

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5745 of 2013

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Sandeep Kumar, S/o Priyavrat Narayan Bhagat, R/o Azad Chowk, Gangjala,
Police Station and District- Saharsa

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Chief Engineer (Commercial), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. The General Manager-Cum-Chief Engineer Kosi Electric Supply Area, Saharsa, At and P.O.- Saharsa
6. The Electrical Superintending Engineer, Electric Supply Circle, Purnia
7. The Electrical Executive Engineer, Electric Supply Division, Purnia, At and P.O.- Purnia

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akash Keshav, Advocate. Ms. Akanksha Malviya, Advocate. Dr. Suchi Bharti, Advocate. Mr. Shreyanshu Kumar, Advocate. Mr. Rajendra Prasad Sah, Advocate.
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate. Mr. Venkatesh Kirti Singh, Advocate. Mr. Akhileshwar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 24-09-2024

Heard Mr. Akash Keshav, learned counsel along
with Ms. Akanksha Malviya and Dr. Suchi Bharti, learned
counsels appearing on behalf of the petitioner and Mr. Vinay
Kirti Singh, learned senior counsel along with Mr. Vekatesh
Kirti and Mr. Akhileshwar Singh, learned counsels appearing on
behalf of the respondents.



2. The petitioner in paragraph no. 1 of the present writ petition has sought, *inter alia*, following relief(s), which are reproduced hereinafter:-

“i) For quashing of the resolution vide resolution no. 1997 dated 19.09.2012 issued under the signature of the Joint Secretary of the Board (Respondent No. 3) and communicated to the petitioner vide Memo No. 1998 dated 19.09.2012 whereby and whereunder on wrong assumption of facts and law the services of the petitioner has been terminated.

ii) For holding that the reasons and ground for termination of services of the petitioner and issuance of the impugned resolution dated 19.09.2012 (Annexure 1) are totally non-existent, arbitrary, invalid, mala fide and illegal.

iii) For holding that the petitioner is entitled to continue in service of the Board without any hindrance and the petitioner is further entitled to the salary/remuneration as he was getting immediately prior to issuance of the impugned resolution of termination.

iv) For issuance of any other appropriate relief or reliefs which the petitioner may be deemed entitled to.”

3. Brief facts of the case are that the petitioner was appointed as Electrical Junior Engineer on contractual basis and his tenure was extended from time to time by the erstwhile Bihar State Electricity Board at present the North Bihar Power Distribution Company Ltd. A drive against theft of electricity was directed to be carried within the Electric Supply Circle/Division, Purnia. The Electrical Superintending Engineer, Electric Supply Circle, Purnia in compliance had constituted a team and conducted several raids detecting theft of energy and



accordingly lodged FIR against the persons found stealing energy.

4. The petitioner who was posted as Electrical Junior Engineer was served with a letter vide Memo No.1796 dated 08.11.2011 issued under the signature of Chief Engineer (Commercial) of the Board to show cause why administrative/disciplinary action be not taken against him. Similar show cause was also sought from other Electrical Junior Engineers. A criminal case was also directed to be lodged vide memo no. 1796 dated 08.11.2011. The petitioner by his letter no. 465 dated 22.11.2011 submitted his reply stating that the electric supply to Chitrawani Cinema Hall, Purnia was disconnected and he has taken several steps of stopping theft of electricity and lodged several FIRs against the guilty persons. After the submission of explanation by the petitioner, the General Administration Department of the Board under the signature of Joint Secretary issued letter vide letter No.175 dated 25.01.2012 informing that the explanation of all the concerned officers including the petitioner were examined and after consideration of the entire gamut of allegation, a decision was taken to lodge a criminal case against such officer including the petitioner. Thereafter FIR was lodged vide K. Hat P.S. Case



No. 126/2012 dated 27.02.2012 against all the seven engineers/officers of the Board including the petitioner under various sections of the Indian Penal Code and Prevention of Corruption Act. The petitioner submitted his representation to the Joint Secretary of the Board and the Joint Secretary of the Board vide his letter no. 830 dated 17.04.2012 directed the petitioner to submit his explanation withing seven days, as to why, his contractual appointment should not be terminated. The petitioner in response to the letter dated 17.04.2012 issued by the Joint Secretary, submitted his detailed explanation denying the allegations and also reiterated his defence in his representation dated 13.03.2012 (Annexure-10). The petitioner, in the meantime, was granted anticipatory bail vide order dated 31.08.2012 in connection with K. Hat P.S. Case No.126/2012 passed in Cr. Misc. No.29460/2012. Consequently, the F.I.R. no K. Hat P.S. Case No. 126 of 2012 has been quashed by this Hon'ble Court vide order dated 28.08.2019 passed in Cr. Misc No. 42596 of 2016 (Annexure-13). The petitioner vide the order contained in Memo No.1998 dated 19.09.2012 was communicated that the Board has taken a decision vide resolution No. 1997 dated 19.09.2012 to terminate his service by canceling his contract of service.



SUBMISSION ON BEHALF OF THE PETITIONER

5. Learned counsel appearing on behalf of the petitioner submitted that petitioner was working on the post of Electrical Junior Engineer as a contractual Employee, his employment being continued and extended from time to time, in the erstwhile Bihar State Electricity Board at present the North Bihar Power Distribution Company Ltd. while the petitioner was working on the post of Junior Electrical Engineer, Electric Supply Division, Purnia, there was a drive against theft of electricity within the Division, during which raids were conducted by a team consisting of the Superintending Engineer, Assistant Engineer and Junior Engineer of the Electrical Division, Purnia on 15.10.2011. During the raid in the area under the petitioner's duty a Cinema Hall was raided but no theft of Electricity was found in the premises, however two TV repairing shops in the premises were found and accordingly actions were taken including registration of FIR against the theft.

6. It is further submitted that the officer who were present and participated in the raid were served with common notice vide memo no.- 1924 dated 08.11.2011 as contained in Annexure- 4 asking them to show cause in respect of their non-



complicity in the theft of electricity, otherwise appropriate action shall be taken against them. The petitioner replied vide his letter no. 465 dated 22.11.2011 (Annexure 5).

7. Thereafter, based on the allegation, FIR was directed to be registered against all the employees who were member of the raid team constituted vide letter no. III/KAEB-Alleg-13002/12-175 dated 25.01.2012. The petitioner was again issued show cause vide letter No. III/KAEB- Alleg. 13002/2012/830 dated 17.04.2012 (Annexure 11). The petitioner replied to the show cause contained in Annexure-12. The show cause of the petitioner was not considered in accordance with law and he was terminated from the service vide the impugned order dated 19.09.2012 (Annexure-1) without holding any enquiry and without recording any evidence to conclude the involvement of the petitioner in the theft of electricity.

8. Learned counsel submitted that the respondents in their counter affidavit have specifically stated that since the petitioner was working on contractual basis, there was no occasion to draw departmental proceeding and in absence of any material in respect of theft of electricity, the F.I.R. being K. Hat P.S. Case No. 126 of 2012 has been quashed by this Hon'ble



Court vide order dated 28.08.2019 passed in Cr. Misc No. 42596 of 2016 (Annexure-13). Learned counsel has emphatically submitted that the departmental proceeding on the basis of similar charges drawn upon other officers, based on which the departmental Enquiry was held, have been exonerated from all the allegations at the stage of enquiry itself as same can be inferred from annexure 15, 16 and 17 as such, the petitioner is also required to be given equal treatment for similar charges. Learned counsel further submitted that order of termination being stigamatic due procedure was required to be followed by holding enquiry and not following the proceeding laid down under Article 311 of the Constitution of India, the termination order is fit to be set aside. It has been specifically stated in counter affidavit that the petitioner was working on contractual basis and there was no need to draw departmental proceeding. Further, in case of contractual employment, if the order of termination is not a discharge simpliciter but an order inflicting punishment, the same is punitive and stigmatic and in such cases enquiry as contemplated under Article 311(2) is a necessary requirement. Learned counsel also submitted that holding an enquiry against specific charges and not giving reasonable opportunity to the petitioner to deny his guilt through



evidences and witnesses before terminating him is bad in law and against the mandate of Article 311(2) of the Constitution of India.

SUBMISSION ON BEHALF OF THE RESPONDENTS

9. *Per contra*, Learned counsel appearing on behalf of the respondents, at the outset, submitted that the writ petition is not maintainable and the petitioner had remedy of filing suit before the competent civil court in view of the fact that the petitioner was a contractual employee.

10. Learned counsel further submitted that while the petitioner was posted as Electrical Junior Engineer, Supply Sub Station, Purnia (East), he was found involved in theft of electricity with involvement of the officers of the Board. The petitioner was appointed on contractual basis and his service was to be guided in terms of the contract. The contract stipulates that the service of the petitioner may be terminated with one month notice or one month salary. In the present case, the petitioner was served with a show-cause notice dated 17.04.2012 (Annexure- A & B to the counter affidavit) in accordance with the terms of the contract along with other five other defaulting officers. A departmental proceeding was initiated. Pursuant to the reply of the petitioner (Annexure-12)



and the enquiry, it was found that the petitioner who was the Junior Electrical Engineer was under duty / obligation to report the theft of the electricity which he had admittedly failed to do so, which amounts to misconduct on the part of the petitioner calling for the termination of the contract of service and accordingly the petitioner was terminated vide Memo No. 1998 dated 19.09.2012 (Annexure-1).

11. Learned counsel further submitted that one Satish Kumar Choudhary, Junior Electrical Engineer was also found guilty in departmental proceeding for his involvement in the theft of electricity and was also awarded with punishment of withholding on 1% pension for three years. Learned Counsel submitted that the petitioner was afforded the opportunity to defend himself, but he failed to submit a satisfactory reply. Learned counsel further informs that the petitioner has preferred an appeal against the impugned order dated 19.09.2012 contained in Memo No. 1998 by which he has been terminated from service and at the same time for similar relief he has filed the present writ petition.

12. Learned counsel emphatically submitted that the order of termination cannot be faulted with in view of the fact that the order of the termination has been passed after



following prescribed procedure in accordance with law after giving adequate opportunity to the petitioner. The appeal filed against the termination order has also been rejected by the Chairman of the Bihar State Electricity Board vide order dated 24.08.2013 on merits by passing a reasoned order and as such, interference is required by this Court. He reiterated that the departmental proceeding is conducted to enforce discipline in service and the consequences are based on preponderance of probabilities, while criminal proceeding is based for enforcing the Rule of law by penalizing the offender.

13. Learned counsel on behalf of the respondent further submitted that the petitioner cannot claim parity with other permanent employees and the benefit of Articles 309 to 311 and Bihar CCA Rules, 2005 cannot be granted to the petitioner.

ANALYSIS & CONCLUSION

14. Heard the parties.

15. Before proceeding to decide the case on merits, I find it apt to analyze, as to whether the present writ petition is maintainable in view of the relief as sought on behalf of the petitioner who was, admittedly, a contractual employee in the Electricity Board. In view of the recent judgment of the Apex



Court in the case of ***St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.***, reported in (2023) 4 SCC 498, the Hon'ble Supreme Court has held that contract of personal service cannot be enforced subject to the following conditions, namely:-

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and "status" to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal."

16. The Bihar State Electricity Board is an instrumentality of the State Government which has been rechristened into Power Holding Company within the meaning of Article 12 of the Constitution of India. In view of the exception drawn by the Apex Court in the case of ***St. Mary's Education Society (supra)***, the respondents come under the meaning of the State under Article 12, as such, the objections are rejected and the writ petition is held to be maintainable.



17. The main questions which falls for consideration are, firstly, petitioner who was a contractual employee, whether his order of the termination on the alleged ground of misconduct is stigmatic and not simpliciter affecting future career of the petitioner and require constitutional protection as enshrined under Article 311 of Constitution of India?

Secondly, whether the other employees against whom the same allegations were made as against the petitioner, have been exonerated from the departmental proceeding, similar relief can be granted to the petitioner against whom order of termination has been passed?

18. The petitioner has been terminated from service on allegation of misconduct for not fulfilling his duty/obligation to report the theft of the electricity causing revenue loss to the Electricity Board and the same is misconduct on the part of petitioner.

19. Misconduct is defined as a transgression of a known rule or standard of behavior, or an intentional act that is wrongful or improper. It can also referred to violation of a law or standard especially by a government official. Misconduct literally means wrong conduct or improper conduct. In usual



parlance, misconduct means a transgression of some established and definite rule of action. The word misconduct has been defined in Stroud's Judicial Dictionary, which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

20. The services of the petitioner have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to the petitioner. No show cause notice appears to have been issued to the petitioner. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.

21. The proposition of law relating to enquiry and termination of contractual employees has been very well established in the *Parshottam Lal Dhingra vs. Union Of India* reported in *AIR 1958 SC 36* in which the Hon'ble supreme court had settled the proposition in para 14 as quoted herein below:-



"14. Article 311 does not, in terms, say that the protections of that article extend only to persons who are permanent members of the services or who hold permanent civil posts. To limit the operation of the protective provisions of this article to these classes of persons will be to add qualifying words to the article which will be contrary to sound principles of interpretation of a Constitution or a statute. In the next place, clause (2) of Article 311 refers to "such person as aforesaid" and this reference takes us back to clause (1) of that Article which speaks of a "person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State". These persons also come within Article 310(1) which, besides them, also includes persons who are members of a defence service or who hold any post connected with defence. Article 310 also is not, in terms, confined to persons who are permanent members of the specified services or who hold permanent posts connected with the services therein mentioned. To hold that that Article covers only those persons who are permanent members of the specified services or who hold posts connected with the services therein mentioned will be to say that persons, who are not permanent members of those services or who do not hold permanent posts therein, do not hold their respective offices during the pleasure of the President or the Governor, as the case may be a proposition which obviously cannot stand scrutiny. The matter, however, does not rest here. Coming to Article 311, it is obvious that if that Article is limited to persons who are permanent members of the services or who hold permanent civil posts, then the constitutional protection given by clauses (1) and (2) will not extend to persons who officiate in a permanent post or in a temporary post and consequently such persons will be liable to be dismissed or removed by an authority subordinate to that by which they were appointed or be liable to be dismissed, removed or reduced in rank without being given any opportunity to defend themselves. The latter classes of servants require the constitutional protections as much as the other classes do and there is nothing in the language of Article 311 to indicate that the Constitution makers intended to make any distinction between the two classes. There is no apparent reason for such distinction. It is said that persons who are merely officiating in the posts cannot be said to "hold" the post, for they only perform the duties of those posts. The word "hold" is also used in Articles



58 and 66 of the Constitution. There is no reason to think that our Constitution makers intended that the disqualification referred to in clause (2) of the former and clause (4) of the latter should extend only to persons who substantively held permanent posts and not to those who held temporary posts and that persons officiating in permanent or temporary posts would be eligible for election as President or Vice-President of India. There could be no rational basis for any such distinction. In our judgment, just as Article 310, in terms, makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor; so does Article 311, in our view, make no distinction between the two classes, both of which are, therefore, within its protections and the decisions holding the contrary view cannot be supported as correct."

22. In case of ***State of Haryana & Anr. vs. Satyender Singh Rathore*** reported in **(2005) 7 SCC 518**, wherein, the Apex Court has faced to decide an order of termination in case of contractual employee against whom charge was of committing misconduct being penal in nature and relying on several decisions of the Apex Court including ***A.P. State Federation of Coop. Spg. Mills Ltd. v. P.V. Swaminathan*** reported in **(2001) 10 SCC 83**, has held that without complying the principle of natural justice and the order being stigmatic had allowed the claim of the appellant of the said case directing the State Government to give all the consequential benefits along with reinstatement. I find it apt to reproduce para 3 of the case, which is, *inter alia*, as follows:-



"3. The legal position is fairly well settled that an order of termination of a temporary employee or a probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by the court. But the court is not debarred from looking at the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so-called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed.

23. In case of *Karnataka Power Transmission Corpn. Ltd. vs. C. Nagaraju*, reported in, (2019) 10 SCC 367 it was observed in para 9 that :

"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different.

24. In case of *Abhay Jain vs. High Court of Judicature For Rajasthan & Anr.* reported in (2022) 13 SCC 1,



I find it apt to reproduce paragraphs no. 40.1, 59, 51, 64.1 and 78 of the said judgment, which, *inter alia*, are as follows:

"40.1. Article 311(2) of the Constitution of India:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1)

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

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

Provided further that this clause shall not apply

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

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

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

50. This Court also further observed that : (Gopi Kishore Prasad case [State of Bihar v. Gopi Kishore Prasad, 1959 SCC OnLine SC 40 : AIR 1960 SC 689] , AIR pp. 691-92, para 5)

"5. ... In our opinion, the controversy raised in this case is completely covered by the decision of the Constitution Bench of this Court in Dhingra case [Parshotam Lal Dhingra v. Union of India, 1957 SCC OnLine SC 5 : AIR 1958 SC 36] . The main question for decision in that case was whether the appellant



Dhingra had been reduced in rank by way of punishment as a result of the order of the General Manager of the Railway. Though, in that case, this Court decided that the order impugned had not that effect, this Court went elaborately into all the implications of the service conditions, with particular reference to the Railway Service Rules and the constitutional provisions contained in Section 240 of the Government of India Act, 1935 and Article 311 of the Constitution. The elaborate discussion in that judgment has reference to all stages of employment in the public services including temporary posts, probationers, as also confirmed officers. Insofar as those observations have a bearing on the termination of service or discharge of a probationary public servant, they may be summarised as follows:

1. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant, or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

4. In the last mentioned case, if the probationer is discharged on any one of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of Article 311(2) of the Constitution and will, therefore, be liable to be struck down.

5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or



inefficiency, or some such cause.”

(emphasis supplied)

51. A seven-Judge Bench of this Court in Samsher Singh v. State of Punjab [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] has held that : (SCC pp. 851-52 & 856-57, paras 64-66 & 86)

“64. ... 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. ...

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 [State of Orissa v. Ram Narayan Das, 1960 SCC OnLine SC 36 : AIR 1961 SC 177 : (1961) 1 SCR 606]). 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 [Madan Gopal v. State of Punjab, 1962 SCC OnLine SC 43 : AIR 1963 SC 531 : (1963) 3 SCR 716]). In R.C. Lacy v. State of Bihar [R.C. Lacy v. State of Bihar, 1963 SCC OnLine SC 1] it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2)....

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 [K.H. Phadnis v. State of Maharashtra, (1971) 1 SCC 790]).

86. ... In the facts and circumstances of this case



it is clear that the order of termination of the appellant Shamsheer Singh was one of punishment. The authorities were to find out the suitability of the appellant. They however concerned themselves with matters which were really trifling. The appellant rightly corrected the records in the case of Prem Sagar. The appellant did so with his own hand. The order of termination is in infraction of Rule 9. The order of termination is therefore set aside.” (emphasis supplied)

64.1. *In fact, this Court in the aforesaid itself has held that : (Ved Priya case [Rajasthan High Court v. Ved Priya, (2021) 13 SCC 151] , SCC pp. 158-59, paras 21 & 24)*

“21. True it is that the form of an order is not crucial to determine whether it is simpliciter or punitive in nature. An order of termination of service though innocuously worded may, in the facts and circumstances of a peculiar case, also be aimed at punishing the official on probation and in that case it would undoubtedly be an infraction of Article 311 of the Constitution. The Court in the process of judicial review of such order can always lift the veil to find out as to whether or not the order was meant to visit the probationer with penal consequences. ...

24. ... If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of overall satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simpliciter order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of overall performance during the period of probation, the theory of action being punitive in nature, will not be attracted.” (emphasis supplied)

78. *Accordingly, the appeal is allowed and the impugned order of the High Court dated 21-10-2019 [Abhay Jain v. High Court of Rajasthan, 2019 SCC OnLine Raj 7837] is set aside and the discharge order dated 27-1-2016 is quashed. Keeping in view that the appellant has not worked as judicial officer after he was discharged, we direct that while the appellant be reinstated with all consequential benefits including continuity of service and seniority, but will be entitled to be paid only 50% back wages, which may be paid within a period of four months from today.”*

25. The Apex Court in recent judgment in case of



Swati Priyadarshini vs. the State of Madhya Pradesh & Ors.
(Civil Appeal No.9758 Of 2024 Arising Out Of Special Leave
Petition (C) No.11685 Of 2021) has held that the termination orders being stigmatic in nature, relating to alleged misconduct involving moral turpitude, the same could not have been passed without holding a regular enquiry and the termination order could not have been passed without giving an opportunity of being heard relying upon several earlier decisions of the Apex Court, the Apex Court held that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. I find it gainful to *inter alia*, reproduce paragraphs no. 35 to 37 of the aforesaid judgment:

"35. We would only be adding to verbosity by multiplying authorities. In view of the above dictum, it is clear that the Respondents did not comply with Clause 4 – either the first part or the second part thereof. The order dated 30.03.2013 does visit the appellant with evil consequences and would create hurdles for her re further employment.

36. In view of the discussions made hereinabove, the Impugned Judgment is quashed and set aside. The judgment of the learned Single Judge dated 20.06.2017 stands revived, however with a modification to the extent that the appellant shall be entitled to all consequential benefits including notional continuation in service at par with other similarly- situated employees, but with the back wages restricted to 50%. Further, in view of the long passage of time, we deny liberty to the respondents to proceed afresh against the appellant as was granted by the learned Single Judge. However, this will not



preclude the respondents from taking action against the appellant in accordance with law in futuro apropos her official duties on the post in question, if the situation so arises. The exercise be completed within three months from the date of receipt of this judgment.

37. The appeal is allowed and disposed of on the above terms while leaving the parties to bear their own expenses.”

26. In so far as second question arises that the permanent employees have been exonerated from departmental proceeding, whether the petitioner can be granted similar relief against whom also order of termination has been passed? In this regard, I find it apt to place reliance on the judgment of Hon’ble Apex Court in case of in the case of **Sengara Singh and Ors. Vs. State of Punjab**, reported in **(1983) 4 SCC 225**, wherein it has been held that similarly placed delinquents must receive the same benefit with those reinstated received in absence of any distinguishing feature in their cases.

27. Further reliance is placed in the case of **Man Singh vs. State of Haryana** reported in **(2008) 12 SCC 331**, wherein the Hon’ble court observed in paragraph no. 20, which is, *inter alia*, reproduced hereinafter :-

20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of



equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness.

28. The Apex Court in the case of **Rajendra Yadav vs. State of M.P. & Ors.** reported in (2013) 3 SCC 73, has held, *inter alia*, as under:

"9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident 1997 (2) SCC . Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."

29. Based on the above principles of law, now I proceed to analyze as to whether the impugned order terminating the petitioner dated 19.09.2012 is stigmatic or not? The allegation made against the petitioner in the show cause is that while the petitioner was posted as Junior Engineer at Electrical Division, Purnia, a raid was conducted in the area



under his jurisdiction and it was reported that the persons who were not consumer of the Electricity Board were involved in theft of the electricity. The petitioner had filed reply to the show cause pleading his innocence that on several occasions he had lodged F.I.R. against the persons who were found committing theft of electricity unauthorizedly and pursuant to the raid conducted, he had lodged F.I.R. against all the accused persons, in spite of the said fact for no reason and in absence of any evidence, the petitioner was made accused in the K. Hat P.S. Case No. 126 of 2012. The petitioner was terminated holding him guilty that his indulgence in alleged theft of electricity and revenue loss to the Board cannot be ruled out. The respondents have themselves admitted that as the petitioner was appointed on contractual basis, there was no need to draw departmental proceeding against him which goes to show, even in absence of any material in respect of theft of electricity and complicity of the petitioner, he has been terminated from service and has to face consequences of criminal prosecution arising out of K.Hat P.S. Case No. 126 of 2012 in light of the law laid down by the Apex Court as discussed herein above, I find that the order of termination being stigmatic in nature mandatorily requires to be interfered by this Court as the petitioner has been terminated



from service without there being any rational distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependent upon the pleasure of the employer. So in my considered opinion and in view of the law laid down by the Apex Court as discussed hereinabove and in recent case of ***Swati Priyadarshini (Supra)***, the petitioner has protection under Article 311 of the Constitution of India and termination of the petitioner without holding departmental inquiry cannot be sustained on this ground and secondly the criminal case which was lodged against the petitioner in connection with K. Hat P.S. Case No. 126 of 2012, has already been quashed by this Court vide order dated 28.08.2019 in Cr. Misc. No. 42596 of 2016 and the officers who had faced the similar charges, being the permanent employee after having been exonerated from the allegation have been discharged from the departmental inquiry at the stage of inquiry itself, as such, the petitioner is also required to be given equal treatment for similar charges, in view of settled principle of law laid down by the Apex Court in the case of **Sengara Singh (supra)**, **Man Singh (supra)** and **Rajendra Yadav (supra)**.

30. In light of the recorded evidence, the order



dated 19.09.2012 contained in Memo No. 1998 is hereby set aside and quashed.

31. The writ petition stands allowed.

32. There shall be no order as to costs.

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26.10.2024
Transmission Date	N.A.

(Purnendu Singh, J)

