

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 2096 of 2017 (O&M)

Reserved on:29.08.2022

Pronounced on : 09.09.2022

State of Haryana and others

---Appellants

versus

Suresh Punia

---Respondent

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

**Present: Mr. Hitesh Pandit, Addl. A.G.Haryana
for the appellants-State**

**Mr. R.K.Malik, Senior Advocate with
Mr. Aditya Jain, Advocate
for the respondent**

JAGMOHAN BANSAL, J.

1. Through the instant appeal under Clause X of the Letters Patent Act, 1865, the appellant is seeking quashing of order dated 11.05.2017 passed by learned Single Judge of this Court in C.W.P. No. 7130 of 2015 whereby the learned Single Judge has allowed the writ petition of the respondent-Suresh Punia.

2. Before dwelling into facts, it would be apt to notice that it is a second round of litigation. The respondent assailing termination order dated 19.03.2008 (Annexure P-6) preferred C.W.P. No.6982 of 2008 which came up for consideration before Co-ordinate Bench of this Court and was dismissed as withdrawn vide order dated 07.07.2008 (Annexure P-7).

3. The facts emerging from record and arguments of both sides which launched the litigative rocket are that the respondent was appointed as Junior Engineer vide order dated 18.10.2006 (Annexure P-1). Para 2 of the appointment letter reads as under:-

“You will be on probation for a period of two years from the date of joining. In case your work and conduct is not found satisfactory during the period of probation, your services will liable to be terminated without giving any notice or pay in lieu thereof.”

In para 3 of the aforesaid appointment letter, it was further made clear that appointment is purely temporary.

The respondent sought permission from competent authority and appeared in departmental examination held from 26.10.2007 to 28.10.2007. The appellant-State received a complaint pointing out that respondent has not actually appeared in the exam and it is a case of impersonation. Pursuant to complaint, vide letter dated 14.01.2008 (Annexure P-3), the respondent was called upon to appear before the Executive Engineer, Vigilance Division Hisar on 14.01.2008 to tender his statement. The respondent filed reply dated 14.01.2008 submitting that he has personally written all the papers in his own handwriting and nobody had appeared on his behalf. The appointing authority of Respondent was Engineering in Chief and Financial Commissioner exercising power of Government was appellate authority, however vide letter dated 10.03.2008 the respondent was asked to appear before the Financial Commissioner & Principal Secretary to Government of Haryana Irrigation

Department, Chandigarh on 19.03.2008. The respondent appeared before the Financial Commissioner and made his submissions. The appellant-State vide order dated 19.03.2008 terminated services of the respondent. The termination order was passed without conducting regular inquiry though Respondent was granted opportunity of personal hearing. The termination order reads as below:

“The Governor of Haryana hereby orders to terminate the service of Sh. Suresh Punia S/o Shri S.R.Punia, Junior Engineer (Civil), under probation, resident of House No. 1, Arya Lane, B/H Jawa Hospital, Tosham Road, Sector-13, Hisar with immediate effect.”

4. The respondent preferred C.W.P. No. 6982 of 2008 before this Court assailing order dated 19.03.2008 whereby services of respondent were terminated. The matter came up for consideration before a Co-ordinate Division Bench of this Court which vide order dated 07.07.2008 dismissed the aforesaid petition as withdrawn, however, the respondent was granted liberty to file a representation against order dated 19.03.2008. The order dated 7.7.2008 passed by this court reads as under:

“After arguing for some time, counsel for the petitioner wishes to withdraw the writ petition with liberty to file a representation against order dated 19.03.2008 (Annexure P-6).

Liberty granted. Dismissed as withdrawn.”

5. As per Rule 9 of HCS (P&A) Rules, 1987 no appeal is maintainable if termination order is passed by Government, thus, the respondent could not file appeal because termination order itself was

passed by Government. Left with no other remedy, the Respondent filed representation before the Government which vide order dated 01.01.2010 (Annexure P-8) rejected representation of the respondent holding that competent authority has found no merit in the representation of the respondent. The respondent feeling aggrieved from orders dated 19.03.2008 and 01.01.2010 made a Memorial before the Governor of Haryana. Relevant extracts from the said Memorial are as under:-

“That thereafter the memorialist received a letter No. 1310-12/EN-I/HSR/2008 dated 10.03.2008 from Superintending Engineer, Vigilance Rohtak vide which the memorialist was asked to appear before the Financial Commissioner & Principal Secretary to Govt. Haryana, Irrigation Department, Chandigarh on 19.03.2008 whereas, the memorialist appeared before the FC&PS Haryana ID Chandigarh at 4.30 p.m. on 19.03.2008 from the memorialist was give to understand that the memorialist had been alleged for the irregularity in handwriting in respect of the two papers held on 28.10.2007 namely (i) Irrigation manual of Order and PWD Code paper and (ii) Duie's settlement Manual Paper 'C'. It is stated that during the hearing before the FC&PS the memorialist fully justified that he himself attempted the above stated paper with his own handwriting and the proof of the same had been very much obvious that the memorialist had himself appeared in the examination in these two papers and had signed the attendance sheet, which fact can be tallied at the stage while it was indicated to him during hearing that the doubt in hand writing had been created from the facts that in one paper the name of the memorialist had been

written on the separate sheet as Suresh Kumar without Poonia with date of his birth as 23.12.1981 while in respect of the other papers held on 28.10.2008, the date of birth has been indicated/wrongly as 23.03.1983 but the name of the memorialist has been written as Suresh Kumar Poonia the FC&PS had thereupon formed the view that in the case of the memorialist and fair means in the examination had been adopted by him. Whereas the fact had been that which the memorialist explained before the FC&PS is that no unfair means were undertaken by him or else he could not have failed in the examinations and that a possibility might had been so that my papers might had been placed by the official conducted the examination for their own safety they might had done the mischief or exchange the same or might had committed the discrepancies in the co-relating the papers with original answer books.”

6. The Governor of Haryana vide order dated 15.07.2014 rejected Memorial of the respondent holding that Memorialist was heard in person on 24.09.2012 and during the course of personal hearing he has not stated any new points/facts and only reiterated version already on record.

7. On the one hand, the department looked into the allegations which led to the termination of respondent as well as dismissal of appeal by Competent Authority and on the other hand, FIR No. 464 dated 03.07.2009 was registered under Section 419 of the Indian Penal Code against respondent at Police Station, Civil Lines, Karnal. The police conducted preliminary investigation and thereafter sought legal opinion from Deputy District Attorney, D.P.O. Karnal who in its report concluded that no criminal action should be

taken against respondent- Suresh Punia, however, he found that departmental enquiry is based on different modes/footing but the criminal action needs strict proof against the accused.

8. Police filed its report dated 04.04.2011 as untraced before Learned Chief Judicial Magistrate, Karnal who vide order dated 08.09.2012 accepted the same. The relevant extracts of police report dated 04.04.2011 are as below:-

“.....During that copy of report of inquiry conducted by department and answer sheet and signature sheet of candidates was obtained. The statement of duty supervisor and other employees appointed examination centre were taken. Signature sheet and the answer sheet written by Suresh Punia was sent to FSL, Madhuban and opinion of analyst was taken. As per the FSL, Madhuban report, the signature on the attendance sheet were found of Sh. Suresh Punia and the answer sheet No. 167 and 237 were also found written by Suresh Punia in his handwriting. Sheet No. 184 and 247 was found different. But the statements of duty Supervisor appointed on Examination Centre from 26.10.2007 to 28.10.2007 were taken. As per that no case of impersonation or copy was registered in the examination centre during that period. Thereafter, legal opinion was sought who opined as, I opined that this case may be sent untraced and no criminal action should be taken against the Suresh Punia at stage as per the evidence collected by the I.O. The case has become very old. No evidence has been adduced against accused Suresh Punia on the basis of which he may be arrested. No information could be traced against other accused. If in future any information is received, inquiry will, be complied with. The report is

submitted for your kind information.”

9. The respondent after losing before all the departmental authorities preferred C.W.P. No. 7130 of 2015 before this Court which came up for consideration before learned Single Judge who vide order dated 11.05.2017 ordered to set aside termination order dated 19.03.2008 as well as subsequent orders. Learned Single Judge primarily allowed petition on the ground that termination order amounts to stigmatic order and it was not preceded by regular enquiry as contemplated under Article 311(2) of the Constitution of India (in short “COI”). It was further directed that the appellant-State shall regulate the intervening period for service and monetary benefits in accordance with law.

10. Feeling aggrieved from the order of learned Single Judge, the appellant-State has preferred instant appeal before this Court.

11. Learned State counsel contended that filing of untraced report before trial Court does not exonerate the respondent from allegations substantiated on account of a complaint received. The respondent was on probation and termination order was a simpliciter order and not a stigmatic, thus no regular enquiry was necessary. The Government has right to terminate services of a probationer if his services or conduct is not found satisfactory. The respondent was on probation and higher degree of conduct was expected from him whereas he was found involved in impersonation. There is no dispute that handwriting of two papers is different from other papers and it is highly improbable and impossible that handwriting of one person can altogether be different in different papers. The fact that

respondent has failed in two or three papers out of four papers where he allegedly appeared does not make any difference because it is not necessary that a person who had written paper on behalf of respondent must be quite competent and able to cut the ice. It is well known fact that in spite of well preparation, a candidate is not found able to crack the exam and thus, it cannot be concluded that respondent himself appeared as he was declared fail. Learned counsel in support of his contention relied upon judgment of Hon'ble Supreme Court **Chaitanya Prakash and another Vs. H. Omkarappa (2010) 2 SCC 623**. Learned State counsel produced photocopies of the answer sheets allegedly written by the respondent.

12. Per contra, Mr. R.K.Malik, learned Senior Counsel appearing for the respondent vehemently contended that termination order and subsequent orders were passed in gross violation of principles of natural justice and mandate of Article 311(2) of the COI. The appellant-State was duty bound to conduct proper enquiry and had there been proper enquiry, the respondent would have proved that he had actually appeared in all the papers. In support of his contention learned Senior counsel relied upon judgments of Hon'ble Supreme Court in **'State Bank of India and others Vs. Palak Modi and another 2013 (3) SCC 607, Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta, 1999 (3) SCC 60, Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna Bihar and others, 2015 (9) JT 363, Anoop Jaiswal Vs. Government of India and**

another, 1984(2) SCC 369, Amar Kumar Vs. State of Bihar and others, 2013(4) PLJR 269, Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank and others 1995 (2) SCC 474, Electronics Corporation of India Vs. G. Muralidhar, 2001 (10) SCC 43.

13. We have perused the record and heard arguments of both sides. We find that following questions arise for our consideration:

- i) Whether writ petition was maintainable when earlier petition qua same termination order stood dismissed by co-ordinate Division Bench of this court?
- ii) Whether order of termination of services of respondent deserves to be set aside as criminal proceedings stands dropped?
- lii) Whether termination order and subsequent orders were passed in compliance or violation of Article 311(2) of the COI?

14. The conceded position emerging from arguments and record of the case is that the respondent was appointed on 18.10.2006 on probation for a period of two years. The respondent was required to clear departmental exam; the respondent appeared in four out of six papers conducted from 26.10.2007 to 28.10.2007 though he sought leave to appear in all the papers; on the basis of complaint, the matter was enquired into against the respondent who was granted opportunity to file representation and was given personal hearing; as per report dated 06.05.2010 of Forensic Science Laboratory, Madhuban Karnal, two answer sheets bearing

No. 167 and 237 were written by one person whereas answer sheets bearing No. 184 and 247 were written in different handwriting means by a different person; the respondent was on probation for a period of two years and as per appointment letter services of respondent could be terminated without giving any notice in case work and conduct is found unsatisfactory; police filed untraced report which was accepted by learned Chief Judicial Magistrate, Karnal.

Question No. 1: Whether writ petition was maintainable when earlier petition qua same termination order stood dismissed?

15. The petitioner through CWP No 6982 of 2008 challenged termination order dated 19.03.2008. A Co-ordinate Division Bench of this Court vide order dated 07.07.2008 dismissed the aforesaid writ petition with liberty to file representation against order dated 19.03.2008. The writ petitioner vide C.W.P. No. 7130 of 2015 assailed the very same order along with subsequent orders which were based on the representation of the respondent/writ petitioner. The dismissal of writ petition by Co-ordinate Bench even with liberty to file representation amounts to finality of dispute qua termination order. In view of the principle of constructive res judicata which is also applicable to writ proceedings, the respondent was precluded from assailing the termination order dated 19.03.2008 again. Learned Single Judge has not considered this aspect, thus, the present appeal deserves to be allowed on this sole ground.

Question No. 2: Whether order of termination of services of respondent deserves to be set aside as criminal

proceedings stand dropped?

In view of our findings qua question No.(1), though the present appeal may be allowed yet we deem it appropriate to deal with other issues.

16. Before adjudicating aforesaid question, it would be appropriate to have bird's eye view of enunciation of law on topic by Hon'ble Supreme Court.

In **Nelson Motis v. Union of India (1992) 4 SCC 711**, the Supreme Court held that the disciplinary proceedings can be legally continued even where the employee is acquitted in a criminal case as the nature and proof required in a criminal case are different from those in the departmental proceedings. The Court observed:

“5. So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. *Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject-matter of the criminal case.*”

In **M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3**

SCC 679 after adverting with its previous enunciation of law, in Para 22 laid down guidelines with respect to stay of department proceeding when criminal proceedings on the same set of allegations are pending before competent court. The appellant therein was acquitted in criminal trial, however in disciplinary proceedings he was dismissed from service. The order of dismissal was passed ex-parte and appellant was not given subsistence allowance during the period of suspension. The Supreme Court held:

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, “the raid conducted at the appellant's residence and recovery of incriminating articles therefrom”. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where

the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

By majority a three judge bench of the Supreme Court in **Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581**, while dealing with outcome of departmental vis a vis criminal proceeding has concluded:

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court

of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In **K.G. Premshanker (2002) 8 SCC 87** a three-Judge Bench considered the effect of the decision of the civil court on the criminal proceedings and initiation of civil and criminal proceedings against the same person belonging to the same cause. The following discussion and conclusion are relevant: (SCC pp. 97-98, paras 30-34)

“30. What emerges from the aforesaid discussion is—(1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of *res judicata* may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil

court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. ...

32. In the present case, the decision rendered by the Constitution Bench in *M.S. Sheriff case* [*M.S. Sheriff v. State of Madras*, AIR 1954 SC 397 : 1954 Cri LJ 1019] would be binding, wherein it has been specifically held that no hard-and-fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages

‘such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages’.

33. Hence, the observation made by this Court in *V.M. Shah case* [*V.M. Shah v. State of Maharashtra*, (1995) 5 SCC 767 : 1995 SCC (Cri) 1077] that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in *Karam Chand case* [*Karam Chand Ganga Prasad v. Union of India*, (1970) 3 SCC 694] are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the

Constitution Bench in *M.S. Sheriff case* [*M.S. Sheriff v. State of Madras*, AIR 1954 SC 397 : 1954 Cri LJ 1019] as well as Sections 40 to 43 of the Evidence Act.

34. In the present case, after remand by the High Court, civil proceedings as well as criminal proceedings are required to be decided on the evidence, which may be brought on record by the parties.”

In **Iqbal Singh Marwah (2005) 4 SCC 370**, about the binding nature of the decision in criminal case in respect of the same issue, Hon'ble Supreme Court has held: (SCC pp. 389-90, para 32)

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings is entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.”

17. In the case in hand, on the basis of a complaint the issue was looked into in January' 2008 which culminated into termination order dated 19.03.2008. The FIR was registered on 03.07.2009 which culminated into untraced report means there was no trial and acquittal on merits. The police authorities on the basis of opinion of Deputy District Attorney concluded that respondent is not beneficiary and they are unable to find out the person who had written two out of

four answer sheets. We have seen all the four answer sheets during the course of arguments and find that apparently two papers are written in one handwriting whereas other two are written in different handwriting. There may be minor difference in signatures but there cannot be difference in handwriting especially when papers are written within a span of two days. It is not a case of multiple choice papers whereas answers are subjective thus, handwriting of one person cannot be different qua different papers, written within span of 2-3 days. Hon'ble Supreme Court in aforesaid judgments has clearly held that civil/departmental proceedings are independent from criminal proceedings. If departmental proceedings are dropped, it has bearing upon criminal proceedings especially when departmental proceedings are dropped on merits and not technical grounds. The criminal proceedings may affect departmental/civil proceedings where both the proceedings are based upon same set of allegations and same set of evidences/witnesses. If criminal proceedings are dropped after complete trial and there is honourable acquittal, the departmental proceedings which are based upon same set of allegations and witnesses deserve to be dropped. However, mere dropping of criminal proceedings on technical grounds or benefit of doubt, cannot mean that the employee can ask for reinstatement on that basis.

In view of above discussion, we hold that non-filing of police report or filing of police report as untraced would not vitiate the action of the respondents in terminating the services of the employee during the period of probation.

Question No. 3: Whether termination order and subsequent orders were passed in compliance of Article 311(2) of the COI?

18. Learned Senior counsel has cited various judgments as quoted hereinbefore. The common thread running through all the judgments cited by learned counsel is that an employee whether temporary (probationer) or permanent is entitled to protection guaranteed by Article 311(2) of the COI. In all the judgments, it has been held that an employee before termination must be confronted with adverse material and opportunity of hearing should be granted. The protection guaranteed by Article 311(2) is a facet of principles of natural justice. A temporary servant is also entitled to protection of Article 311(2) in the same manner as permanent servant if the Government takes action against him and seeks to impose any one of three punishments i.e. dismissal, removal or reduction in rank. In case of dismissal, it would be necessary to have a formal departmental enquiry and an order terminating services must be based upon findings of the enquiry. Though learned Senior counsel has cited seven judgments yet it would be appropriate to look at findings recorded in **State Bank of India and others vs. Palak Modi and another 2013(3) SCC 607** as ratio and law laid down by Hon'ble Court in all the cases is identical. The Hon'ble Supreme Court in **Palak Modi's case (supra)** has held that an order of termination is impermissible if it is not preceded by an enquiry involving the probationer. The relevant paragraphs are reproduced as below:-

“32. A combined reading of Rules 15(1) and 16 and

paragraph 5 of the conditions of appointment makes it clear that a person appointed as a Probationary Officer remains on probation for a minimum period of two years at the end of which he is entitled to be confirmed if the competent authority is of the opinion that he has satisfactorily completed the training in any institution to which he may have been deputed and the in- service training in the Bank. The Probationary Officer can also be subjected to screening for judging his merit and suitability. If the Probationary Officer fails to satisfactorily complete the training(s) or fails to pass the screening test or his service is not satisfactory, then the Bank can extend the period of probation by a further period of which the outer limit is one year. In a given case, the competent authority can, if it is of the opinion that the Probationary Officer is not fit for confirmation, terminate his service by one month's notice or payment of one month's emoluments.

33. It is thus evident that satisfactory performance during the period of probation, successful completion of training(s) and passing of the test conducted by the Bank for judging his suitability for the post constitute the touchstone for his confirmation.

37. The use of unfair means in the evaluation test/confirmation test held by the Bank certainly constitutes a misconduct. The Bank itself had treated such an act to be a misconduct (paragraph 10 of advertisement dated 1.7.2008). It is not in dispute that the services of the private respondents were not terminated on the ground that there was any deficiency or shortcoming in their work or performance during probation or that they had failed to satisfactorily complete the training or had failed to secure the qualifying marks in the test held on 27.2.2011. As a matter of fact, the note prepared by the Deputy General

Manager, which was approved by the General Manager makes it crystal clear that the decision to dispense with the services of the private respondents was taken solely on the ground that they were guilty of using unfair means in the test held on 27.2.2011. To put it differently, the foundation of the action taken by the General Manager was the accusation that while appearing in the objective test, the private respondents had resorted to copying. IBPS had relied upon the analysis made by the computer and sent report to the Bank that 18 candidates were suspected to have used unfair means. The concerned authority then sent for the chart of seating arrangement and treated the same as a piece of evidence for coming to the conclusion that the private respondents had indeed used unfair means in the examination. This exercise was not preceded by an inquiry involving the private respondents and no opportunity was given to them to defend themselves against the charge of use of unfair means. In other words, they were condemned unheard which, in our considered view, was legally impermissible.

46. In the result, the appeals are dismissed. The appellants shall reinstate the private respondents within 15 days of the production of copy of this judgment before respondent No.3 and give them all consequential benefits like pay, allowances, etc. within next one month. However, it is made clear that this judgment shall not preclude the competent authority from taking fresh decision in the matter of confirmation of the private respondents after giving them effective opportunity of hearing against the allegation of use of unfair means in the test held on 27.2.2011.”

19. As per Article 310 of COI, a person who is member of civil services of the State holds office during the pleasure of the

Governor. Article 311 of COI provides protection to civil servants. In true sense, Article 311 is proviso to Article 310 and prescribes safeguards, check and balances against arbitrary exercise of power of the Governor because it is executive which exercise power on behalf of the Governor. Principles of natural justice and absence of arbitrariness are facets of rule of law on which our entire judicial, political, administrative structure rests. For the ready reference, Article 310 and 311 are reproduced as below:-

310. Tenure of office of persons serving the Union or a State.-(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

-(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge: or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a

question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

20. Hon'ble Supreme Court in **A. Sudhakar vs Post Master General, Hyderabad & another, 2006 (4) SCC 348** while dealing with mandate of Article 311(2) has held that opportunity to the officer concerned to deny his guilt and establish his innocence must be provided, he must be given opportunity to cross examine the witnesses and he must be given opportunity to show cause that proposed punishment would not be proper punishment. Para 25 and 26 of the judgment is reproduced as below:-

“25. In terms of Article 311(2) of the Constitution of India, the procedural requirements which were required to be followed were as under:

(i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;

(ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and

(iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

26. It is well-settled that those principles of natural justice are not embodied principles. The requirements contained in [Article 311\(2\)](#) of the Constitution of India in view of the decision of this Court in [Khem Chand v. Union of India](#) [(1958) SCR 1080] are held to be as a part of the principle of natural justice. The courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance of the procedure, the court may not interfere. [See [State of Uttar Pradesh v. Om Prakash Gupta](#), (1969) 3 SCC 775 and [Kuldeep Singh v. Commissioner of Police](#) (1999) 2 SCC

21. Hon'ble Supreme Court in plethora of judgments including in **Parvanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences, (2002)1 SCC 520, Abhujit Gupta vs. S.N.B. National Centre, Basic Sciences, (2006) 4 SCC 469, Allahabad Bank Officers Association vs. Allahabad Bank, (1996) 4 SCC 504, Chaitanya Prakash and another vs. H. Omkarappa (supra) and Mathew P. Thomas vs. Kerala State Civil Supply Corporation Limited (2003)3 SCC 263** has categorically held that regular departmental enquiry is not required where a probationer has been terminated by a letter of termination simpliciter and it is not stigmatic.

The law elucidated by Hon'ble Supreme Court in few of above cited cases is noted for the ready reference.

In **Parvanendra Narayan Verma's case (supra)** Hon'ble Supreme Court had the occasion to determine as to whether the impugned order therein was a letter of termination of services simpliciter or stigmatic termination. After considering its various

earlier decisions, court in paragraph 21 held:-

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

In **Mathew P. Thomas's case** (supra) the employee was kept on probation for a period of two years. During the course of his employment, he was informed that despite being told to improve his performance time and again there is no such improvement. His shortfalls were brought to his notice and consequently by order dated 16.01.1997 his services were terminated, wherein also a reference was made to his unsatisfactory service. In the said decision, the Supreme Court has held that on the basis of long line of decisions, it appears that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case.

22. In the case in hand, from the perusal of termination order as well subsequent orders rejecting representations of respondent, it stares that Government has not assigned any specific reasons for the termination of respondent. Thus termination order passed by the State Government is a simpliciter termination order and it cannot be called as stigmatic. Learned Single Judge without considering the

law laid down by Hon'ble Supreme Court and contents of termination order has held that it was stigmatic and required to be preceded by regular enquiry. We are of the opinion that Courts cannot go into subjective satisfaction of the competent authority even though Court can look into procedure followed especially when there is non-compliance of principles of natural justice and order is passed in manifestly arbitrary, unreasonable manner or with intent to achieve some oblique object. In the present case, the respondent has nowhere alleged that termination order was passed with intent to achieve some oblique purpose or there was mala fide intention of the authorities. The only argument of the respondent is that he was terminated without following the procedure prescribed by Article 311 (2) of COI. We find that termination order was simpliciter as per the terms of his appointment letter, thus, contention of Respondent is not sustainable.

23. Though we have held that termination order was not stigmatic yet if for the sake of discussion, it is considered that order was stigmatic and it should be set aside on account of non-compliance of mandate of Article 311(2), we will have to remit the matter back to Government to conduct enquiry and thereafter pass appropriate order. We are of the opinion that a termination order can be set aside on the ground of non-compliance of procedure prescribed by Article 311(2) of the COI yet clean chit cannot be given to officer concerned and liberty must be given to competent authority to conduct regular enquiry. The impugned order was passed more than 10 years back and it would not be appropriate to remit the

matter back because Government as well Governor has already rejected representation of Respondent after granting opportunity of hearing. Moreover, the earlier writ petition having been dismissed on 7.7.2008, which had been preferred against the termination order dated 19.3.2008 and the same having attained finality, the same issue cannot be permitted to be opened up at this point of time.

24. In view of our above findings, the present appeal deserves to be allowed and is accordingly allowed. The order dated 11.05.2017 passed by learned Single Judge is set aside.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

09.09.2022

PARAMJIT

Whether speaking/reasoned: Yes
Whether reportable : Yes