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

*Date of decision: 01.05.2024*

+ LPA 642/2023, CAV 484/2023, CM APPL. 48847/2023 –Stay,  
CM APPL. 48848/2023 –LLOD, CM APPL. 48849/2023 -Ex. & CM  
APPL. 48850/2023 -Delay 61 days.

UNION OF INDIA THROUGH SECRETARY MINISTRY OF  
INFORMATION AND BROADCASTING & ANR..... Appellants

Through: Mr.Chetan Sharma, ASG, Mr.  
Apoorv Kurup, CGSC, Ms.Nidhi  
Mittal, Mr. Akhil Hasija, Mr.Amit  
Gupta, Ms. Gauri Goburdhun, Mr.  
Gurjar Narula and Ms. Aanchal  
Dubey, Advs.

versus

NINA LATH GUPTA

..... Respondent

Through: Mr. Gurminder Singh, Sr. Advocate  
with Mr. Harshvar Dham Jha, Mr.  
Gurnoor Sandhu and Mr. Aman  
Pathak, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**REKHA PALLI, J (ORAL)**

1. The present appeal under Clause X of the Letters Patent Appeal seeks to assail the order dated 01.05.2023 passed by the learned Single Judge in W.P.(C) 10385/2021. Vide the impugned order, the learned Single has allowed the writ petition preferred by the respondent by holding that the order terminating the services of the respondent dated 24.04.2018 being clearly stigmatic, was unsustainable. However, taking into account that by the time the writ petition came to be allowed the respondent's remaining



tenure of two years and eleven months had already elapsed, the learned Single Judge directed that she be compensated by payment of her salary and other allowances for the period she remained out of service.

2. The brief factual matrix as emerging from the record may be noted at the outset.

3. In August 1989, the respondent joined the Indian Revenue Service (IRS) as an Assistant Commissioner of Income Tax and while she was working as Additional Director Income Tax, an advertisement inviting applications for the post of Managing Director, National Film Development Corporation (NFDC)/the appellant no.2, was issued by the Public Enterprises Selection Board (PESB). Being desirous of applying to the said post, the respondent submitted her application and was on 17.04.2006 selected for the same. Based on her selection, she was appointed to the post for a term of five years, which period was extendable for further periods till she attained the age of superannuation. After she resigned from the post of the Additional Director of Income Tax, the respondent was issued an offer of appointment on 06.01.2007 for a period of five years, which term was extended from time to time with the last extension being granted to her on 17.04.2016 to 16.04.2021.

4. While the respondent was in her third five-year-tenure, she was on 03.3.2018, served with an order dated 27.02.2018, whereby her services were terminated with immediate effect. Being aggrieved and claiming that the said termination order was stigmatic and had been passed without giving her an opportunity of being heard, the respondent approached the learned Single Judge of this Court by way of W.P.(C) 2163/2018 claiming that grave prejudice has been caused to her reputation and future career prospects on



account of the broadcast of the news of her termination all over the media. Upon notice being issued in the said petition, the said termination order was stayed on 08.03.2018. On 23.04.2018 when the writ petition came up for hearing, the appellants stated that they were willing to pass a fresh non-stigmatic order of termination. Relying on this statement, the learned Single Judge disposed of the petition by granting three days time to the appellants to pass a simplicitor order dispensing with the services of the respondent.

5. In terms thereof, the appellants on 24.04.2018 passed a fresh termination order, omitting para 2 of the order dated 27.02.2018. This order, however, included an additional para 4 which referred to this Court's decision dated 23.04.2018 in W.P.(C) 2163/2018. It may be noted that being aggrieved by the order dated 23.04.2018 the respondent had preferred LPA 65/2018, which after initiation of notice initially, was ultimately dismissed on 12.02.2021 granting liberty to the respondent to assail the termination order dated 24.04.2018. It was in these circumstances that the respondent again approached the learned Single Judge of this Court, this time by way of a fresh W.P.(C) 10385/2021, which has since been allowed vide the impugned order by holding that the order dated 24.04.2018 was camouflage and founded on the same allegations as leveled in the earlier order and on also that account of the reference to W.P.(C) 2163/2018 made in para 4 of the order, the same was again rendered stigmatic.

6. In the challenge to the impugned order by the appellants herein, the primary submission of Mr. Apoorv Kurup, CGSC for the appellants is that the learned Single Judge has failed to appreciate that once there was no mention about the purported misconduct on the part of the respondent in the



order dated 24.04.2018, the same could not be treated as stigmatic merely because of the reference to the earlier W.P.(C) 2163/2018 filed by the respondent. He submits that the learned Single Judge has failed to appreciate that as per the terms and conditions of the appointment as contained in the appointment letter dated 06.07.2007 read alongwith the Articles of Association of the appellant no.2, as per which the respondent's services, being contractual in nature, could be dispensed with, without assigning any reasons. It is, therefore that the learned Single Judge could not have directed payment of consequential benefits to the respondent for the entire period of two years and eleven months. He, therefore, prays that the impugned order be set aside.

7. On the other hand, Mr. Gurminder Singh, learned senior counsel for the respondent supports the impugned order and contends that there is no infirmity with the conclusion drawn by the learned Single Judge to hold that the order dated 24.04.2018 was stigmatic. He submits that even a cursory reading of the order dated 24.04.2018 would show that it categorically referred to the earlier writ petition which the respondent was compelled to file to assail the earlier stigmatic order of termination dated 27.02.2018. The learned Single Judge was therefore justified in holding that on account of reference to the earlier writ petition in the termination order the factum of the respondent having been removed from the service by the appellants on account of alleged misconduct was easily discernible. He submits that it was only on account of the successive stigmatic orders passed by the appellants that the respondent, who was a decorated IRS Officer, was unable to get any suitable job after her illegal termination and had to suffer grave trauma and hardship. He, thus, prays that this appeal be dismissed.



8. In order to appreciate the rival submissions of the parties, it would be apposite to begin by noting the relevant extracts of the impugned order, especially qua the aforesaid issue, as under:-

*“27. Therefore, what emerges from the conspectus of the aforesaid judgments is that if an order is founded on allegations, the order is stigmatic and punitive and services of an employee cannot be dispensed with without affording him an opportunity of defending the accusations/allegations made against him in a full-fledged inquiry. Since this case relates to a tenure appointment, it will be pertinent to look at the law with respect to stigmatic orders in the context of tenure appointments. In **Dr. L.P. Agarwal v. Union of India and Others**, (1992) 3 SCC 526, Petitioner was Director, AIIMS, who had been appointed for a period of 5 years or till he attained the age of 62 years, whichever was earlier, the Supreme Court examined the meaning and connotation of the term ‘tenure’ and observed that tenure is a term during which an office is held. It is a condition of holding office and once a person is appointed to a tenure post, his appointment begins when he joins and comes to an end on completion of the tenure, unless curtailed on ‘justifiable’ grounds. Such a person does not superannuate, he only goes out of office on completion of his tenure and thus, the question of prematurely retiring him does not arise. In **A.P. State Federation of Coop. Spinning Mills Ltd (supra)**, Respondent was appointed as General Manager (Finance) for a period of 3 years and prior to the said period coming to an end, his services were terminated. Respondent approached the High Court in a writ petition seeking quashing of the order and the learned Single Judge dismissed the writ petition after coming to a conclusion that the termination order was innocuous and not penal in nature and termination being in accordance with the contract of service, after giving three months’ salary in lieu of the notice, required no interference. The Division Bench, allowing the appeal held that though the order on the face of it appeared to be innocuous, however, if the attendant circumstances were examined, more particularly, the stand in the counter affidavit, the conclusion was irresistible that the order was penal in nature and since penalty was imposed without affording opportunity to meet the charge, the order was unsustainable. This order of the Division Bench was challenged before the Supreme Court and the contention of the Appellant was that the reasons indicated in the order were the motive for termination and not the foundation, requiring an inquiry, prior to termination. The Supreme Court upheld the order of the Division Bench, to the extent that the order of termination was vitiated and ruled 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. The decisions of this Court relied upon by Mr K. Ram Kumar also stipulate that if an allegation of arbitrariness is made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive for passing the order of termination, and it is in that sense in the counter-affidavit it can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee. But on examining the assertions made in paras 13 and 14 of the counter-affidavit, in the present case it would be difficult for us to hold that in the case in hand, the appellant-employer really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question.

4. In fact, the letter of the Commissioner for Handlooms and Director of Handlooms and Textiles dated 19-5-1993 was the foundation for the employer to terminate the services and as such the Division Bench of the Andhra Pradesh High Court was justified in holding that the order of termination is based upon a misconduct, though on the face of it, it is innocuous in nature. We therefore do not find any infirmity with the said conclusion of the Division Bench of the Andhra Pradesh High Court requiring our interference.”

28. In the aforesaid case, the letter of the Commissioner for Handlooms and Director of Handlooms and Textiles was the foundation for the termination order and hence found to be stigmatic. It is thus trite that in a tenure employment, if the termination order of the employee is an order simpliciter and casts no stigma, it warrants no interference by the Court, however, if the attendant circumstances lead to a conclusion that termination is founded on allegations, then being penal in nature, the order would be untenable in law, if issued without affording an opportunity to the employee to defend the



accusations.

29. Another judgment, which needs a mention and is close on facts, is in the case of *Dr. Vijayakumaran C.P.V. v. Central University of Kerala and Others*, (2020) 12 SCC 426, wherein the Supreme Court observed that the termination order was issued in the backdrop of Internal Complaints Committee Report and going by the terms and tenor of the order, it was incomprehensible to construe such an order to be an order simplicitor when the report of the Inquiry Committee was the foundation. The Supreme Court also reiterated the position of law that the material which amounts to stigma need not be contained in the termination order and may be in any document referred to therein, which reference will inevitably effect the future prospects of the incumbent and if so, the order must be construed as an *ex facie* stigmatic order of termination.

30. In the background of the principles of law elucidated in the aforementioned judgments, if one examines the nuances of the present case, it is luminously clear that several allegations permeated the first order viz: NFDC had not adhered to the prescribed procedures relating to release of advertisement spots to selected private channels; non refund of 15% commission to the client Ministry; Rs. 4.29 crores charged in excess of actual expenditure from the Ministries; non adherence to the standing operating procedures for co-production of films; and non-adherence to due process for utilization of funds for restoration of films. There can be no doubt that the order was 'founded' on allegations and was not an innocuous or a simplicitor order of termination. In order to wriggle out of the legal implications that would have been a fall out of the stigmatic order, the order was withdrawn, however, as rightly pointed out by the Petitioner, the allegations were not wiped out and despite omission of paragraph 2 thereof, the impugned order is a camouflage and founded on the same allegations, as admittedly, there was no fresh or any other reason/ trigger for truncating the five-year tenure. Minus the allegations, there is no cause for termination as it is nobody's case that Petitioner was otherwise unsuitable for the job.

31. Be it ingeminated and underscored that applying the law laid down in *Dipti Prakash Banerjee* (supra) and *Dr. Vijayakumaran C.P.V.* (supra), that the stigmatic part may not necessarily be contained in the order itself but if it is referable or traceable to another document which casts a stigma, it is enough to categorize the order as stigmatic, the impugned order cannot sustain. Clearly, the impugned order makes a reference to order dated 23.04.2018, passed by the Court in W.P.(C) No. 2163/2018 and this reference is enough



*to connect the dots to the previous order, allegations contained therein and the earlier litigation, which shall inevitably affect the future prospects of the Petitioner.”*

9. From a perusal of the aforesaid, what emerges is that the learned Single Judge, after examining the circumstances under which the order 24.04.2018 was passed, came to a conclusion that despite paragraph 2 of the earlier termination order 27.02.2018 being omitted, the fresh termination order dated 24.04.2018 was based on the very same allegations. The learned Single Judge opined that merely because while issuing the fresh order, the stigmatic part contained in paragraph 2 of the earlier order had been removed, would in itself not be a ground to hold that the order was no longer stigmatic.

10. Additionally, the learned single judge also observed that the fresh order made a reference to the order dated 23.04.2018 passed in the earlier writ petition filed by the respondent, which reference was itself enough to link the respondent to the earlier stigmatic order. While coming to the aforesaid conclusion the learned Single Judge referred to the decision of the Apex Court in *Dr. Vijayakumaran C.P. V. v. Central University of Kerala and Others*, (2020) 12 SCC 426 and in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others*, (1999) 3 SCC 60, to hold that the material which amounts to stigma may not always be in the order of termination but may be contained in any document referred to in the termination order.

11. Now coming to the facts involved in the present case before us, in our considered opinion no doubt the appellants in their order dated 24.04.2018 have not referred to the earlier stigmatic order dated 27.02.2018, they have,



however, for reasons best known to them referred to the earlier writ petition filed by the respondent. This reference, in our view, was sufficient to arouse the suspicion of any future employer like the appellants herein who would have necessarily called for the said order as also the earlier termination order at the time of giving the respondent approaching them for employment. We, therefore, have no hesitation in concurring with the learned Single Judge that the order dated 24.04.2018 was a camouflage and could not be treated as a simpliciter order of termination. More so, whence the appellants could have very well simply terminated the services of the respondent in terms of Clause 1.1 of the Letter no.202/20/2005-F(C) dated 06.01.2007 issued by the Ministry of Information and Broadcasting-appellant no.1 without assigning any reasons. That they instead chose not to do so, itself further casts a shadow of doubt in our minds qua the conduct of the appellants. All the more when they were well aware of the aforesaid Clause 1.1 same at all points of time.

12. Having said so, we may now consider as to whether the direction to the appellants under the impugned order to pay all consequential benefits to the respondent was justified or not. The learned Single Judge found that by the time the writ petition came to be decided the extended term of the respondent of five years had already expired. It is thence, that in these circumstances the learned Single Judge instead of directing reinstatement, directed only for payment of consequential benefits and that too only for the remaining period of two years eleven months. The said directions read as under:-

*“33. Ordinarily, this Court would have given liberty to the Respondents to initiate inquiry proceedings against the Petitioner, giving her the opportunity to defend herself, however, on account of*



*the untraversed facts that no action worth the name has been even initiated against any other employee of NFDC and even the final CAG report was not tabled, it would be unfair, unjust, iniquitous and harsh to permit the Respondents to initiate any coercive proceedings against the Petitioner at this stage.*

*34. The next question that begs an answer is what relief can be granted to the Petitioner. On the date of passing the impugned order, Petitioner had a balance tenure of nearly 3 years, since the five-year tenure was scheduled to expire on 16.04.2021. With the chequered history of litigation and passage of time, the balance period of about 2 years and 11 months has ended and Petitioner cannot be reinstated. Therefore, Petitioner can only be compensated in terms of monetary benefits such as pay and allowances, reimbursement of amounts recovered towards HRA, Income Tax, SBF and GSLI etc.*

*35. Accordingly, it is directed that the Respondents shall pay all outstanding dues of the Petitioner on account of salary and other allowances for the balance tenure of about 2 years 11 months. Petitioner is also held entitled to refund of all amounts recovered from her towards HRA etc., during this period. Payments shall be released within a period of eight weeks from today."*

13. Having perused the aforesaid directions, we are of the view that the learned Single Judge was correct in holding that though ordinarily a fall out of the setting aside of such a stigmatic termination order, which had been passed without holding an enquiry, would be to grant liberty to the employer like the appellants herein for initiating enquiry proceedings against the employee like the respondent herein, but, taking into account that the remaining tenure of the respondent had already expired and no action whatsoever had been initiated against any other employee of the NFDC, it was a fit case where the respondent should be paid monetary compensation, by payment of her salary for the remaining period of service.

14. Furthermore, in our considered view even if we were to grant permission to the appellants to initiate inquiry proceedings against the



respondent, the same would have been subject to her reinstatement, which as noticed by the learned Single Judge, would not have been possible at this belated stage when the remaining contractual term of two years and eleven months had already expired more than three years ago, i.e. on 16.04.2021.

15. Lastly, before parting, we may also add that the learned Single Judge, while passing the well-reasoned impugned order under challenge, has meticulously taken due care of all the aspects involved to arrive at satisfactory finding/s with which we see/ or find no plausible reasons to disagree.

16. In view of the aforesaid analysis, we find absolutely no ground to interfere with the impugned order. The appeal, therefore being meritless, is dismissed along with all pending applications by granting the appellants six weeks time to release payments in terms of the impugned order in favour of the respondent.

**(REKHA PALLI)**  
**JUDGE**

**(SAURABH BANERJEE)**  
**JUDGE**

**MAY 1, 2024/rr**