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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision:** September 06, 2023

+ **W.P.(C) 6596/2023 & CM APPL. 37592/2023**

GOVERNMENT OF NCT OF DELHI & ANR. Petitioners

Through: Mrs.Avnish Ahlawat, Standing
Counsel with Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik, Ms. Aliza
Alam and Mr.Mohnish Sehrawat,
Advocates.

versus

DALBIR SINGH Respondent

Through: Ms.Esha Mazumdar, Ms.Setu Niket,
Mr.Chaitanya Kamal and Ms.Josmy
John, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ANOOP KUMAR MENDIRATTA, J.(ORAL)

1. The challenge in this writ petition is to an order dated November 28, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "Tribunal") in O.A. 3945/2018, whereby the Tribunal allowed the OA preferred by the respondent and quashed the order dated November 06, 2017 passed by the Director General, Prisons terminating the services of the respondent who was posted as Warder and was still under Probation. Tribunal further directed the respondent to be reinstated and permitted holding of departmental proceedings against the



respondent, in accordance with rules and guidelines governing the subject.

2. Factual matrix lies within a narrow encompass and may be briefly noticed. Respondent was appointed as Warder on May 31, 2016 upon his selection through Delhi Subordinate Services Selection Board (DSSSB) and was on probation for a period of two years. On October 13, 2017 while entering the Jail premises for the duty assigned to him at Ward No.9 of CJ-4, during the mandatory search by Tamil Nadu Special Police Personnel (TNSPP), a packet of narcotic drugs weighing about 15 grams wrapped in a polythene was recovered from the undergarment of the respondent. Consequently, FIR No.0440 dated October 13, 2017, under Section 21/61/85 NDPS Act was registered against the respondent at Police Station Hari Nagar and was arrested on the same date.

3. Since the respondent was under probation and was involved in a NDPS case, the Competent Authority i.e. Director General, Prisons after taking into account the report of the Superintendent, CJ-4 and gravity of misconduct committed by the respondent, considered the continuation of the respondent in service detrimental to the Prison Department and, therefore, terminated the services of the respondent forthwith under Rule 5 of the CCS (Temporary Services) Rules, 1965 vide order dated November 06, 2017 which reads as under:

“In pursuance of the Proviso to Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Services) Rules, 1965, I, Ajay Kashyap, Director General, Prisons, hereby terminate forthwith the services of Sh. Dalbir Singh, Warder - 1663 and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service or, as the case may be, for the period by which such notice falls short of one



month.”

4. Aggrieved with the order of termination, respondent preferred OA No.3945/2018 before the Tribunal for setting aside of the order of termination and for directing the petitioners to reinstate the respondent in service, with all consequential benefits.

5. Vide impugned order dated November 28, 2022, Tribunal allowed the O.A. and quashed the order dated November 06, 2017 passed by Director General, Prisons whereby the services of the respondent were terminated. The same has been challenged by way of present writ petition, on behalf of the petitioners.

6. Learned counsel for the petitioners assails the order passed by the Tribunal and submits that the Tribunal failed to appreciate that the respondent who was appointed on May 31, 2016, was under probation for a period of two years and as such the termination order dated November 06, 2017, passed by the Competent Authority under Rule 5(1) of CCS (Temporary Services) Rules, 1965 without conduct of regular inquiry was in accordance with rules. It is emphasized that ‘termination simpliciter’ is distinguishable from ‘punitive termination of service’, and regular inquiry is not required to be undertaken by the Competent Authority. It is contended that the Competent Authority was well within its jurisdiction to pass the aforesaid termination order during the probation period and same cannot be considered as ‘stigmatic’ or ‘punitive’. Learned counsel for the petitioners further refers to **Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd., (1999) 2 SCC 21** to emphasize the distinction between ‘motive’ and ‘foundation’. It is contended that in a case of ‘motive’, the employer after gathering some *prima facie* facts, does not wish to go into the



truth of the allegations but decides merely not to continue with the services of a dubious employee. However, if the employer conducts an inquiry only for proving the misconduct and the employee is not heard, it would be a case where the inquiry is 'foundation' and the termination would be bad. It is also pointed out that the termination of the services of a temporary employee or a probationer under rules of employment, is neither *per se* dismissal nor removal from services and does not attract the provisions of Article 311 of the Constitution of India. Further, the order of termination simpliciter is not a punishment and carries no evil consequences. Reliance is further placed upon judgment delivered by this court in ***Govt. of NCT of Delhi & Ors. v. Naresh Kumar, W.P.(C) 22658-60/2005***, decided on September 20, 2010 and ***Director, Aryabhata Research Institute of Observational Sciences (ARIES) v. Devendra Joshi and Others, (2018) 15 SCC 73***.

7. On the other hand, learned counsel for the respondent supports the order passed by the Tribunal and submits that respondent was falsely implicated in the FIR No.0440/2017 under Section 21/61/85 NDPS Act registered at P.S. Hari Nagar and the allegations are yet to be proved in trial against the respondent. It is urged that vide order dated November 06, 2017, the services of the respondent were wrongly terminated by invoking the provisions under Sub-Rule (1) of Rule 5 of CCS (Temporary Services) Rules, 1965 and no opportunity was afforded to the respondent prior to passing of order of termination. It is urged that despite the respondent being a temporary employee, he is entitled to protection under Article 311 of the Constitution of India and the petitioners were required to undertake regular inquiry prior to passing of any such order, since it permanently impacts the respondent. It is emphasized that the 'foundation' for the termination order



was the registration of FIR at P.S. Hari Nagar. Reliance is further placed upon *Chandra Prakash Shahi v. State of U.P. and Ors.*, (2000) 5 SCC 152; *Paras Nath Pandey v. Director, North Central Zone*, MANU/UP/1499/2008; *State Bank of India and Ors. v. Palak Modi and Ors.*, MANU/SC/1058/2012; *Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors.*, Civil Appeal No.8662 of 2015, decided on October 15, 2015; and *Pintu Kumar Yadav v. Director General of Police, Central Reserve Police Force and Ors.*, WP(S.) No.398 of 2015.

8. It may be noticed that the Tribunal after consideration of **Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors.**(supra) observed that the impugned order passed by the petitioners is ‘stigmatic’ and the authorities are required to give protection under Article 311 of the Constitution of India, even to a temporary employee, as has been held by this Court in **Union of India v. Rajesh Kumar Meena**, W.P.(C) 6930/2009 decided on March 28, 2017. Tribunal was further of the view that in reply, the petitioners had categorically submitted that the Disciplinary Authority imposed the penalty of termination of services as prohibited articles/drugs were allegedly carried by the respondent, meaning that the petitioners had considered the possession of some contraband items by the respondent and the same is ‘foundation’ of his termination, which is bad in the eyes of law. It was accordingly held that respondent no.2 is entitled for protection under Article 311 of the Constitution of India as per **Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors** (supra).

9. We have given our considered thoughts to the contentions raised.



At the outset, it may be appropriate to refer to Rule 5(1) of CCS (Temporary Services) Rules, 1965 which provides for termination of temporary service. The same reads as under:-

“5. TERMINATION OF TEMPORARY SERVICE.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.”

The very concept of keeping an employee on probation is to give an employer an opportunity to observe the work and conduct, integrity, efficiency etc. of an employee in order to judge his suitability to the job, before permanently absorbing him in the services. Rule 5 (1) of CCS(Temporary Services) Rules, 1965 postulates that the services of a temporary Government servant or a probationer, can be terminated by the Appointing Authority forthwith and the Government servant on termination shall be entitled to claim sum for the period of notice. Apparently, the holding of inquiry has not been mandated though the termination of service may be preceded by an inquiry by the employer, only to ascertain whether the Government servant should be retained in service or not.



In order to attract the provisions of Article 311 (2) of the Constitution of India, it needs to be seen whether the ‘misconduct’ or ‘negligence’ was a mere ‘motive’ for the order of reversion or termination or whether it was the very ‘foundation’ of the said order. The form of the order may not be conclusive of its true nature and the Court can tear the veil behind a termination order, which is innocuous and discharge simpliciter, to examine the entirety of the circumstances preceding or attended to the order of termination. Termination simpliciter does not attract the provisions of Article 311 of the Constitution of India unless the termination involves ‘stigma’.

10. The important principles, which are deducible on the concept of ‘motive’ and ‘foundation’ which have been repeatedly highlighted also stand reiterated in paragraphs 26 and 27 in **Chandra Prakash Shahi v. State of U.P. & Ors.** (supra) and may be beneficially reproduced:

“26. The whole case-law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi case [(1976) 4 SCC 52 : 1976 SCC (L&S) 542 : AIR 1976 SC 2547 : (1977) 1 SCR 462] that there was a conflict of decisions on the question of an order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of “motive” and “foundation” was always kept in view.

27. The important principles which are deducible on the concept of “motive” and “foundation”, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer



for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of “motive””

11. The question whether an order terminating the services of a temporary employee or a probationer was by way of punishment or not, depends upon the facts and circumstances of each case. It may also be apt to refer to principles noticed in paragraphs 40 to 44 in **Govt. of NCT of Delhi and Ors. v. Naresh Kumar** (supra) by a Co-ordinate Bench of this Court, bringing out the difference in concept of ‘motive’ and ‘foundation’ and consideration for determining if the termination order is ‘penal’:

“40. We have enough case law, where pertaining to a misconduct detected during the probation of an employee, a show cause notice is issued to respond as to why on account of the stated misconduct the services be not terminated, but ignoring the show cause notice, a simple order of discharge from service is issued. When questioned in a Court on the plea that the veil be lifted to see as to what was the foundation of the order, it was held that motive and foundation are two different concepts. We may quote only from one decision reported as 1980 (2) SCC 593 Gujarat Steel Tube Vs. Gujarat Steel Tubes Majdoor Sangh. As to foundation, it was observed:-

“.....a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order



under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.”

41. As to motive, it was observed:-

“On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.”

42. Suffice would it be to state that if an inquiry is conducted into an alleged misconduct behind the back of the employee and a simple order of termination is passed, „founded’ on the report of the inquiry indicting the employee, the action would be tainted but where no findings are arrived at any inquiry or no inquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received it would be a case of the complaints motivating the action and hence order would not be bad as observed in the decision reported as AIR 1999 SC 983 Dipti Prakash Banerjee Vs. Satvendera Nath Bose National Centre for Basic Sciences (para 22).

43. To conclude on the issue, we note the decision of the Supreme Court reported as AIR 2002 SC 23 Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences & Anr., where in para 28 thereof, how the issue has to be dealt with by Courts was stated. It was held: Therefore, whenever a probationer challenges his termination the Courts’ first task will be to apply



the test of stigma or the form test. If the order survives this examination the substance of the termination will have to be found out.

44. We may only add by stating that nobody acts for no reasons and indeed if somebody were to act on account of no reasons, that itself would vitiate an action as not only being unintelligible but as being perverse. Obviously, something has to impel or propel an employer to terminate the services of his employee. It is only when the termination is by way of penalty would the principles of natural justice and opportunity to participate at an inquiry where guilt to be determined is the object of the inquiry would come into play. Obviously, where on the finding of guilt an order terminating the services of an employee is passed it can safely be said that the employee has been penalized for a wrong. But where the misdemeanour is not treated as proved and no inquiry is held, and where an inquiry is held, the report is not made the foundation of the order, but what is opined by the employer is that the employee has lost the confidence of the employer, an order of termination cannot be said to be founded on the misdemeanour and the misdemeanour would remain as the motive for the action. This situation would not attract the principle that the termination is penal.”

The circumstances in the aforesaid case were akin to the proposition under consideration. The respondents therein who were working on probation on the post of Warder Prisons were accused of having committed penal offences punishable under Section 363/366/376 IPC. On account of same, their services were terminated during the course of probation. The respondents therein were subsequently acquitted in the criminal trial. **The Division Bench held that the order terminating the services of the respondents was not founded on the proof of misdemeanour of having committed the offences charged of, but the same was only a motive for the action. It was observed that the involvement of the respondents in a criminal offence keeping in view the nature of offence was a justifiable**



ground for the employer to opine that the two had lost the confidence of the employer. Further, the order terminating the services of the respondents was innocuous and non-stigmatic, even after lifting the veil and as such the order of termination of services was upheld.

12. Reference at this stage may also be made to *Director, Aryabhatta Research Institute of Observational Sciences (ARIES) v. Devendra Joshi and Others* (supra) relied by learned counsel for the petitioners wherein observations made in paragraphs 33 & 34 in *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.*, (1999) 2 SCC 21 have been reiterated, bringing out analysis of cases, where the ‘misconduct’ was treated as the ‘foundation’ or ‘motive’ for termination of services. The same has also been followed in *Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences* (supra) relied by both the counsels and may be beneficially reproduced:

“33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case [State of Orissa v. Ram Narayan Das, AIR 1961 SC 177] . It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case [Champaklal Chimanlal Shah v. Union of India, AIR 1964 SC 1854]. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows



without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case [State of Punjab v. Sukh Raj Bahadur, AIR 1968 SC 1089] and in Benjamin case [A.G. Benjamin v. Union of India, (1967) 15 FLR 347 (SC)] . In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case [Gujarat Steel Tubes Ltd. v. Mazdoor Sabha, (1980) 2 SCC 593 : 1980 SCC (L&S) 197] the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has



virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee — even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.” (emphasis in original)

So far as factual position in ***Director, Aryabhatta Research Institute of Observational Sciences (ARIES) v. Devendra Joshi and Others*** (supra) is concerned, the services of respondent No.1 therein, who was appointed to the post of Engineer-C (Civil) on November 01, 2007 were terminated at the end of probation, since certain shortcomings in the discharge of duties were noticed. It was also found in a preliminary inquiry that the respondent No.1 was responsible for removal of a pen-drive and copying the files available in the pen- drive to his personal computer without permission. A representation submitted by the respondent for reinstatement was rejected against which a writ petition was preferred before the High Court of Uttarakhand. The stand of the employer was that the service had been terminated at the end of probation due to unsatisfactory work and not for any misconduct and there was no stigma attached to the order of termination. It was further contended that the appellant decided not to proceed against the respondent to prove misconduct, though a *prima facie* finding of misconduct was recorded in preliminary inquiry. The High Court set aside the order passed by the appellant and extended the probationary period of respondent No.1. Hon’ble Apex Court setting aside the findings of the High Court held that the order dated December 31, 2008 passed by the appellant was innocuous terminating the services of the respondent and since no allegations of misconduct were made in the order, there is no stigma. It was further observed that the fact remains that there was a preliminary inquiry conducted by the management



in which there was a *prima facie* finding against respondent No.1 of his involvement in an act of misconduct and the appellants decided not to proceed further and hold a detailed inquiry to prove the misconduct of respondent No.1. It was concluded that termination of respondent No.1 at the end of the period of probation could not be termed as punitive.

13. In the light of aforesaid legal position, there is no dispute as to the principles of law enunciated in the authorities referred to by both the learned counsels for the petitioners as well as respondent. The question whether the order terminating the services is innocuous or punitive in nature has to be considered on the facts of each case. Also, it would be justifiable to lift the veil to find out the true nature of the order by which the services were terminated.

14. (i) The judgments relied upon by learned counsel for the respondent in this regard are distinguishable on facts. In ***Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences*** (supra) the appellant therein, working on the post of Chest Therapist is alleged to have gained illegal appointment, on the basis of which an inquiry was conducted by the DSP. Consequently, Director, IGIMS was directed to initiate proceedings for termination of service. Considering the fact that the punishment of dismissal was passed without conducting the regular inquiry and supplying of documents as requested by appellant and the fact that *ex-parte* inquiry contained stigmatic remarks, it was held that the same constituted 'foundation', rendering termination order punitive.

(ii) Similarly in ***State Bank of India and Ors. v. Palak Modi and Ors***(supra), the services of the private respondent who were working as probationary officers in appellant bank were terminated for use of unfair



means in objective test. I.B.P.S. 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 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. Hon'ble Apex Court affirmed the order passed by the High Court and dismissed the appeal preferred by appellant bank, observing that 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 and the respondents were condemned unheard which was legally impermissible. It was further held that if the misconduct/misdemeanor constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.

(iii). The factual position in ***Chandra Prakash Shahi v. State of U.P. & Ors.***(supra) relied by learned counsel for the respondent is also distinguishable. The order of termination of service of appellant constable therein, who was on probation, was set aside by the Tribunal. Hon'ble Supreme Court upheld the same noticing that the appellant had completed his training and probationary period of two years without any blemish and had been terminated on account of quarrel between two other constables, in which to begin with he was not involved. The termination was observed to



be founded on the report of the preliminary inquiry conducted to find out involvement of the appellant, but not to find out whether the appellant was further suitable for retention in service or confirmation, as he had already completed the period of probation quite a few years ago. Further taking note of Regulation 541 of U.P. Police Regulations, which provided for informing of the grounds on which the services are to be terminated and the employee is required to explain his position, the judgment passed by the Tribunal was restored.

(iv) The judgment passed in ***Paras Nath Pandey v. Director, North Central Zone*** (supra) relied by learned counsel for the respondent is also distinguishable. The services of the petitioner therein who was appointed as Stenographer(Hindi) attached to Deputy Director, on temporary basis were terminated on a false complaint lodged before the District Magistrate, alleging him to be a man of unsound mind and requiring treatment. Also an FIR was registered against the petitioner under Section 353 IPC pursuant to which he was arrested. Petitioner challenged the order of termination before learned Single Judge on the ground that termination order is ‘founded’ on false allegations in the FIR and is punitive in nature. Learned Single Judge dismissed the writ petition holding that the termination order is simpliciter and not ‘founded’ on any alleged misconduct. The same was set aside by the Division Bench of Allahabad High Court after discussing principles governing the termination of services of temporary employees and held the termination order to be punitive in nature. It was observed therein that though the termination order was innocuously worded but the circumstances attending and preceding to the order, the inquiry conducted against petitioner, the findings recorded by the Director, NCZCCC, left no doubt that



order of termination was ‘founded’ on alleged acts of misconduct which was found proved by Director himself, based on an inquiry conducted by Administrative Officer under the orders of Director.

(v) In *Pintu Kumar Yadav v. Director General of Police, Central Reserve Police Force and Ors.* (supra), Petitioner was a probationer whose services were terminated on account of unauthorized absence. Learned Single Judge quashed the termination order holding the same to be stigmatic and punitive in nature since the attending circumstances revealed that misconduct was the real basis of termination. The aforesaid case is also distinguishable and order appears to have been passed in the peculiar facts and circumstances of the said case.

15. Reverting back to the facts of present case, it may be noticed that a report was placed for consideration of the Competent Authority informing the factual position, whereby the respondent during frisking was found smuggling 15 grams of a narcotic drug hidden in his undergarment in presence of Jail Official by the TNSPP on October 13, 2017. It was further informed that an FIR No.0440/2017 under Section 21/61/85 NDPS Act was registered against the respondent at Police Station Hari Nagar and he had been arrested.

In the facts and circumstances, Competent Authority did not proceed to hold any preliminary inquiry, to find out the truth of allegations against the respondent but decided to terminate the services of respondent on the basis of aforesaid report, since the respondent was under probation and the appointment was governed by CCS (Temporary Services) Rules, 1965. It is pertinent to note that entry points in Jail are generally under the CCTV surveillance and the recovery had been effected from the undergarment of



the respondent, by the police personnel of TNSPP, which is an independent police force deputed to guard the jail premises. Accordingly FIR was registered under Section 21/61/85 NDPS Act and the recovered substance on examination was further found to be 'smack'. Apparently, no further preliminary inquiry in the facts and circumstances was even required by the Competent Authority in view of registration of FIR against the respondent. The exercise of powers under Rule 5(1) of CCS (Temporary Services) Rules, 1965, in the facts and circumstances appears to have been rightly undertaken since the respondent allegedly indulged in smuggling of narcotic drugs within the Jail premises wherein he was posted as Warder.

It may be noticed that in order of termination of services of the respondent, no further reference has been made to the 'misconduct/misdemeanour' of involvement of respondent in offences under Section 21/61/85 NDPS Act and as such it cannot be said that the order is stigmatic. The termination on face of record is not 'founded' on any inquiry and the 'involvement' of the respondent in the aforesaid FIR, can only be termed as a 'motive' for terminating the services. The termination order as such is not 'punitive' in character but 'termination simpliciter' without casting any evil consequences on the respondent.

16. We are of the considered view that the Tribunal missed the fine distinction between 'motive' and 'foundation' as brought out in several judgments and wrongly reached the conclusion that the termination order was punitive by simply relying upon **Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors.**(supra).

17. For the foregoing reasons, the order passed by the Tribunal is *set aside* and the termination order passed by competent authority dated November 06,



2017 is upheld. The writ petition is accordingly allowed. No orders as to costs. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J.

V. KAMESWAR RAO, J.

SEPTEMBER 06, 2023/v