

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 739 OF 2012

1. Shri Sanjay Rane
major, resident of House No.60,
Madlawada, Rawan,
Poriem, Sattari, Goa, 403505 Petitioner

Versus

1. The State of Goa
by Its Secretary (Personnel)
Secretariat, Porvorim, Goa.
2. Director of Agriculture
Directorate of Agriculture
Krishi Bhavan, tonca,
Caranzalem, Goa
3. The Chief Secretary,
Secretariat, Porvorim, Goa
Government of Goa. Respondents

Mr. A. F. Diniz, Senior Advocate with Mr. Ryan Da Piedade Menezes,
Mr. Nigel Fernandes and Ms. Gina Almeida, Advocates for the
Appellants.

Ms. Priyanka Kamat, Additional Government Advocate for the
Respondents No.1 and 3.

**Coram :- M.S. SONAK &
BHARATI DANGRE, JJ.
Reserved on: 2nd March, 2021.
Pronounced on: 12th March, 2021.**

JUDGMENT: (Per BHARATI DANGRE,J)

1. The petitioner, who was appointed as a 'Field Worker' by an order dated 22.06.2009, pursuant to the recommendation of the Departmental Selection Committee on probation for a period of two years, came to be terminated by an order dated 28.05.2012 issued by the Director of Agriculture-Respondent No.2. The said order in form of a notice read as follows:

*No.1/22/962/Per-file/2012 -D.Agr/3 & 3
Government of Goa
Directorate of Agriculture,
Krishi Bhavan,
Tonca, Caranzalem, Goa.*

Dated :- 28/05/2012.

NOTICE

*Notice of termination of service under Rule 5(1) of the
Central Civil Services (Temporary Service) Rules, 1965.
In pursuance of sub-rule (1) of Rule 5 of the Central*

Civil Services (Temporary Service) Rules, 1965, I.S.S.P. Tendulkar, Director of Agriculture hereby give notice to Shri Sanjay B. Rane that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

*Sd/-
(S.S.P. Tendulkar)
Director of Agriculture*

*Station: Tonca, Caranzalem- Goa.
Date : 28/05/2012.*

*To,
Shri Sanjay B. Rane
Field Worker
C/o. Zonal Agricultural Office,
Bicholim- Goa.*

2. The said notice is impugned in the writ petition and relief is sought for quashing and setting aside the same and for reinstating the petitioner in service with all benefits including payment of salary, revision of pay, increments, etc. with continuity in service. As Relief is also sought to pay arrears of amount due and payable.

3. By the order of appointment, the petitioner was appointed as Field Worker in the pay band of ₹4440+7400+1300GP and other allowances, payable from time-to-time and placed in the office of Farm Superintendent, Kalay. The order dated 22.06.2009 reflect that the appointment is made against the newly created posts vide order

No.1/11/Staff/Strength/2009/D.Aagri/574 dated 03.02.2009. The appointment order contained a stipulation to the following effect:" *The appointment is purely on temporary basis. The appointees will be on probation for a period of two years w.e.f. the date they join the duty.*"

Pursuant to the said order of appointment, it is not in dispute that the petitioner joined his duties from 24.06.2009.

4. The submission advanced on behalf of the petitioner is that on expiry of a period of two years, the petitioner ceased to be a temporary employee and he is deemed to be confirmed on the said post of 'Field Worker'. Accordingly, it is the case of the petitioner that his name featured in the list of the seniority of Field Workers in the Director of Agriculture.

On 28/05/2012, the services of the petitioner came to be terminated by the impugned communication and the petitioner submits that though the order appears to be innocuous in nature, it is loathed with penal consequences, since it is not in the form of the order which is determinative of its character but the foundation of the order will have to be necessarily ascertained to judge its true nature. The petitioner was served with a Show Cause Notices subsequent to his deemed confirmation and this according to him is bad in law.

5. With the assistance of the learned Senior Counsel Mr. A.F. Diniz, representing the petitioner we have perused the memorandums issued to the petitioner. On 22/12/2009, a memorandum was issued to the petitioner, alleging that the petitioner had furnished false information in the Attestation Form in connection with verification of his character and antecedent from the District Magistrate. The District Magistrate, North Goa District, Panaji has reported that the petitioner is involved in Crime No.12/1995 registered in Valpoi Police Station for the offence punishable under Sections 143, 147, 148, 323, 504 r/w. 149 of IPC and it is pending for trial in the Court of the Judicial Magistrate, First Class. It is alleged in the said memorandum that the petitioner has furnished false information in the attestation form and a clarification is sought from him as to why his services should not be terminated, on his failure to furnish correct information.

6. The petitioner responded to the said memorandum by stating that the said CR to which a reference was made in the memorandum resulted into a chargesheet being filed and vide Judgment dated 01/09/1997 the petitioner along with other accused persons stands acquitted of all the charges leveled against him. He also gave a detailed explanation about the dispute with his co-owner one Mr. Jivbarao Tanbarao Rane who was in enmity with his family and it he who was instrumental in filing false case against him and his family but

finally he was acquitted of the charges leveled against him and therefore there is no case pending against him. He also annexed the copy of the judgment delivered in the said case by the JMFC, Valpoi dated 01/09/1997. He also invited attention of the authorities to a complaint made by him to the Valpoi Police on 10/10/2009 alleging illegal trespass in the property bearing survey No.62/2 of Village Ravan which was the bone of contention between the parties.

7. Another memorandum was issued to the petitioner by the Deputy Director, (Administration) on 04/07/2011. At this time the petitioner was held to be responsible for violation of the C.C.S. Conduct Rules and the allegation is that he had obtained a gas connection under the GGUY Scheme, which cover a provision for LPG cylinder, exclusively meant for the Below Poverty Line(BPL) families and the allegation against the petitioner is, by giving false information he obtained such connection. Again the petitioner was directed to submit an explanation as to why action under C.C.S. Conduct Rules shall not be initiated against him. Even this time the petitioner submitted his explanation to the said memorandum, wherein he stated that he stood confirmed in the service on 25/06/2011, on completion of his probation period but he has not received any confirmation letter to that effect, though orally he was intimated about the same. He admits that he had applied for the gas connection under GGUY Scheme before being

appointed as a “Field Worker” on a temporary basis. However, after his recruitment he received a letter in form of reminder dated 06/04/2011 from the Project Director and Joint Secretary (RD) regarding refund of amount towards release of gas connection. He took a specific stand in the reply to the Show Cause, that the enquiry as far as the gas connection is at a preliminary stage and since the office of the Project Director and Joint Secretary (RD) has not issued any further letter or intimation as regards the same, the deduction of the said amount should not be done. Further on 11/07/2011 the petitioner preferred an application to the Project Director and Joint Secretary seeking deletion of his name from the list of BPL where he categorically averred that since his name is included in BPL list he has not availed any facility or scheme under the umbrella of BPL.

8. Another memorandum is issued to the petitioner on 23/04/2012, intimating him that the explanation submitted by him is not acceptable as it was noticed that the gas connection was released and accepted by the petitioner after joining Government service and this conduct of the petitioner calls for disciplinary proceedings. The petitioner was therefore directed to show cause why disciplinary action should not be initiated against him and why his services shall not be terminated. The petitioner once again responded by a detailed explanation on 30/04/2012 where he stated that after refund of the

amount of ₹5,305.49 towards release of gas connection from his monthly salary of July,2011, August, 2011 and September,2011, he has made payments to the gas dealer from his personal savings based on consumption as per market rate.

9. One another memorandum was on 23/04/2012, this time alleging that the petitioner is involved in criminal offence under Section 323 of the child abuse/trafficking and the Special Case No.65/2010 is registered and pending in the Children's Court. An explanation was sought from the petitioner within 48 hours. The petitioner on 27/04/2012 sought time to file his response. On 30/04/2012, the petitioner responded and submitted that the Special Case No.65 of 2010 is another instance of vindication by Jivbarao Rane and the complainant in the said case is the wife of brother-in-law of Jivbarao T. Rane who had alleged that the petitioner had thrown mud in the eyes of her daughter named Asmita, who is a minor. He also narrated the progress of the said case wherein the complainant was examined but for the last Five hearings the case did not progress as the victim girl did not appear before the Court to render her evidence. Nothing was heard by the petitioner after his said response and it was only on 28/05/2012, the notice terminating his services on expiry of period of one month was received by him which is the subject matter of the present petition.

10. The impugned order is lambasted on two counts: The foremost being the order which is couched as termination simpliciter by placing reliance on Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965, in punitive in nature on account of the attending circumstances reflected above. The position in law that even a temporary employee is entitled for protection under Article 311, is no more res integra and particularly in the facts of the case, the foundation of the order must be taken into account and the order is clamped as unsustainable, since it is passed without conduct of any enquiry into the alleged charges levelled against the petitioner, which forms the basis/foundation for the termination order. The second ground being, the petitioner is deemed to have been confirmed on expiry of period of two years of probation and hence the order of termination is in the teeth of he being a confirmed employee.

11. The position of law as regards the confirmation on expiry of the period of termination and whether it would admit the situation of automatic or deemed confirmation, would vary upon the wordings of the Rules of recruitment, stipulating a period of probation or in the appointment order. The services of the petitioner are governed by the Rules captioned as 'Goa, Daman and Diu Municipalities Group 'C' & 'D' (Ministerial and non-Ministerial non-Gazetted) posts Recruitment Rules, 1986'. As far as the post of the petitioner, which fall under group

‘D’ and Schedule appended to the Recruitment Rules prescribed period of probation against group ‘D’ to be a period of 2 years. Neither there is a specific provision in the said Rules recognizing the concept of ‘deemed confirmation’ nor there is any power contemplated for extension of period of probation. The Rules do not specify a requirement of a definite act on part of the Appointing Authority before the probation can be confirmed.

12. The law as regards the confirmation of an employee on expiry of period of probation and whether on such a period coming to an end whether an employee is terminated or his probation period gets terminated would depend on the Rules containing a clause for confirmation of services and the consequence thereof. The purpose of probation being to ensure that before the employee attains the status as a confirmed regular employee, the employer is afforded an opportunity to test his performance and if it is found to be satisfactory, it enables the employer to confirm him on the post, the scheme underlined being to judge the ability, suitability and performance of an Officer.

The Seven Judges Bench in case of **Shamsher Singh vs State of Punjab** [1974 2 SCC 834] is a locus classicus, where it dealt with a similar question as to whether the termination during probation could be viewed as punitive action in some cases or always it has to be

considered as a discharge simpliciter during the said period. The Court expressed the view that no abstract proposition can be laid that where the services of a probationer are terminated without saying anything more in the order of termination it can never amount to punishment. If a probationer is discharged on the ground of misconduct or inefficiency or for similar reason without proper enquiry and without affording a reasonable opportunity to show cause, such removal from service will attract Article 311(2) of the Constitution. The constitution Bench also deliberated on the issue whether the probationer can be automatically confirmed on expiry of a period of probation.

Relying upon its earlier decision in case of **State of Punjab v/s. Dharam Singh** (AIR 1968 SC1210), where on completion of period of two years and where the maximum period of probation prescribed was three years, it was held that on expiry of the said period of probation an employee is deserved to be confirmed, the divergence of opinion on the point of automatic or deemed confirmation depending upon the precise wording and stipulations in the Rules has been extensively dealt with by the Apex Court. In the case of **Khazia Mohomad Muzammil v/s. State of Karnataka and other** [2010 8 SCC 155]. The two opinions are clearly expressed in following words.:

“41. In order to analyse the reasoning recorded by the Bench in

Dayaram Dayal we may refer to the following paragraphs

“9. The other line of cases are those 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. A question as to its effect arose before the Constitution Bench in *State of Punjab v. Dharam Singh*. The relevant rule there provided initially for a one-year probation and then for extension thereof subject to a maximum of three years. The petitioner in that case was on probation from 1-10-1957 for one year and was continued beyond the extended period of three years (in all four years) and terminated in 1963 without any departmental enquiry. A Constitution Bench of this Court referred *Sukhbans Singh v. State of Punjab*, *G.S. Ramaswamy v. Inspector General of Police and State of U.P.* *v. Akbar Ali Khan* cases and distinguished the same as cases where the rules did not provide for a maximum period of probation but that if the rule, as in the case before them provided for a maximum, then that was an implication that the officer was not in the position of a probationer after the expiry of the maximum period. The presumption of his continuing as a probationer was negated by the fixation of a maximum time-limit for the extension of probation. The termination after expiry of four years, that is after the maximum period for which probation could be extended, was held to be invalid. This view has been consistently followed in *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*, *M.K. Agarwal v. Gurgaon Gramin Bank and State of Gujarat v. Akhilesh C. Bhargav* which are all cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as

the officer must be deemed to have been confirmed.

10. The decision of the Constitution Bench in State of Punjab v. Dharam Singh was accepted by the seven-Judge Bench in Samsher Singh v. State of Punjab. However it was distinguished on account of a further special provision in the relevant rules applicable in Samsher Singh case. The Rule there provided for an initial period of 2 years of probation and for a further period of one year as the maximum. One of the officers, Ishwar Chand Agarwal in that case completed the initial period of 2 years on 11-11-1967 and the maximum on 11-11-1968, and after completion of total 3 years his services were terminated on 15-12-1969. But still Dharam Singh case was not applied because the Rules contained a special provision for continuation of the probation even beyond the maximum of 3 years. The Explanation to Rule 7(1) stated (see p. 852) that the period of probation shall be deemed extended if a Subordinate Judge is not confirmed on the expiry of his period of probation. The Court held (SCC p. 853) that this provision applied to the extended period of probation. It observed: (Samsher Singh case, SCC para 71)

‘71. ... This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh case and that a probationer is not in fact confirmed till an order of confirmation is made.’

Thus, Samsheer Singh case while it accepted Dharam Singh case is still not covered by that case because of the special Explanation which clearly deemed the probation as continuing beyond the maximum period of probation as long as no confirmation order was passed.

13. Applying the aforesaid test, in absence of a maximum period of probation being prescribed in the Rules, mere continuation of service, beyond period of probation, the petitioner cannot be said as deemed to be confirmed in the post of 'Field Supervisor' as there is no positive act on part of the respondent in confirming him and terminating his period of probation. Hence, we do not agree with Mr. Diniz in his submission that the petitioner stood deemed to be confirmed on expiry of period of probation of two years.

However, at the same time we would advert ourselves to another facet of the matter; whether termination during probation to be viewed as punitive action or it is simpliciter termination. It is trite law even a temporary employee is entitled for protection guaranteed under Article 311(2) and it is permissible for the Court to lift the veil and ascertain the foundation on which the order of termination rests. The form of order is not conclusive on its true nature and when it is noted that the alleged misconduct or negligence is a mere motive for the order of termination of service and it form the very foundation of termination of service of a temporary employee, the Writ Court in exercise of its

power of judicial review would plunge deep and ascertain the foundation of the impugned order. The Hon'ble Apex Court in case of **Chandra Prakash Shahi v/s. State of UP and others** [(2000) 5 SCC 152], reproduced the observation of Justice Krishna Iyer in case of **Samsher Singh versus state of Punjab**.

"Again, could it be that if you summarily pack off a probationer, the order is judicially inscrutable and immune? If you conscientiously seek to satisfy yourself about allegations by some sort of enquiry you get caught in the coils of law, however, harmlessly the order may be phrased? And, so this sphinx-complex has had to give way in later cases. In some cases the rule of guidance has been stated to be the substance of the matter' and the 'foundation' of the order. When does 'motive' trespass into 'foundation'? When do we lift the veil to 'form to touch the 'substance'? When the Course says so. Those Freudian 'frontiers' obviously fail in the work-a-day world....."

Reflecting upon the perplexity surrounding the torrid question involved, where the order of termination was challenged by the appellant and the submission of the State was that he was a temporary employee and therefore his services can be terminated at any time by giving him a one month notice in terms of the Uttar Pradesh Government Service (Termination of services) rules 1975 came to be tested and the very argument came to be rejected. Holding that the relevant Rules appointing the appellant on probation for a period of 2

years and on the period of probation being over and in absence of any regulation prescribing the maximum period beyond which the period of probation cannot be extended, it was held that the permanent status can be acquired only by a means of specific order of confirmation. In para 11 following observation is made:

*“11. This Court in State of Punjab versus Dharam Singh ruled out the proposition of automatic confirmation on completion of the period of probation. This court states that permanent status can be acquired only by a specific order of confirming the employee on the post held by him on probation. To the same effect is the decision in Pratap Singh vs union territory of Chandigarh. In **Municipal Corporation Raipur v/s. Ashok Kumar Mishtra** the same principles were reiterated. In view of the above the contention that the appellant had acquired ‘permanent’ status cannot be accepted. His status was that of the probationer. However, the said decision also deal with another aspect of the matter being whether the probationer is entitled for protection under Article 311(2) and has held as under para 12 and 13:*

12. Now, it is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 311(2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month’s notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions

of such service. The courts can, therefore, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is as innocent as worded. (See: Parshotam Lal Dhingra v. Union of India) It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was “founded” on those factors or other disqualifications.

13. Following the decision of Parshotam Lal Dhingra case this Court in State of Bihar v. Gopi Kishore Prasad held that if the services of a probationer are terminated on the basis of an inquiry into the allegations of misconduct and inefficiency, the order would be punitive. It was pointed out that in the case of a probationer, it is always open to the Government to hold an inquiry merely to assess the merits of the employee to find out whether he was fit to be retained in service and confirmed. In another case relating to a probationer, namely, in State of Orissa v. Ram Narayan Das where the services were governed by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which provided that where the services of a probationer were intended to be terminated either during the period of probation or at the end of that period for any fault or on account of his unsuitability, he would be apprised of the grounds of unsuitability and would also be afforded an opportunity to show cause against it before orders are passed against him, it was held that the termination order

would not become punitive merely because of an antecedent inquiry but the real object or purpose of the inquiry had to be found out whether it was held merely to assess the general unsuitability of the employee or it was held into charges of misconduct or inefficiency etc. In Ranendra Chandra Banerjee v. Union of India which again was a case relating to a probationer, it was held that on account of Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules if the inquiry was held for the limited purpose of finding out whether the employee was fit to be retained or not, the said inquiry would not make the order punitive as the inquiry could not be related to any misconduct of the employee. This view was reiterated in Jagdish Mitter v. Union of India. In Madan Gopal v. State of Punjab the order by which the services of the employee were terminated was an order simpliciter in nature, which was innocuously worded, but it was held by this Court that the form of the order was not decisive and the Court could go behind that order to find out whether it was founded upon the misconduct of the employee.”

14. The petitioner is appointed on a permanent vacancy and came to be served with show cause notices contemplating initiation of disciplinary proceedings under the Service Rules governing him and it even asked him to show the cause as to why his services should not be terminated. The instance is not only one but on three different occasions he was asked to show cause why he should not be proceeded departmentally. On every occasion, the petitioner showed cause, by affording reasons and justification of withdrawing the proposed action by

placing appropriate material on record. Pertinent to note that none of the memoranda / Show Cause Notice were taken ahead and no disciplinary enquiry was initiated but the order of termination was issued. By taking over all view of the circumstances, preceding the order of termination, and being examined in detail, the motive of the respondent came very well to be discerned from the said memoranda. On each occasion, an aspersion was cast on the petitioner, reflecting on his character and integrity and therefore though the order of termination of services appears outwardly to be innocuous, we feel that it is not so. Under the threat that the petitioner would be subjected to disciplinary proceedings and his services are liable to be terminated, he is visited with issuance of show cause notices seeking explanation from him and the memorandum attributed his conduct to be in breach of the Service Rules governing him, but ultimately resulted into termination of his services, which apparently is in the backdrop of three memoranda issued to him. The misconduct alleged to be in violation of the Service Rules form the very foundation of the impugned order on closely scrutinizing the entirety of circumstances preceding or attending the order of termination.

The Seven Judge Bench in case of **Shamsher Singh** (supra) in which the motive and foundation theory is reiterated has clearly held that the question whether an order terminating the services of the temporary employee or of probationer is by way of punishment or not

would depend on the facts and circumstances of each case. The form of the order was held to be not conclusive and even an innocuously worded order which ruined the services of a temporary employee or of a probationer made we found to have been passed on account of serious and grave misconduct in utter violation of Article 311(2) of the Constitution. It is permissible for the Court to determine the true nature of the termination order; whether it is punitive or not. A termination simpliciter, on the ground that an employee was found to be unsuitable or unfit to continue in service and need to weed out such employee from services, may probably justify an innocuously worded order of termination. However, when the termination order though innocuously worded as its framework is based on suspecting the character and integrity of an employee and indicate his unsuitability for being retained in service and an attempt is made to ascertain the definable material by issuing a show cause, then such a termination order cannot be held merely under the cloak of 'Termination simpliciter'. The memorandum issued to the petitioner alleging act of misconduct, dispel the submission that the impugned order is 'simpliciter termination' of a probationer. The said order is punitive in nature and cannot be sustained in absence of the adhering to the procedure for conducting an enquiry contemplated under Article 311(2) of the Constitution. The protection under Article 311(2) cannot be evaded by saying that in a set of Rules

that a particular consequence is not a punishment or any particular kind of action is not intended to operate as a penalty. It does not matter whether the evil consequences are one of the penalties prescribed by the rules or not the real test to be applied is in fact it does ensue as a consequence of the order made. The surrounding circumstances clearly demonstrate that the respondent no.2, without proceeding and inquiring into the alleged misconduct of the petitioner has chosen a shortcut to put an end to his services by issuing one month's notice and this according to us is a clear infraction of the protection available even to a temporary employee, which the petitioner is and without going into the controversy whether the petitioner is a confirmed employee or not, the benefit must go to the petitioner.

15. Pertinent to note that the petitioner has preferred an appeal against the order of his termination to the Chief Secretary, Government of Goa. The said appeal was dismissed by an order dated 17/10/2012. Relying upon Rule 5(1) of the C.C.S. (Temporary Service) Rules, it is held that there is no necessity to hold an enquiry or any reasons to be given for termination of the services of the Government servant. The Appellate Authority proceeded to examine whether the petitioner is a temporary Government servant or a permanent Government servant and remarked upon his conduct in light of the memorandum issued to him, as regards he availing some benefits available to BPL category and a

conclusion is derived that he is unfit to become a permanent Government servant. Further reference is also made to the vigilance enquiry to the effect that the petitioner is facing criminal proceedings pending in the Children's Court and this fact has not been revealed. As a cumulative effect the Appellate Authority held that he did not deserve to be a Government servant and, therefore, his services are liable to be terminated under Rule 5(1) of C.C.S. (Temporary Service) Rules. The so called innocuous termination order stands therefore exposed by the Appellate Authority and it is the conduct of the petitioner which according to the Appellate Authority did not deserve him a status as a permanent Government servant and that is why his services has been put to an end and he has not been confirmed as a permanent Government servant is what the Appellate Authority says. In support of this stand a detailed affidavit is also placed on record on behalf of the respondent No.2 justifying its action in the backdrop of Rule 5(1) of C.C.S. (Temporary Service) Rules. The affidavit also reflects upon the power of the Government to assess the competence and proceed to state that the petitioner cannot equate himself as a permanent employee of the State Government as no specific order is issued in his favour, converting him into a confirmed employee. Since, he is not a Government servant it is stated that the benefit of clause (2) of Article 311 cannot be conferred on him. We find the said reason to be absolutely hallow, as the appointment

of the petitioner was on a temporary basis but against a permanent vacancy and a testing time was prescribed to be two years when he was kept on period of probation. On completion of the said period it was always open for the respondent to pack him off and send him back if by observing his conduct it was found to be unsatisfactory. However, on expiry of period of probation in absence of any order confirming him, the memorandum came to be issued to him alleging misconduct and seeking an explanation from him but without preceding further conducting an enquiry into the said allegations. The termination order issued therefore cannot be sustained as the petitioner, a temporary employee is also entitled for the protection under Article 311(2).

16. For the reasons recorded above, the impugned order dated 28/05/2012 as well as the order passed by the Appellate Authority dated 17/10/2012 are liable to be quashed and set aside and the petitioner deserves to be reinstated in the post of 'field worker' with immediate effect. Though we have held that the termination of the petitioner was a punitive one and not termination simpliciter on completion of his period of probation and he is entitled to be reinstated, on the principle of "no work no pay", we hold him entitled for 50% of the back wages from the date of his termination till the date of his reinstatement along with the benefit of continuity of service and other consequential benefits flowing such continuous service. The order as regards payment of back

wages should be complied within a period of 8 weeks from today. No order as to costs. The Writ Petition is partly allowed. Rule is made absolute in the aforesaid terms.

BHARATI DANGRE,J.

M.S. SONAK,J .

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