

CWP-19997-2023 & CWP-19951-2023

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

135 (2 cases)

CWP-19997-2023

Date of Decision: 18.10.2023

Shrinivas Sakharam Dudhgaonkar

...Petitioner

Versus

Union of India and Others

...Respondents

With

CWP-19951-2023

Shrinivas Sakharam Dudhgaonkar

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ravinder Malik, Advocate for the petitioner

Mr. Vipul Aggarwal, Senior Panel Counsel,
for Union of India-respondent No.1

Mr. A.S. Virk, Advocate for respondent Nos.2 and 3

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, both the petitions are disposed of as issues involved in both the petitions are interconnected. For the sake of convenience and with the consent of both sides, facts are borrowed from *CWP-19997-2023*.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 05.09.2023 (Annexure P-20) whereby petitioner has been terminated and order dated 05.09.2023 (Annexure P-21) whereby petitioner has been relieved.

3. The brief facts of the case which are necessary for the adjudication of present petitions are that the petitioner vide appointment letter dated 29.12.2021 (Annexure P-1) came to be appointed on the post of Associate Senior Designer in communication design discipline with respondent-National Institute of Design (for short '**institute**').

3.1 The respondent-institute issued an advertisement dated 03.03.2022 (Annexure P-2) inviting applications from eligible and competent professionals for the post of Senior Designer in three major disciplines, namely, Industrial Design, Communication Design and Textile & Apparel Design. The petitioner applied for the advertised post and respondent-institute on the basis of interview selected him on the post of Senior Designer (Direct Recruitment) in the Pay Level-12 (78800-209200).

3.2 The respondent issued appointment letter dated 05.09.2022 (Annexure P-5). In the appointment letter, it was mentioned that the petitioner would be initially appointed on contract basis for two years and after two years, his performance would be reconsidered and if he is found satisfactory, he would have to undergo probation period of one year before his confirmation.

3.3 The petitioner vide e-mail dated 06.09.2022 sent his consent and thereafter signed appointment letter in token of his consent to terms and

conditions of the appointment letter. The petitioner joined on the advertised post on 09.09.2022. The petitioner was assigned duty of Activity Chairperson (Edu.). The respondent-institute found the services of the petitioner unsatisfactory and on the basis of information collected at internal level, formed an opinion that petitioner deserves to be terminated. The respondent-institute terminated the petitioner without conducting formal inquiry in terms of show cause notice followed by opportunity of hearing. The respondent-institute did not conduct inquiry, forming an opinion that petitioner was a contractual employee and as per terms and conditions of the appointment letter, he can be terminated without inquiry subject to one month's notice or one month's salary in lieu of notice.

3.4 The petitioner is assailing terms and conditions of advertisement, appointment letter and termination order. As per petitioner, terms and conditions of the advertisement were contrary to the Statute. Termination of the petitioner is illegal and bad in the eye of law.

4. Learned counsel for the petitioner *inter alia* contends that advertisement was contrary to First Statute of the National Institute of Design, Ahmadabad (for short '**First Statute**') as made applicable to N.I.D. Kurukshetra. Clause 30 of the First Statute provides for classification of the members of the staff of the institute as well as their appointments. As per sub-clause (2) of Clause 30, an employee either may be regular employee or contractual for a fixed period with pay scale or contractual on fixed tenure basis with lump sum salary. The respondent-institute did not make appointment of the petitioner in terms of sub-clause (2) (b) of Clause 30 whereas appointment was made in terms of sub-clause (2)(a) of Clause 30.

The respondent-institute could not adopt hybrid system. The respondent-institute either can make appointments on contract basis for a fixed period or on regular/permanent basis. Condition Nos.2, 4 and 12 of the appointment letter are contrary to the statutory provision, thus, deserve to be declared invalid. The petitioner has been terminated without conducting any inquiry. He has not even been served show cause notice prior to passing the impugned orders. The impugned orders have further been passed by an incompetent officer. The petitioner could be terminated by Director of the institute, whereas impugned orders have been passed by an Administrative Officer. The respondent-institute, as per Regulation 32 of First Statute, was supposed to constitute a Core Evaluation Committee whereas no such committee was constituted, thus, there was no appraisal report prepared by a competent authority. The respondent-institute without getting report from Core Evaluation Committee has fired the petitioner. The petitioner submitted his self-appraisal report on 04.08.2023 for the period from 01.07.2022 to 30.06.2023. The respondent-institute has not evaluated self-appraisal report, thus, impugned termination orders have been passed in gross violation of principles of natural justice as well as service jurisprudence.

5. *Per contra*, learned counsel for respondent Nos.2 to 4-institute submits that Clause 30 of the First Statute permits the institute to make appointment on regular basis as well as contract basis. There are two types of contracts i.e. (i) contract for a fixed period carrying applicable pay scales and allowances and (ii) contract for a fixed tenure on consolidated pay. The institute can appoint an employee on contract for a fixed period and on satisfactory completion of the said period, he may be appointed on

regular/permanent basis, however, he is supposed to complete probation period of one year prior to confirmation. The petitioner is misreading sub-clause (2) of Clause 30 of First Statute. In terms of Clause 2(b) of Clause 30, the petitioner was appointed on contract basis. The period of contract was two years which could be further extended. On satisfactory completion of contractual period, the petitioner has to be appointed on regular/permanent basis. An employee can be confirmed only after completion of three years service which includes two years contractual period and one year probation period. The institute initially adopted First Statute of Ahmadabad, however, Governing Council of the Institute has framed its own statute known as National Institute of Design, Haryana Statutes, 2023 (for short '**2023 Statute**'). The 2023 Statute has come into force w.e.f. 05.04.2023 i.e. date of publication of the notification. Clause 30 of 2023 Statute deals with classification of members of the staff of the institute and Clause 31 deals with method of appointment. In the 2023 Statute, the concept of 'appointment of employees on contract for lump sum amount' has been abolished. Now, there are two categories of employees i.e. direct recruitment as regular employee and appointment on contract basis for a fixed period of three years. The said three years period may be extended for further two years on yearly basis. The contractual employees are also appointed on direct recruitment basis and they are entitled to pay scales and allowances as specified in the first schedule. The petitioner was appointed on contract basis, thus, respondent-institute was quite competent to terminate him without conducting inquiry as contemplated by Article 311 of the Constitution of India. In the advertisement, it was specifically pointed out that an appointee may be terminated at any point of time after giving one month's notice or one month's salary in lieu of notice. In

the advertisement, it was specifically mentioned that candidate would be initially appointed on contract basis and period of contract would be two years. The petitioner with open eyes participated in the selection process and signed appointment letter wherein terms and conditions of the appointment were duly jotted down. The terms and conditions jotted down in the appointment letter were *pari materia* with the advertisement. The petitioner is not alleging that terms and conditions of the appointment letter are contrary to advertisement, however, he at this belated stage, is assailing terms and conditions of the advertisement. The petitioner participated in the selection process and was selected. He furnished his consent in response to the appointment letter and thereafter, signed appointment letter. The act of petitioner amounts to acquiescence and in view of principle of estoppel, he has no right, at this belated stage, to question terms and conditions of the advertisement. The petitioner was free to challenge terms and conditions of the advertisement prior to participating, however, he opted to remain indolent. The petitioner at this stage cannot be permitted to take somersault.

With respect to termination of petitioner without inquiry, Mr. A.S. Virk, submitted that as per Clause 12 of the appointment letter as well as settled principle of law, the respondent-institute was not supposed to conduct regular inquiry. The petitioner has not even completed one year of his contractual period and he was appointed on contract basis for two years. The respondent got various complaints from the students and behavior of the petitioner was not cordial with the management. After collecting inputs, an opinion was formed at the level of Director and thereafter, petitioner was terminated. The petitioner has been removed from service and it is not

stigmatic in nature. It is axiomatic in service jurisprudence that during contract or probation period, regular inquiry is not necessarily to be conducted unless and until dismissal order is stigmatic in nature. In case of removal/dismissal from service simpliciter which does not affect future prospects of the employees, an employer is not supposed to conduct regular inquiry or issue show cause notice prior to passing order of termination.

6. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

7. From the perusal of record and arguments of both sides, the following questions arise for consideration of this Court:

- I. Whether terms and conditions of the advertisement are contrary to Clause 30(2) of First Statute of the National Institute of Design, Ahmadabad?
- II. Whether the petitioner after appointment on the advertised post could dispute terms and conditions of the advertisement?
- III. Whether dismissal of the petitioner without inquiry is just, fair and reasonable?

8. The questions, as framed above for consideration, are adverted with as under:

Q. No. I. Whether terms and conditions of the advertisement are contrary to Clause 30(2) of First Statute of the National Institute of Design, Ahmadabad?

8.1 Before dwelling into the controversy, it would be apt to look at Clause 30 of First Statute as well as Clause 30 and 31 of 2023 Statute. The relevant extracts of Clause 30 of First Statute as well as Clause 30 & 31 of 2023 Statute read as:

Clause 30 of First Statute

*30. Classification of the Members of the Staff of the Institute:
The members of the staff of the Institute shall be classified as under:*

a. Faculty members which shall include Director, Deans of the campuses, Principal Designer, Principal Faculty, Senior Designer, Senior Faculty, Associate Senior Designer, Associate Senior Faculty, Designer, Faculty and such other academic posts as recommended by the Senate and approved by the Governing Council. The faculty members shall be appointed either through direct recruitment or promotion, based on the recommendations of Selection Committee constituted by the appointing authority.

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(2) Appointments in all the above three categories shall be made in any of the following ways against sanctioned posts-

- a) as regular employee against available posts on applicable pay scales and allowances; or*
- b) on contract basis for a fixed period up to three years (extendable for further periods as needed) on applicable pay scales and allowances; or*
- c) on fixed tenure basis on consolidated pay as approved by the Governing Council.*

Clause 30 & 31 of 2023 Statute

30. Classification of the Members of the Staff of the Institute.

- (I) The members of the staff of the Institute shall be classified as under:-

a) Faculty members which shall include Director, Principal Designer (Professor), Senior Designer (Associate Professor), Associate Senior Designer (Assistant Professor), Principal Technical Instructor, Senior Technical Instructor, Designer (Faculty), Senior Design Instructor and such other academic posts as recommended by the Senate and approved by the Governing Council.

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31. Method of appointment of staffs. -(1) The officers, teachers and other staffs shall be appointed either by direct recruitment, by promotion, by deputation (including short-term-contract), by absorption, by re-employment or by contract on the recommendations of the Selection Committee constituted by the appointing authority.

(2) Appointments in all the categories shall be made against sanctioned posts.

(3) The appointment through direct recruitment shall be as regular employee against available posts on applicable pay and allowances as specified in the First Schedule.

(4) The appointment on contract basis shall be for a fixed period up to three years (extendable for further two years, on yearly basis) on applicable pay scales and allowances as specified in the First Schedule and terms and conditions as approved by the Governing Council on recommendation of Standing Committee.

9. The petitioner has assailed Conditions No.2, 4 and 12 of the appointment letter. The said clauses are reproduced as below:-

“2. The appointment will be initially on contract for two years from the date of joining, extendable further at the discretion of the Competent authority based on the performance appraisal. On yearly performance review basis, the institute will consider suitable faculty for long-term regular appointment, after successful completion of the contract period, against the sanctioned posts initially on probation for one year. On satisfactory completion of probation, you will be considered for confirmation in the said post.

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4. As a contract employee on fixed term time scale basis, you will be entitled to the following facilities:

- a) Casual Leave
- b) Privilege Leave
- c) Half-pay Leave
- d) Maternity Leave/Paternity Leave
- e) Medical Reimbursement for self and dependent family members
- f) Children's Education Allowance
- g) Communication Allowance
- h) Any other benefits as decided by the Competent Authority

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12. This contract appointment is also subject to yearly review of your performance, and also liable to be terminated without assigning any reason, with one-month notice or notice pay in lieu of the notice by the Institute. At the same time, as Senior Designer, you can resign with at least one month's notice prior to the end of any semester, subject to fulfilment of your academic commitments for the semester, during the currency of the contract.”

10. The aforesaid clauses of the appointment letter find mention in instructions of the advertisement. The relevant extracts of the general instructions of the advertisement are reproduced as below:

“General Instructions:

1. The candidates applying for Teaching/Non-Teaching Positions on Direct Recruitment basis with time scale of pay and allowances shall be appointed initially on two years fixed term contract. On yearly performance review basis, the Institute will consider suitable faculty/officer for long-term regular appointment against the sanctioned posts.

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3. Candidates applying for a Teaching/Non-Teaching post both on Direct Recruitment and Contract Basis may indicate the same in the application form. There is no need of sending separate applications for same post. However, in case of application for different post the candidate should send separate applications with separate application fee in separate envelopes.

4. Applicants against Direct Recruitment post also will be considered against vacancies in contractual positions and if found suitable, offers may be made by the Institute to the suitable candidates.

5. The regular and fixed term contract employees drawing time scale of pay and allowances is presently covered under NPS. The service conditions of these employees are governed under NID service rules (<https://www.nidh.ac.in/rti>) as adopted by NID Haryana and being amended from time to time.”

11. From the conjoint reading of general instructions of the advertisement and terms and conditions of the appointment letter, it can be easily gleaned that conditions of appointment letter are *pari materia* with

advertisement, thus, petitioner is precluded from claiming that any term and condition of appointment letter was contrary to the advertisement. The question left to be answered is whether terms and conditions of the advertisement are contrary to the statutory provisions.

From the perusal of Clause 30 of First Statute and Clause 31 of 2023 Statute, it comes out that respondent has authority to make direct appointment on contract basis as well as regular basis. In case of appointment on contract basis, the respondent is supposed to prescribe period of service. As per First Statute as well as 2023 Statute, the initial appointment on contract basis may be for maximum period of three years. The said three years period as per First Statute could be extended without outer limit, however, as per 2023 Statute, the contractual period cannot be extended for more than two years and two years period cannot be extended in one go.

From the perusal of 2023 Statute, it becomes clear that respondent has authority to make appointment on contract basis for a maximum period of five years. From the perusal of old as well as new statute, it cannot be concluded that respondent has power to adopt hybrid appointment system i.e. initial appointment on contract basis and thereafter regularize the contractual employee. The respondent has power to make appointment either on contract basis or on regular basis. In case of regular appointment, as per general principles of service jurisprudence, an employee is initially appointed on probation of a certain period. In the case in hand, neither old nor new statute permits initial appointment on contract basis and thereafter, on regular basis. The 2023 Statute makes the things more clear. As per Clause 31(4) of 2023 Statute, a contractual employee may be appointed for a maximum period

of five years. This Court finds itself unable to trace the source of appointment of a contractual employee on regular basis. There is no source or provision which empowers respondent to regularize an employee who has been appointed on contract basis for a maximum period of five years. This Court is further unable to find out any provision which permits respondents to adopt hybrid system which has been adopted by the responded-institute. Learned counsel for the respondent-institute during the course of arguments has candidly pleaded that institute is bound by statute and advertisement as well as further appointments are on the basis of and in terms of statute. The statute does not permit the petitioner to adopt hybrid system, thus, the respondent has no authority to make appointment of regular/permanent employees on contract basis and thereafter convert contractual employees into regular employees. The respondent is empowered either to make appointment on contract basis or on regular basis.

In the wake of above facts and discussions, this Court is of the considered opinion that conditions of the advertisement which permit the respondent to make initial appointment of regular employee on contract basis and thereafter regularize him, are contrary to Clause 30 of First Statute and Clause 31 of 2023 Statute. It is apt to notice here that at present First Statute is not applicable to respondent, thus, entire appointments are bound to be made in terms of 2023 Statute.

Q. No. II Whether the petitioner after appointment on the advertised post could dispute terms and conditions of the advertisement?

Before advertizing with the question in hand, the judicial precedents need to be considered.

12. A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others 2023 SCC OnLine SC 344*** has held that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

In ***Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309***, after referring to a catena of judgments on the principle of waiver and estoppel, Supreme Court did not entertain the challenge to the advertisement for the reason that the same would not be maintainable after participating in the selection process. The relevant extracts of the judgment read as:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

In ***Ashok Kumar v. State of Bihar, (2017) 4 SCC 357***, the Apex Court after referring to catena of judgments made an observation that having participated in the selection process without objection, precludes the candidate to challenge the process at a later stage.

In *Union of India v. S. Vinodh Kumar*, (2007) 8 SCC 100, the Apex Court held that it is well settled principle that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

The Apex Court in *Sadananda Halo v. Momtaz Ali Sheikh*, (2008) 4 SCC 619 has noted that the only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board.

A two Judge Bench of Supreme Court in *State of Uttar Pradesh v. Karunesh Kumar and Others* 2022 SCC Online SC 1706 has clearly held that a candidate who has participated in the selection process is estopped and cannot challenge the selection process.

The Apex Court in *Madan Lal v. State of Jammu and Kashmir* AIR 1995 SC 1088 has held that if a candidate takes a calculated chance and participates in the selection process, he cannot challenge selection process on being found unsuccessful.

13. In the case in hand, the petitioner prior to participation in the selection process was working with the respondent-institute. He was well-versed with the terms and conditions of the advertisement. The petitioner with open eyes and without any pressure participated in the selection process and he was duly selected. The petitioner worked with respondent-institute from September' 2022 to September' 2023. As noticed above, it is settled proposition of law that a candidate after participating in the selection process cannot challenge terms and conditions of the advertisement/selection criteria. Even an unsuccessful candidate cannot challenge advertisement after

participation in the selection process and in the case in hand, the petitioner was selected and he worked on the advertised post, thus, he cannot be permitted to challenge terms and conditions of the advertisement. It is apposite to notice here that petitioner furnished his consent in response to offer of appointment letter and he further signed appointment letter.

14. The petitioner in support of his contention has relied upon judgment of Hon’ble Supreme Court in ***Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another (2021) 10 SCC 116***. The relevant extracts of the said judgment read as:

“12. It may be relevant to note that from the very inception of the advertisement, until the final recommendations made by the Executive Council, undisputedly, a regular mode of recruitment was followed by the respondent University making substantive appointment but to the dismay of the appellants, as they are not in the equal bargaining position were shocked to notice the arbitrary conditions of the letter of appointment restricting it to be on contract basis limited for a period of three years which either of the appellant was never been made aware of at any stage and for the first time, such conditions were incorporated in the offer of appointment in contravention to the statutory scheme of the 1973 Act.

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21. The main thrust of submission of the learned counsel for the appellants is that the process was initiated to hold regular selection pursuant to an advertisement notified by the respondents in the years 2004 and 2006 and after going through the rigours of regular selection, arbitrary conditions were incorporated in their offer of

appointment, left with no choice but to accept on the dotted lines being in the need of employment and further submits that the scheme of the 1973 Act, postulates of making regular selections on the recommendations made by the Selection Committee constituted in terms of Section 31(1) read with Section 31(4) of the 1973 Act, and that being the procedure prescribed under Chapter VI of the 1973 Act, incorporating arbitrary conditions at this stage in their letter of appointment was violative of Article 14 of the Constitution and of Section 23 of the Contract Act, 1872 and of the scheme of the 1973 Act.

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42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”

14.1 The reliance placed upon said judgment is misplaced because in the afore-cited case, the terms and conditions of the appointment letter were contrary to the advertisement besides statute whereas in the case in hand, as noted hereinabove, the terms and conditions of the appointment letter were in consonance with the advertisement. The petitioner could have a case had there been terms and conditions of appointment letter contrary to the advertisement.

This Court while adverting with Question No.I has formed an opinion that conditions of the advertisement were contrary to First Statute and 2023 Statute. The conditions of the appointment letter are not contrary to the advertisement and petitioner after being selected had worked for quite some time, thus, petitioner at this belated stage is precluded from raising grouse that terms and conditions of the advertisement were contrary to statute, therefore, his appointment should be treated as regular appointment.

Question No.III Whether dismissal of the petitioner without inquiry is just, fair and reasonable?

15. Hon'ble Supreme Court in plethora of judgments including in *Parvanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520, Abhujit Gupta v. S.N.B. National Centre, Basic Sciences, (2006) 4 SCC 469, Allahabad Bank Officers Association v. Allahabad Bank, (1996) 4 SCC 504, Chaitanya Prakash and another v. H. Omkarappa (supra) and Mathew P. Thomas v. Kerala State Civil Supply Corporation Limited (2003) 3 SCC 263, Rajasthan High Court v. Ved Priya and Another (2021) 13 SCC 151* 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.

15.1 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, the 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.

In *Ved Priya 's case (supra)*, Hon'ble Supreme Court has held that there is no indefeasible right of an employee to continue the employment until confirmed. The employee can claim protection under the principles of natural justice only when the removal is in a manner which violates his constitutional rights. The Court in Paragraph 19 held:-

“19. Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable. It is only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are “removed” in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of “stigmatic” removal only that a reasonable opportunity of hearing is sine qua non. Way back in Parshotam Lal Dhingra v. Union of India [Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36] , a Constitution Bench opined that : (AIR p. 49, para 28)

“28. ... In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other

disqualification, then it is a punishment and the requirements of Article 311 must be complied with.”

16. The petitioner has contended that termination order could be passed by Director whereas impugned termination order has been passed by an Administrative Officer.

On the asking of the Court, the respondent, during the course of hearing, produced original record relating to termination of the petitioner. From the perusal of original record, it was found that matter was put up before the Director who had approved the termination of the petitioner. The order passed by the Director has been communicated through an Administrative Officer, thus, it is wrong to allege that termination order was passed by an Administrative Officer instead of Director. The petitioner was certainly terminated by Director, thus, contention of the petitioner that termination order was passed by an incompetent person cannot be countenanced. From the perusal of the aforesaid file, it was further found that Director had considered act and conduct as well as performance of the petitioner and on the basis of performance, he had formed an opinion that petitioner should be terminated. The respondent in its reply has also submitted that there were many complaints of students against the petitioner and his performance was not satisfactory.

17. The petitioner has raised another question that he submitted his self-appraisal report on 04.08.2023 for the period 01.07.2022 to 30.06.2023 and respondent was supposed to constitute a core evaluation committee to evaluate performance of the petitioner whereas respondent without constituting a core evaluation committee has terminated him.

The respondent prior to introduction of 2023 Statute was following First Statute of Ahmadabad. The 2023 Statute came into force w.e.f. 05.04.2023. There was no provision of constitution of core evaluation committee in the 2023 Statute. The petitioner submitted his self-appraisal report on 04.08.2023 and after the introduction of 2023 Statute, he was governed by said statute instead of First Statute of Ahmadabad. There was provision of self-appraisal in 2023 Statute but there was no provision of constitution of core evaluation committee, thus, there was no lapse on the part of respondent in not constituting core evaluation committee and getting evaluated performance of the petitioner from the said committee. The performance of the petitioner was duly considered by the competent authority and thereafter decision was taken to discontinue his services.

18. A two Judge Bench of Supreme Court in ***The State of Punjab and Others v. Jaswant Singh (2023) 9 SCC 150*** has adverted with the question of termination of an employee while on probation. In the said case, the employee was appointed as a Constable and he jointed duty on 12.11.1989 as probationer. During probation, he along with other recruits was deputed for law and order duty in Amritsar. The said employee and other recruits were relieved from the said duty. The said employee did not report back to Training Centre though other recruits duly reported back. He remained absent for quite long time and S.P., Training Centre made a recommendation to S.S.P. that employee had not shown any interest in the training and lacks sense of responsibility and he is unlikely to prove a good and efficient police officer, hence, he be discharged under Rule 12.21 of Punjab Police Rules. The said employee was discharged by S.S.P. forming an opinion that probationary

Constable is found unlikely to prove an efficient police officer owing to his demeanour.

The Apex Court noticing full bench judgment of this Court in *Sher Singh, Ex-Constable v. State of Haryana and Others 1994 SCC OnLine P&H 166* and its earlier judgments in *State of Punjab and Others v. Balbir Singh (2004) 11 SCC 743*, *Ravindra Kumar Misra v. U.P. State Handloom Corporation Limited and Another 1987 (Supp) SCC 739*, has held that if an order is punitive in nature, an opportunity is required to be granted whereas if order of discharge is simpliciter, procedure contemplated under Article 311 of the Constitution of India is not required to be followed. If an inquiry or assessment is done with the object of finding out any misconduct on the part of an employee and for that reason his services are terminated then it would be punitive in nature. On the other hand, if such an inquiry or an assessment is aimed at in determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. The Apex Court, forming an opinion that order of termination was termination simpliciter and not punitive, set aside orders passed by this Court as well as Courts below.

19. In the case in hand, from the perusal of termination order, it stares that termination order passed by the authority is a simpliciter termination order and it cannot be called as stigmatic. Courts cannot go into subjective satisfaction of the competent authority even though Court can look into procedure followed especially when order is passed in manifestly arbitrary & unreasonable manner or with intent to achieve some oblique object. In the present case, the petitioner has no where 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 petitioner is that he was terminated without following the procedure. This Court finds that termination order was simpliciter and even as per the terms of his appointment letter, he could be terminated by one month notice or salary in lieu of notice, thus, contention of petitioner is not sustainable.

20. Before concluding, it would be apposite to mention that in answer to Question No.I, this Court has held that appointment against permanent post but on contract basis, is contrary to statutory provisions, however, in the wake of act and conduct of the petitioner, he has not been extended benefit of permanent/regular appointee. The petitioner joined on the advertised post on 09.09.2022 and he was terminated vide communication dated 05.09.2023. The probation period of one year had to commence after completion of contractual period of two years. The petitioner was supposed to complete one year probation period and appointing authority was competent to terminate services of the petitioner on finding service of the petitioner unsatisfactory. The petitioner was terminated prior to completion of one year, thus, petitioner in any case was not entitled to benefit of conclusion of this Court that there is no provision to make hybrid appointment.

21. In the wake of above discussion and findings, the above formulated questions are answered as below:-

- i. There is no statutory provision which permits hybrid appointment of employees. The respondent can either make appointment on contract or permanent basis.

- ii. The petitioner participated in the selection process and he was fully aware of terms and conditions of the advertisement as well as appointment letter. He is precluded from assailing advertisement and appointment letter.
- iii. The petitioner was on contract/probation, thus, the respondent could terminate services of the petitioner without holding inquiry contemplated by Article 311 of the Constitution of India.

22. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

18.10.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>