and that the resolution in its turn referred to the report of the Manager. A copy of the Manager's report had been filed along with the counter and the said report was the "foundation". Venkataramiah, J. (as he then was) held that the Manager's report contained words amounting to a stigma. The learned Judge said: "This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct ...", that these findings in the Manager's report amounted to a "mark of disgrace or infamy" and that the appellant there was visited with evil consequences. The officer was reinstated with all the benefits of back wages and continuity of service.

34. It will be seen from the above case that the resolution of the Committee was part of the termination order being an enclosure to it. But the

offensive part was not really contained in the order of termination nor in the resolution which was an enclosure to the order of termination but in the Manager's report which was referred to in the enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager's report were the basis for the termination and the said report contained words amounting to a stigma. The termination order was, as stated above, set aside.

35. The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma."

51. Holding that the order was stigmatic, Respondent ought to have subjected the Appellant to a regular inquiry as per Service Rules, Supreme Court quashed the order and directed the reinstatement of the Appellant, granting liberty to the Respondent to hold an inquiry, if so advised.

52. Relying on some of the above-mentioned judgments, a Division Bench of this Court in ***Aditya Beri v. Ministry of Civil Aviation Thr Secretary, LPA 578/2013, decided on 17.08.2017***, set aside the

Termination Order of the Appellant who was a qualified commercial pilot with Air India and had been terminated during probation. The reason that weighed with the Court was that the Termination Order was founded on serious allegations that he had been appointed in an illegal manner conniving with his father who was also a senior employee of the Air India. Counter Affidavit therein had referred to the recommendations of the Chief Vigilance Officer which was the starting point of the process of termination. No chance was given to the Appellant to deal with the allegations and the Court held that the innocuous order of termination was not a termination simplicitor and was in violation of principles of natural justice.

53. The judgements referred to above luminously project that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the causative factor of termination are the 'motive' or 'foundation'. Generally speaking, when a probationer's appointment is terminated, it is because he is unfit for the job whether due to unsatisfactory performance or ineptitude or by a reason of a misconduct and strictly speaking the words of the Termination Order may indicate if the stigma is implicit in it. However, as noticed in several judgements, there could be cases where the order on the face of it may appear innocent or innocuous but could be founded on serious allegations. It is for this reason that the Courts have held that the veil could be lifted to find out if it was founded on misconduct or allegations and, in which case, the law mandates that the Petitioner has to

be subjected to an inquiry and cannot be terminated by a simplicitor order.

54. Analysed on this bedrock, the uncontroverted facts of this case lead me to a conclusion that the termination of the Petitioner is not a termination simplicitor. What leads this Court to this inevitable conclusion are the documents placed by the Respondent on record as well as the averments in the Counter Affidavit. It is undisputed that the trigger was a complaint alleging irregularity in the recruitment of the Petitioner, which though initially was pseudonymous but subsequently the complainant identified himself and claimed protection as a whistle blower. As it emerges from the Note of the CVO, the Complainant later denied lodging the complaint and it remained pseudonymous in nature. Pursuant to the complaint, the CVO who had barely taken over a week before, started his preliminary investigation and rendered a Report/Note advising review of the appointment of the Petitioner and further Administrative action as deemed fit. Report/Note dated 03.07.2019 is on record.

55. In Para 3, CVO observes that he had embarked on the investigation in view of his punitive vigilance functions stipulated in Para 2.14, Chapter II, Vigilance Manual, 2017, which in my view gives a Vigilance complexion to the issue. Respondent has also filed along with the Counter Affidavit a Board Note dated 06.01.2020 which clearly alludes to the Report of the CVO triggered by the pseudonymous complaint dated 07.06.2018 and in fact also refers to another pseudonymous complaint dated 22.03.2018 by one Shri Gupta. Para 3 refers to the complaints

being marked for a CAG Audit. Para 6 reveals that vide letter dated 10.07.2018 Bank sought permission from the CVC for conducting investigation to find out the veracity of facts. Para 6(b) has a reference to a letter dated 18.09.2018 of the Department of Posts seeking comments from the Respondent and also advising that in case CVC permitted internal investigation and if the involvement of any Board level appointee of IPPB is also found, the CVO, IPPB will not conduct investigation any further and the matter would go back to CVO, Department of Posts for further action. It would be significant to mention at this point that in Para 12 of the Note it is mentioned that on examination, the HR Department observed that it seemed that the Petitioner had misrepresented by declaring that she had the requisite experience and on account of this a decision was taken in the Board Meeting held on 17.10.2019 to terminate her services. Yet again in the final observation by the Board, there is a mention of alleged misrepresentation by the Petitioner.

56. The serious allegations of misrepresentation are further accentuated by the stand in the Counter Affidavit filed by the Respondent. In very many places in the Counter Affidavit, it is averred that the Petitioner knowingly and deliberately suppressed her actual experience and submitted incorrect and wrong information in the Application Form. As an illustration, Reply to Ground (D) is extracted hereunder:

“(d) That in reply to the contents of Ground (D), it is submitted that the Petitioner knowingly and deliberately suppressed her “Post qualification Work Experience” and submitted incorrect and wrong information in the Online Application Form to mislead the Respondent bank. The

experience letter submitted by the Petitioner was also not clear and the said experience letter was also submitted by the Petitioner in order to mislead the Respondent Bank, when the Petitioner herself was well aware that she was not fulfilling the criteria of 03 years' experience as prescribed in the Advertisement."

57. Viewed in the aforesaid background, it is evident that the Termination Order was founded on serious allegations of irregular recruitment of the Petitioner, CAG Audit, queries raised by Department of Posts, Investigation by the CVO and alleged misrepresentation and suppression by her. Petitioner was admittedly not subjected to an inquiry giving a fair chance to defend herself. Applying the law on the subject, it is clear that the order is not an order of termination simplicitor but is punitive and in the absence of a regular inquiry deserves to be set aside.

58. Argument of the Respondent that a letter was written to the Petitioner seeking clarification cannot help the Respondent as a letter cannot be a substitute to a full fledged inquiry. The Board Notes indicate that material was collected and used against the Petitioner to arrive at an adverse conclusion against her, behind her back. If confronted and given a chance to lead evidence, more particularly documents of her experience with IDBI bank, there was a possibility that Petitioner could have proved her innocence.

59. There are additional factors which weigh with this Court to come to a conclusion that inquiry ought to have been held before terminating the services of the Petitioner and this is not a simple case of lack of eligibility criteria. Board of the Respondent had in its meeting dated 17.10.2019 taken a decision to terminate the services of the Petitioner,

but, in the meeting dated 06.01.2020, the decision was kept in abeyance. The reason was that the Respondent had through its letter dated 17.12.2019, sought information from the IDBI Bank on the profile of the Petitioner during her tenure at IDBI and had also sought information on the nature of her experience and the pay scale in which she last worked. Interestingly, the IDBI sent a response by its letter dated 06.01.2020. This was a brief letter where they indicated her experience between 20.09.2008 to 07.11.2010 as the General Manager Grade E at one level below the Head of Finance and Accounts Department. This letter was placed before the Board and acting solely on this letter, impugned decision was taken in the Meeting dated 19.02.2020. Relevant Para reads as under:

“The above letter of IDBI dated January 6, 2020 states that Ms. Savita Gupta had worked one level below the Head of Finance and Accounts department in IDBI Bank for a period of 2 years, 1 month and 18 days, which is not as per the eligibility criteria of having experience of heading a Finance and Accounting department or one level below the Head of the Finance and Accounting department in IDBI for minimum period of three years.”

60. It is an admitted case between the parties that this letter of the IDBI was never shared with the Petitioner and she had no opportunity or occasion to respond to its contents. This is in clear violation of principles of natural justice and against the norms of service jurisprudence where an employer relies on a document which becomes the basis of an extreme penalty of termination and is not even communicated to the employee. If this practice is to be accepted as a norm, the caprice of an employer would prevail and service careers of employees would be fossilized.

Respondent sought to argue that Petitioner has not disputed the contents of the IDBI letter. The question that needs an answer is whether sharing the certificate as an 'Annexure' to a Counter Affidavit in a writ petition and expecting the Petitioner to prove her experience based on the contents of the certificate by leading evidence in a writ petition, is compliance with the principles of natural justice and/or the right platform for an employee to refute a document. The answer can only be in the negative.

61. While much has been argued by the Respondent that in case an employee lacks the essential qualification, there is no stopping the employer from taking action of termination and that too at any stage, whenever the fact is discovered. As a proposition of law, this can hardly be disputed and debated. No doubt the employee when recruited is required to meet all the essential qualifications of a post and whether or not there is a Disclaimer in the Advertisement, the right of the employer to take action on discovery, to the contrary, is always preserved. It is also undisputed as a proposition of law that the employee cannot take a stand in defence that he had been selected and therefore, for all times to come, the employer is bound to continue the employee, despite his lacking the eligibility qualification. However, argument of the Petitioner in the present case is slightly different. The argument is that the Petitioner had applied for the post in question pursuant to an Advertisement, where in Para 11(ii) it was categorically stipulated that the Interview Board will determine the eligibility of the candidate. Said Clause is as follows:-

“11. GENERAL INSTRUCTIONS

i. ...

*ii. Candidates should satisfy themselves about their eligibility for the post applied for. **IPPB** would admit to test all the candidates applying for the posts with the requisite fee on the basis of the information furnished in the online application **and shall determine their eligibility only at the time of interview.**”*

62. Petitioner furnished all her documents including a detailed Resume which mentioned her entire job profile in the Finance and Accounts Department of IDBI in the last 26 years. Basis of the claim to Experience was an Experience Certificate issued by the IDBI Bank and was not a self-serving statement of the Petitioner. Pertinent it is to note here that the IDBI Bank at no stage, even while responding through its letter dated 06.01.2020 took a stand that the experience certificate issued earlier was a forged or a fabricated document. The Selection Committee, according to the Petitioner, was comprised of very Senior Members including one Member who had vast knowledge and experience in the field of Banking. It is argued that the Selection Committee keeping in line with the provisions of the Advertisement assessed her eligibility including that of her experience and after satisfying itself recommended her for appointment to one of the top positions in the Banking Sector. In this backdrop the Board neither had the competence nor the expertise to assess her eligibility and that too merely on the basis of a letter of IDBI giving incomplete information of her profile.

63. On repeated questioning by the Court, as to what is the role of the Selection Committee and in case the Selection Committee was

incompetent to assess the experience, why was it so constituted and a Clause incorporated in the Advertisement that the experience will be assessed at the time of interview, but no answer was forthcoming. Respondent significantly has not taken any stand that any Member of the Interview Committee was in connivance with or known to the Petitioner. Court had directed the Respondent to produce the Minutes of the Selection Committee. The same were sent via E-mail and have been perused by the Court but being a confidential document, the same is not being extracted herein.

64. A perusal of the Minutes indicates that the Members of the Committee have given numerical markings to the Petitioner and the overall score is also numerical on a scale of 10 and the Petitioner has been granted a high score. But, what is relevant is that each of the Members of the Committee have separately assessed the Petitioner in different columns, which includes the pen-picture appraisal of technical knowhow etc. and most importantly, there is a specific and separate column of 'experience'. The experience of the petitioner has been examined, analysed and the Members of the Committee have annotated their respective comments observing that she has the requisite experience and given good scores to the Petitioner on that count. Court is taking note of these facts only with a view to analyse if an order of termination simplicitor could have been passed without subjecting the Petitioner to an inquiry, with all these facts and documents in the background.

65. It must be noted at this stage that the experience required for the post in question is as under:

“C. ELIGIBILITY CRITERIA

1. ...

2. JOB SPECIFICATIONS

...

#	Function	Post	Grade	Scale	Job Specification (Age, Qualification and Experience as on 01.09.2016)
1.	...				
2.	...				
3.	Finance	GM (Finance) / Chief Finance Officer	TEGS-VII	VII	... Post Qualification Work Experience: Minimum 18 years of experience is mandatory. (of which) Minimum 3 years of experience heading a finance and accounting department of a bank or one level below the head of a finance and accounting department in a Bank is mandatory. (And) The candidate should at least be working in Scale VI of a PSB or equivalent scale in a Private Bank or similar level in any other organization. ...

66. Petitioner has through her detailed Rejoinder and an Additional Affidavit placed on record her entire experience and profile of functioning in a Finance and Accounting Department in the IDBI Bank. She has also annexed a detailed Resume which was placed before the Interview Board. The categorical stand of the Petitioner is that the nomenclatures, pay scales and the hierarchy in IDBI are different from the Respondent or other PSBs and thus, a superficial analysis after the

complaints were received, has led to a misconception. The Selection Committee with its expertise had in detail examined and compared the functions and responsibilities of the Petitioner and found her eligible.

67. I find force in this submission. It is evident from the documents on record that the hierarchy and nomenclatures etc. in IDBI are different from the other PSBs and cannot be compared without expertise in the field. For this reason the Selection Committee was specifically tasked to determine the eligibility as this was a technical issue. The short cut method adopted by the Respondent to come to a conclusion to the contrary, is clearly in my view illegal and without any basis. Suffice would it be to state that the material on record leads to only one inexorable conclusion that the petitioner could not have been terminated without an inquiry.

68. It was also submitted on behalf of the Petitioner that as per the Advertisement, the experience required was of minimum 3 years and this could be in the entire tenure with the erstwhile employer. There was no restriction to have the experience in any particular period and this fact was admitted by Learned Counsel for Respondent during the arguments. The argument thus is that the Petitioner had worked one level below the Head of Finance between 1991 and 1993 and if this is added with the experience from 2008 to 2010, the total experience is over 3 years. While the Petitioner did not mention the years 1991-1993 in her resume but she had given the details of her functions and responsibilities for the entire tenure and looking at the resume and being satisfied with the experience, the Selection Committee recommended her appointment.

69. I find force even in this argument of the Petitioner. The terms of the Advertisement did not restrict the experience to any period and the experience could be of any period in the erstwhile tenure. Petitioner has taken a categorical stand in the writ petition with respect to her experience between the years 1991 and 1993 and there is no specific denial to the same in the Counter-Affidavit. It is relevant to note that the Respondent had sought information from IDBI about her profile for the entire tenure with IDBI. In response however IDBI only sent the data for the period 2008-2010. Had the Respondent put the Letter to the Petitioner in an inquiry, she may have been in a position to bring forth the complete facts. In this background also, the action of the Respondent in relying on the letter of IDBI, behind the back of the Petitioner and drawing adverse inference, is clearly arbitrary and illegal.

70. I would now deal with the argument of the Respondent that as per the offer of appointment the services of the Petitioner could be terminated during probation by invoking Clause 5(a) which reads as under:-

“5. Termination:

a. Your services with IPPB may be terminated after giving one month notice or payment of emoluments in lieu thereof without assigning any reason during probation at any time during your services with IPPB in the event of

- *Any breach of the conditions mentioned in this letter on your part.*
- *Any incorrect background information furnished by you, such as information relating to your education or past employment.*

- *Suppression of any material information by you.*
- *Any breach of the rules and regulations of IPPB as applicable/ may be made applicable to you from time to time.”*

71. In my view, this argument cannot be sustained in law for very many reasons. Plethora of judgements on the subject have now settled the difference between a termination simplicitor and punitive. Foundation or motive is the test to see whether the order is ex-facie stigmatic and thus in the present case with host of complaints and insinuations, the order is in the teeth of the well settled law requiring a regular inquiry. Secondly, in the case of **Aditya Beri (supra)** Court has quashed punitive termination order in the absence of an inquiry, despite existence of right of termination during probation, under a similar Clause.

72. In view of the above, the Termination Order dated 27.03.2020 being ex-facie stigmatic is set aside and the Respondent is directed to reinstate the Petitioner with immediate effect. It is open to the Respondent to take any further action as it may deem fit in accordance with law. It is made clear that in view of the findings above with regard to status of Petitioner as a probationer, Petitioner will be reinstated as a probationer from the date of her termination. The period for which the Petitioner had remained out of service would be counted as period spent on duty for all purposes, however, the Petitioner is not entitled to back wages. Vide order dated 13.05.2020, this Court had directed the Respondent to pay the Lease amount for the Leased premises hired by the Petitioner as a part of the service conditions and the payment was subject to the outcome of the petition. Since the Petitioner has succeeded, the

Lease amount paid till date by the Respondent will not be recovered from her and hereinafter she would be given accommodation, as per her entitlement.

73. Petition along with the pending application is disposed of in the above terms.

AUGUST 4th, 2020
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JYOTI SINGH, J

