

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10287 of 2016

Dr. Kumar Balwant Singh son of Sri Amrender Narayan Singh the then Asstt. Controller of Examinations-1 (Now Removed), Aryabhatta Knowledge University, Patna, Resident of Khabra Road, Near Satya Sai School, P.S.-Kazi Mohammadpur, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Human Resource Development Department (Higher Education), Government of Bihar, Patna.
2. The Chancellor, University of Bihar, Raj Bhavan, Patna.
3. The Aryabhatt Knowledge University, Patna through its Registrar, Chanakya National Law University Campus, near Bus Stand, Mithapur, Patna.
4. The Vice-Chancellor, Aryabhatta Knowledge University, Chanakya National Law University Campus, Near Bus Stand, Mithapur, Patna.
5. The Registrar, Aryabhatt Knowledge University, Chanakya National Law University Campus, Near Bus Stand, Mithapur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajesh Kumar Singh, Advocate
For the Respondent/s	:	Mr.Devendra Kr Sinha, Advocate
For Hon'ble Chancellor	:	Mr.Rajiv Ranjan Kr. Pandey, Advocate
	:	Mr.Janardan Pd. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
C.A.V. JUDGMENT

Date : 23-09-2024

1. The present writ application has been filed for quashing the order dated 04.09.2014, contained in Memo No. 002/Reg/2249/001/AKU/2014 (Annexure-6), passed by the Registrar, Aryabhatta Knowledge University, Patna (in short "A.K.U.") and the appellate order dated 05.12.2015, passed by Hon'ble Chancellor of the Universities (Annexure-8), by which the appeal filed by the petitioner has been dismissed. The petitioner has further prayed for a direction to the respondents to



reinstate him on his post with all consequential benefits.

2. The brief facts of the case is that the petitioner was appointed on the post of Assistant Controller of Examination-I at A.K.U. on 18.10.2013, through an open advertisement. While the petitioner was on probation, a show cause dated 12.04.2014 was served upon him, by the Registrar of the University, containing following articles of charge and imputation of misconduct in support of each article of charge:-

(a) Charge no. 1 was that on re-evaluation of the paper of the candidate of B.Tech, 4th year special examination, the examiner had allotted 09 marks. Petitioner tampered with the records and intentionally changed the original mark i.e. 09 and replace it by 25 marks with an intention to help the candidate.

(b) Charge no. 2 was that the petitioner, by his note in the file dated 05.03.2014, recommended to Controller of Examination for publication of the result of the candidate, thus attempted to deceive the authorities of the examination department of the University, which is an act of misconduct and cheating.

3. The petitioner filed reply to show cause and denied the charges levelled against him. Thereafter, second show cause



notice having reference no. 1815 dated 26.07.2014, was issued to the petitioner stating therein that he had tampered the marks on re-evaluation in the answer book for B.Tech 4th year special examination for favouring a candidate and the facts are evident from the records and nobody has complained.

4. In response, petitioner submitted a reply to the second show cause on 11.08.2014, denying the allegation and stated that answer-sheets of the students never came before him nor he had any access to the answer-sheets. Changed answer-sheets were having its respective codes, hence one cannot know which answer-sheet is of which particular student.

5. The University considered the reply to the second show cause of the petitioner and found it unsatisfactory. The respondent- University discharged the petitioner on the ground of un-suitability. The appeal filed before the Chancellor against the order of discharge has been dismissed.

6. Learned counsel for the petitioner submits that the impugned order of removal of the petitioner from his services is a non-speaking order and is based upon the second show cause notice dated 26.07.2014, which has specific reference of tampering of marks on re-evaluation in the answer book relating to B.Tech 4th year special examination in order to favour a



candidate. The order of removal was challenged by the petitioner before Hon'ble Chancellor, which has been dismissed on the ground that the petitioner was on probation and therefore, no full-fledged inquiry is required regarding his discharge from service and that the charge of enhancement of marks in answer book of one student namely Randhir Kumar is established against the petitioner and therefore, removal of the petitioner from his services is just and proper. The petitioner was removed from services, in light of provisions contained under Article 36(g) of the Statute of Aryabhatt Knowledge University, on the basis of proved charge of enhancements of marks in answer-sheet of one student.

7. Learned counsel further submits that Human Resources Development Department, vide notification dated 27.05.2011, has issued the first Statute of A.K.U. under the powers conferred under Section 28 of the A.K.U. Act, 2008. Chapter-II of the said Statutes deals with General Conditions of Service. Article 35 of the Statute deals with penalties and Explanation II of Article 35 provides that the discharge of a probationer, whether during or at the end of the period of probation, for specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning



of this Article. There are two key words in Explanation II of Article 35 namely “Specific Fault” and “Unsuitability for the Service”, however there is no mention of the word “Misconduct”. The misconduct by a probationer cannot fall under specific fault and as such, the probationer charged with misconduct, which caused stigma, cannot be discharged as simpliciter but such decision shall amount to removal or dismissal, which can only be done by initiating regular departmental proceeding.

8. Learned counsel also submits that the petitioner was served with article of charges having specific charge of misconduct. The second show cause also mentions the charge of tampering with the marks and the impugned order is based upon the second show cause notice and petitioner’s reply. The appellate order clearly shows that the same is based upon misconduct.

9. Article 36 of the Statutes provides for full-fledged departmental proceeding, as contemplated under Article 311(2) of the Constitution of India. Article 36(g) of the Statute reads as under :-

“36(g)- The full procedure indicated above need not be followed in the case of a probationer discharged in the circumstances



*described in explanation (ii), Art. 15. (Sic 35)
In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is proposed to discharge him and his reply against the discharge is duly considered before orders are passed.”*

10. Thus, it is clear that as per the Statute, in the case of probationer, a full-fledged departmental proceeding is not required to be initiated if the probationer has committed any specific fault or has been found unsuitable for the job. The charge levelled against the petitioner does not fall under the definition of “specific fault” or “unsuitability”. Neither the respondent-University, in its counter affidavit, nor the learned Advocate appearing for the University argued that the charge levelled against the petitioner falls under the definition of “specific fault” or “unsuitability”. The Act and Statutes of Aryabhatt Knowledge University, Patna and the law settled by Hon’ble Supreme Court and the High Courts have made no difference between probationer and confirmed employee, as far as holding departmental proceeding for misconduct, which casts stigma upon the probationer. In support of his arguments, learned counsel for the petitioner has relied upon the following



judgments :-

(i) Parshotamlal Dhingra v. Union of India (AIR 1958 SC 36)

(ii) Shamsheer Singh and ors. v. State of Punjab & anr. (AIR 1974 SC 2192)

(iii) Anoop Jaiswal v. Government of India and anr. 1984(2) SCC 369

(iv) Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others 1993 (3) SCC 60

11. On the other hand, learned counsel for the respondent-University argued that in course of discharge of the official work of Controller of Examination of the University, it was found that the marks obtained by the candidate Randhir Kumar, on re-evaluation, was enhanced from 15 to 25, though he had failed in original evaluation. The Controller of Examination, being not satisfied, referred the matter to the examiner Dr. Bimal Kumar, who, vide his letter dated 07.03.2014, informed that in the answer-sheet of Randhir Kumar, for Question no. 1, he was given 05 marks on re-evaluation whereas it has been tampered and has been shown as 09 marks. For Question no. 7, it is stated that he was given 04 marks and for other question, 0 mark has been given, which has been tampered and changed. Thus, the marks in the answer book



of the candidate Randhir Kumar was found to be tampered, which was handed over by Dr. Bimal Kumar, after re-evaluation, to the petitioner. Thus, this fact was established that the tampering has been done by the petitioner.

12. Learned counsel further argued that the petitioner forwarded two copies for onward action to the Controller of Examination on 05.03.2014. In the course of routine checking, the Controller of Examination found that the marks of student Ved Prakash Kumar were reduced from 04 to 01 after re-evaluation, whereas the marks of Randhir Kumar were increased from 15 to 25 and he passed after re-evaluation though he was failed during the original evaluation. The Controller of Examination sent the photo stat copies of both the answer books through special messenger to Dr. Bimal Kumar, who has confirmed that the marks has been tampered and changed.

13. Learned counsel next argued that the Controller of Examination reported the matter to the Registrar on 10.03.2014 and on 14.03.2014, the Registrar directed the Controller of Examination to investigate further and to put up a conclusive report with his recommendations directly to Pro Vice Chancellor/ Vice Chancellor. Accordingly, on 28.03.2014, the



Controller of Examination submitted his report directly to the Acting Vice-Chancellor, recommending therein that the petitioner being Assistant Controller of Examination and custodian of the answer books is responsible for such tampering in the answer book. Thereafter, the petitioner was served with a show cause notice dated 12.04.2014, containing Article of Charges and imputation of misconduct, alleging therein that the petitioner tampered with the records of examination department of the University, wherein a candidate, who had sought the re-evaluation of his answer book of B.Tech, 4th year special examination, had been favoured and the petitioner had tampered and had enhanced the marks of the concerned candidate. The petitioner filed his reply on 09.05.2014, denied the charges, upon which the show cause reply submitted by the petitioner was put up before the Discipline Committee of A.K.U. on 30.05.2014. The Committee found that the marks have been tampered with the intention of giving undue favor to the student but in absence of any other conclusive proof and solely on the basis of the report of Dr. Bimal Kumar, it was not possible to hold any individual guilty. So, the Discipline Committee decided that the available evidences should be examined by the Forensic Department of the Police Latoratory of C.I.D., Bihar



and accordingly, a letter dated 29.05.2014 was written by the Registrar of the University to the Director General of Police, Bihar, requesting him to get an investigation conducted regarding the possibility of enhancement of marks in the answer book of the candidate Randhir Kumar. On 07.07.2014, the Police Laboratory submitted its report vide letter no. 321 to the effect that a disputed writing and figure writing in English enclosed with red lines stamped and marked-X to X/6 is in the handwriting of the person who wrote the specimens of writing and figure writing in English and is enclosed and marked as A to A/6. Thus, the report of the Police Laboratory also confirmed the tampering and enhancement in marks by the petitioner.

14. On receipt of the Investigation Report from the police Laboratory, a legal opinion from the counsel was sought and discussed in the meeting of the Discipline Committee held on 14.07.2014 and a second show cause notice was issued to the petitioner on 26.07.2014, to which the petitioner submitted his reply on 11.08.2014, denying the allegations levelled against him. The University discussed the whole matter in a threadbare manner with the Special Secretary, Department of Education, Government of Bihar on 29.08.2014 and considering the reply to show cause by the petitioner, the University discharged the



petitioner from the services.

15. Learned counsel further submits that action has been taken against the petitioner in accordance with Article 36(g) of Chapter-II of the Statutes of A.K.U., which stipulates that probationer can be discharged by giving him an opportunity to show cause against his discharge after apprising him of the grounds, on which it is proposed to discharge him and his reply against the discharge is duly considered before the orders are passed. The petitioner was provided with an opportunity while apprising him the grounds, which was done in the form of Article of Charges, appended along with the Show Cause. In none of the show cause or communication to the petitioner, any indication was given that the University proposed to initiate a disciplinary enquiry against him. Hence, mere providing Articles of Charge cannot be said to be a ground that a full-fledged enquiry ought to have been followed. Annexure 2 to the writ application contains the show cause and it was only stated that in case of failure to submit reply to the show cause, within the stipulated time period, an *ex-parte* order would be passed. The petitioner was provided with another opportunity to submit show cause as to why he should not be discharged from service as per the provisions in the Act and Statutes of the A.K.U. and



finally, the petitioner was discharge from service as per Article 36(g) of Chapter II of the Statutes of the University on 04.09.2014.

16. Since the petitioner has been discharged from services as per the Statute, it is not having any stigmatic bearing on his career and being a probationer, the petitioner has been discharged without holding any full-fledged enquiry in accordance with the relevant provisions of the Statute. The impugned letter of discharge is non-stigmatic and it has only been stated that the reply, submitted by the petitioner, found unsatisfactory, he is found unsuitable for the post of Assistant Controller of Examination and is thus discharged from services, with immediate effect. The respondent-University complied the principle of natural justice twice and the petitioner was given opportunity to submit his reply on the charges against him, which petitioner submitted on two occasions. The report submitted by Forensic Science Department can also not be said to be flawed. The handwriting specimen of the petitioner was available with the University and if at all, his handwriting was not obtained, the earlier notings made by the petitioner could always be forwarded to the Forensic Department. Now, post of Assistant Controller of Examination does not exist, as per the



posts created and sanctioned by the Education Department, Government of Bihar, as per Memo No. 15/P2-01/2011-740 dated 28.02.2023.

17. The respondent- University has relied upon the following judgments :-

1. Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36.
2. Bishan Lal Gupta v. the State of Haryana & ors., AIR 1978 SC 363.
3. State of Punjab v. Sukh Raj Bahadur, AIR 1968 SC 1089.
4. Champaklal Chimanlal Shah v. The Union of India, AIR 1964 SC 1854.
5. State of Orissa & ors. v. Ram Narayan Das, AIR 1961 SC 177.
6. Kendriya Vidyalaya Sangathan v. Arunkumar Madhavrao Sinddhave and ors., (2007) 1 SCC 283.
7. State of Punjab v. Sukhwinder Singh, (2005) 5 SCC 569.

18. I have heard learned counsel for the parties and gone through the materials available on record.

19. Under Section 28 of the A.K.U. Act, 2008, the first Statute of A.K.U. came into existence vide notification dated 27.05.2011, issued by Human Resources Development



Department, Government of Bihar. Chapter-II of the said Statutes deals with General Conditions of Service. Article 35 of the Statute prescribes the penalties imposed by the appointing authority upon members of the University services. Explanation I of Article 35 relates to discharge of a person appointed on probation, during or at the end of the period of probation, on any ground arising out of the specific conditions laid down by the appointing authority e.g. want of a vacancy, failure to acquire any prescribed special qualification, or to pass any prescribed test. Explanation II says that the discharge of a probationer, whether during or at the end of the period of probation, for specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning of this Article.

20. Article 36 deals with disciplinary action and prescribes the complete procedure for conducting departmental proceeding. Sub-clause (g) of Article 36 of the Statutes says that the full procedure indicated above need not be followed in the case of a probationer discharged in the circumstances described in Explanation (II), Art. 15. (Sic 35). In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the



grounds on which it is proposed to discharge him and his reply against the discharge is duly considered before orders are passed. Under Explanation II, the discharge of a probationer can be for some “specific fault” or on account of his “unsuitability.

21. The petitioner has relied upon ***Shamsher Singh and ors. v. State of Punjab***, reported in ***AIR 1974 SC 2192 (equivalent to (1974) SCC 831)***, which relates to the termination of the services of a probation judicial officer on the basis of vigilance enquiry conducted by the State Government on the request of the High Court. In paragraph no. 63 of the judgment, Hon’ble Supreme Court has held as follows :-

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



In paragraph 64 of the judgment, it has been observed as follows :-

“ 64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved, in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. In Gopi Kishore Prasad v. Union of India [AIR 1960



SC 689 : (1960) 2 SCR 982 : (1960) 1 Lab LJ 262] it has been stated that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment.

In paragraph 65 of the aforesaid judgment, Hon'ble Supreme Court has further discussed as follows :-

“ 65. The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment (see State of Orissa v. Ram Narayan Das [AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 SCJ 209]). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance (see Madan Gopal v. State of Punjab [AIR 1963 SC 531. A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311.”

In paragraph no. 66, it has been held as follows :-

“ 66. If the facts and circumstances of the



case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive (see K.H. Phadnis v. State of Maharashtra [(1971) 1 SCC 790 : 1971 Supp SCR 118]).”

Paragraph no. 67 of the aforesaid judgment says as follows :-

“ 67. An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with, Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct.”

(ii) Another judgment relied upon by the petitioner is ***(1993) 3 SCC 60 (Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre For Basic Sciences, Calcutta and others)***. Relevant paragraphs i.e. paragraphs no. 25 and 26 are quoted hereinbelow :-

“ 25. In the matter of “stigma”, this Court has held that the effect which an order of



termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven-Judge Bench decision in Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] Ray, C.J. observed that if a simple order of termination was passed, that would enable the officer to “make good in other walks of life without a stigma”. It was also stated in Bishan Lal Gupta v. State of Haryana [(1978) 1 SCC 202 : 1978 SCC (L&S) 55] that if the order contained a stigma, the termination would be bad for “the individual concerned must suffer a substantial loss of reputation which may affect his future prospects”.

26. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a “stigma”. The other issue in the case before us is whether even if the words used in the order of termination are innocuous, the court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination.

(iii) In ***Parshotam Lal Dhingra v. Union of India (AIR 1958 SC 36)***, Hon’ble Supreme Court has observed as follows :-



“ (i) If a right exists under a contract or Service Rules to terminate the service the motive operating on the mind of the Government is wholly irrelevant.

(ii) if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and violates Article 311 of the Constitution. The reasoning why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible. On the other hand, if termination is founded on misconduct it is objective and is manifest.”

22. The respondent- University has also relied upon *Parshotam Lal Dhingra v. Union of India* (supra) for the proposition that it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article. The motive or the inducing fact which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant. Further reliance has been placed upon the judgment of Hon'ble Supreme Court in the case of ***Bishan Lal Gupta v. The State of Haryana & ors.*** (AIR 1978 SC 363). In paragraph



no. 14 of the judgment, taking note of the judgment of ***Shamsher Singh (supra)***, Hon'ble Supreme Court has said that

“ 14. These observations must be meant to cover those cases where, even though the probationer may have no right to continue in service, yet, the order terminating his services casts a stigma on his name. This means that the individual concerned must suffer a substantial loss of reputation which may affect his future prospects. In that case, justice requires a fuller hearing. If, however, after going into the particular facts and circumstances of a case, the Court finds that the enquiry conducted and notices given were intended only to arrive at a finding on the desirability of continuing a person in service, and more serious action was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere form does not indicate the exact nature and result of the proceeding judged by its nature and its effects upon a probationer. To some extent the Courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that, even if the reputation of a probationer was to some degree affected by what took place, yet, if those facts could not reasonably be disputed by him, it provided a



*sufficient ground for terminating his services.
There is, in such cases, no injustice.*

Another judgment relied upon by the respondent is
***State of Punjab and ors. v. Sukh Raj Bahadur (AIR 1968 SC
1089)***, paragraphs no. 16 and 17 are reproduced hereinbelow :-

*“ 16. On a conspectus of these cases, the
following propositions are clear :-*

- 1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.*
- 2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.*
- 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.*
- 4. An order of termination of service in exexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.*



5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge sheet submitted, explanation call for and considered, any order of termination of service made thereafter will attract the operation of said article.

17. In this case the departmental enquiry did not proceed beyond the stage of submission of a charge sheet followed by the respondent's explanation thereto. The enquiry was not proceeded with; there was no sittings of any Enquiry Officer, no evidence recorded and no conclusion arrived at on the enquiry. In these circumstances the principle in Madan Gopal's case, (1963) 3 SCR 716 = (AIR 1963 SC 531) or Jagdish Mitter's case, AIR 1964 SC 449 will not be applicable. The case is in line with the decision of this Court in 1961-1 SCR 606 = (AIR 1961 SC 177), Civil Appeal No. 590 of 1962, D/ 20-10-1963 (SC) and Civil Appeal No. 1341 of 1966, D/- 13-12-1966 (SC) (supra) "

Yet another judgment relied upon by the respondent is ***Kendriya Vidyalaya Sangathan v. Arun Kumar Madhavrao Sinddhave and Ors.*** reported in (2007) 1 SCC 283, where it has been held that compliance with the principle of natural justice



are mandatory in the case of formal inquiry and in the case of informal inquiry, compliance with the principle of natural justice are not necessary.

23. Coming back to the facts of the present case, it appears that the respondent-authority served article of charges upon the petitioner before the expiry of probation period, which contains two charges. Charge no. 1 says that on re-evaluation of the paper of the candidate of B-Tech 4th year (Special Examination), the examiner had allotted 09 marks and the petitioner tampered with the records and intentionally changed the original 09 marks and in its place, wrote 25 marks with an intention to wrongly help the candidate. Charge no. 2 says that the petitioner, by his note in the file dated 05.03.2014, endorsed to the Controller of Examination, recommended for publication of result of the candidate knowing fully well that the petitioner had tampered with the original marks allotted to the candidate by the examiner. The charge further says that the petitioner intended to deceive the authorities of the examination department of the University, which is an act of misconduct and cheating. Annexure-2 appended with article of charges is the imputation of misconduct. The petitioner, by his reply on the charges, dated 09.05.2014, denied the allegation of tampering



with the marks and cheating the institution on the ground that the petitioner only forwarded the files for re-evaluation, after perusal.

24. From the counter affidavit filed by the University, it transpires that the University has taken stand that on 22.05.2014, Disciplinary Committee was constituted, vide notification, issued under the order of Vice-Chancellor, comprising the Vice-Chancellor as its Chairman and 06 other members. The Disciplinary Committee held its first meeting on 30.05.2014 in the University premises and decided that for the purposes of inquiry for tampering in the marks, no conclusive decision is possible on the basis of available materials. It is not possible to hold anybody guilty only on the basis of report, submitted by Prof. Bimal Kumar, Associate Professor, Civil Engineering Department Loknaya Jai Prakash Narayan, Institute of Technology, Chapra without any evidence/ cogent material. Accordingly, the Disciplinary Committee decided to call for further opinion/ report of Prof. Bimal Kumar, so that the matter may further be proceeded with. The Disciplinary Committee decided that in case, fresh report/ opinion of Prof. Bimal Kumar doesn't come, the evidence available on record be sent for forensic examination to the Forensic Department and a



report was called for from the Forensic Department, which submitted its report and confirmed tampering in the answer-sheet and implicated the petitioner in tampering, as his handwriting matched with tampering on the answer book.

25. The report of the Forensic Laboratory was considered by the Disciplinary Committee in its second meeting, held on 14.07.2014, which arrived at the conclusion that the petitioner tampered and enhanced the marks, enabling the student to pass illegally, as he had originally failed. Accordingly, on 14.07.2014, the Committee decided/recommended to issue second show cause notice to the petitioner. The Committee further recorded that on perusal of the relevant papers, the reports and replies, the Committee is convinced that Dr. Kumar Balwant Singh (petitioner) Assistant Controller of Examination (Evaluation) is guilty of gross misconduct, not commensurate with his position, has misused his official status to favour somebody by illegal means and therefore, fit to be discharged from the service.

26. In pursuance of the aforesaid decision, a second show cause notice dated 26.07.2014 was served upon the petitioner, stating therein that from the examination of records, it is now clear that he has tampered the marks on re-evaluation



in the answer book relating to B.Tech 4th year special examination for favouring a candidate. The petitioner was called upon to submit his reply to the second show cause to show as to why he should not be discharged from service, as per the provisions of the Act & Statutes of A.K.U. Petitioner has submitted his reply to the second show cause, which was found to be unsatisfactory and impugned order of discharge/termination of the petitioner has been passed on 04.09.2014.

27. Upon perusal of the impugned order of discharge/termination, it appears that there is reference of second show cause issued by University having letter no. 1815 dated 26.07.2014 in it. Second show cause dated 26.07.2014 says that from the examination of records, it is clear that you (petitioner) have tampered the marks on re-evaluation in the answer book relating to B.Tech 4th year special examination for favouring a candidate and that the facts are evident from the records. While arriving at the conclusion whether the order of discharge/termination is stigmatic or not, the Court can look into the order on the face of it and can find whether it casts any stigma on the government servant or not.

28. In *Chandra Prakash Shahi v. State of U.P. and others, (2000) 5 SCC 152*, it has been held that the Courts can



lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is as innocent as worded In paragraph no. 38 of judgment, taking note of judgment of *State of Bihar v. Gopi Kishore Prasad* [AIR 1960 SC 689 and *Samsher Singh v. State of Punjab* (supra), it has been said that question of termination of services of a probationer was considered and it was laid down that the form of the order was not conclusive and the Court could go behind the order to find out the real foundation of that order. In paragraph no. 29, Hon'ble Supreme Court has held that if there is allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

29. In the counter affidavit, at paragraph no. 30, the specific stand of the respondent- University is that departmental proceeding was conducted against the petitioner as per the mandate of Article 311(2) of the Constitution. Two show cause notices were issued to the petitioner and the University also got conducted the forensic test to meet the ends of justice. A



preliminary enquiry was conducted by the department and the same was reported to the higher authorities and on the basis of the same, a Discipline Committee was constituted. The action has not been taken on hearsay basis, rather the same has been done after a conclusive finding having come forth in this regard, which conclusively suggests the misconduct of the petitioner.

30. Admittedly, in the present case, the period of probation was not over. After serving an articles of charges upon the petitioner alleging serious misconduct, the University asked a show cause from the petitioner upon the charges, which was submitted by the petitioner. Thereafter, the respondent-University formed a Discipline Committee for taking a decision on the charges levelled against the petitioner. The Discipline Committee collected evidence and sent it to Forensic Science Laboratory for examination and upon submission of the report by the F.S.L., holding the petitioner responsible for the tampering, the Discipline Committee arrived at the conclusion that petitioner is guilty of gross misconduct, who misused his official position/ status to favour somebody by illegal means and therefore, fit to be discharged from services.

31. The Committee recommended and asked second show cause from the petitioner. The second show cause issued



to the petitioner is based upon the finding/ conclusion, arrived at by the Discipline Committee, holding the petitioner guilty of tampering in the answer-sheet. Article 36 of the Statute which prescribes the procedure for taking disciplinary action for misconduct says at Clause 3 that a second show cause shall be issued before passing final order of punishment. It is the specific case of the respondent- University that a full-fledged departmental proceeding was initiated against the petitioner in consonance with Article 311 of the Constitution of India. But no disciplinary enquiry was held as contemplated in Article 36 of Statutes.

32. In paragraph no. 37 of the judgment passed in ***Dipti Prakash Banerjee (supra)***, the Supreme Court has said that the words which amounts to “stigma” need not be contained in the order of termination of the probationer but may be contained in any document, referred to in the termination order or its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. From the materials and the documents brought on record by the respondent- University read with the reference of second show



cause dated 26.07.2014 and the recommendation/ conclusion of the Discipline Committee and upon reading them together, there is no doubt in the mind of the Court that the alleged act of tampering in the answer-sheet/ misconduct was the basis of the order. The respondent- authorities collected evidence behind the back of the petitioner. The petitioner was not given reasonable opportunity to defend himself, as provided under Article 311(2) of the Constitution of India. The disciplinary authority arrived at the conclusion on the basis of report of Forensic Science Laboratory to the effect that the petitioner was responsible for tampering but the report of F.S.L. was not given to the petitioner. The inquiry held by the Discipline Committee and evidence collected by it behind the back of the petitioner was not for the purposes as to whether the petitioner was suitable to retain the post but was for the purpose of proving his guilt and involvement in increasing/ tampering the marks.

33. In the facts and circumstances of the present case and the law discussed hereinabove, I am of the considered opinion that impugned order of discharge casts aspersion and is stigmatic and not a termination simpliciter. The same has been passed without giving reasonable opportunity to the petitioner to defend himself against the allegation/ charges.

34. For the aforesaid reasons, the writ application is



allowed. The impugned order dated 04.09.2014 and the appellate order dated 05.12.2015 are set aside and the respondent- University is directed to re-instate the petitioner on the post, from where he was terminated/ discharged or any other equivalent post without any back wages, as from the supplementary affidavit filed by the petitioner, it is evident that the petitioner is gainfully employed at Langat Singh College, Muzaffarpur. Accordingly, in the facts and circumstances of the case, the petitioner is not entitled for any amount as back wages. The respondents are permitted to proceed afresh against the petitioner, in accordance with law.

35. The writ application is allowed, however, there shall be no order as to costs.

(Anil Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	29.07.2024
Uploading Date	.09.2024
Transmission Date	NA

