



CWP-20981 of 2020

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Yadwinder Singh
.....Petitioner
versus
State of Punjab and others
.....Respondents

Sr. No.	Particulars	Details
1.	The date when the judgment is reserved	09. 04.2026
2.	The date when the judgment is pronounced	23.04.2026
3.	The date when the judgment is uploaded on the website	24.04.2026
4.	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Gauravjit S. Patwalia, Advocate,
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for quashing the order dated 17.11.2020 (Annexure P-14), whereby services of the petitioner have been terminated. Further, a writ of *mandamus* has been sought for directing the respondents to reinstate the petitioner with effect from 17.11.2020 and grant him the benefit of continuity in service, with all consequential benefits.
2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner was appointed as Assistant District Attorney



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(ADA) vide appointment letter dated 22.09.2014 on probation for a period of two years and he joined as such on 23.12.2014 and thereafter he was posted at Gurdaspur.

One Ms. Pardeep Kaur had committed suicide at her residence on 06.11.2016 and FIR No.273/2016 dated 07.11.2016 under Section 306 IPC was registered at Police Station Cheharta, District Amritsar, against the petitioner on the complaint of Smt. Surinder Kaur, mother of late Ms. Pardeep Kaur, alleging abetment to suicide against the petitioner. Thereafter, the said complainant made a complaint dated 22.11.2016 to respondent No.1, alleging therein abetment to suicide against the petitioner and informed the department that FIR No.273/2016 has been registered against the petitioner. In pursuance to the said complaint, respondent placed the petitioner under suspension vide order dated 28.11.2016 (Annexure P-1). The petitioner was granted anticipatory bail by this Court vide order dated 18.05.2017 (Annexure P-2), passed in CRM-M-42652 of 2016. Thereafter, he was issued chargesheet dated 27.04.2017 by respondent No.1, proposing disciplinary action under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and for imposition of one of the punishments prescribed under sub clauses (iv) to (ix) of Rule 5 of the aforesaid Rules. In the chargesheet also, the same allegation was levelled with regard to abetment to suicide of late Ms. Pardeep kaur. The petitioner in his reply to the chargesheet categorically stated that articles of charges framed in the chargesheet and the allegations in FIR



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No.273/2016, pending against the petitioner are identical, based on similar set of facts and the evidence, therefore, the disciplinary proceedings be stayed till the final outcome of the criminal case. However, the said request was not accepted and vide order dated 31.08.2017, respondent No.1 appointed Sh. R.C. Nayyar, IAS (retd) as enquiry officer and Sh. Malkit Singh, Superintendent, Prosecution and Litigation, as the presenting officer. The petitioner requested the enquiry officer to provide him the official record/documents pertaining to the mobile phone recording, mobile phone details and other documents relied upon by the respondents, however, without paying any heed to the said request, the enquiry officer on the very first date of enquiry i.e. 26.09.2017 examined all the prosecution witnesses and recorded the prosecution evidence and further directed the petitioner to cross-examine the witnesses on the same day. Since the enquiry officer was conducting the proceedings with undue haste and without providing a fair opportunity of hearing to the petitioner, the petitioner vide his application dated 28.09.2017, requested respondent No.1 to change the enquiry officer. The said request was accepted and vide order dated 24.10.2017, Sh. S.S. Dhillon, IAS (retd.) was appointed as enquiry officer and Smt. Harjit Rani, Assistant Superintendent as presenting officer. The enquiry officer vide order dated 18.01.2018 fixed the next date of hearing as 01.02.2018 for the statement of the defence witnesses. The petitioner requested the enquiry officer, vide letter dated 01.02.2018, to adjourn the enquiry proceedings *sine die* till the final



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outcome of the criminal case pending before the criminal Court. However, the enquiry officer did not accept the request of the petitioner and adjourned the proceedings for 08.02.2018. The petitioner again vide his representation dated 29.01.2018 (Annexure P-6) requested respondent No.1 that as the charges in the criminal case and the chargesheet are same and identical, as they are based upon similar set of facts and evidence, hence if both are allowed to proceed simultaneously then it would seriously jeopardise the right of the petitioner in the criminal trial. However, without considering the representation of the petitioner, the respondents vide order dated 08.02.2018 (Annexure P-7) continued the enquiry proceedings.

Petitioner being aggrieved against the said action filed CWP-3918 of 2000 before this Court for staying the enquiry proceedings. This Court while disposing of the aforesaid writ petition, vide order dated 19.02.2018 (Annexure P-8), directed respondent No.2 to consider and decide the representation dated 29.01.2018, within four weeks from the receipt of certified copy of the order. In pursuance thereof, respondent No.2 called the petitioner for personal hearing and conceded the request of the petitioner and stayed the enquiry proceedings till the pendency of the criminal case, vide order dated 12.03.2018 (Annexure P-9). Thereafter, the petitioner submitted representation dated 02.07.2018 (Annexure P-10), requesting respondent No.2 to reinstate him in service and the said representation



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was accepted, vide order dated 19.07.2018 (Annexure P-11), and the petitioner was reinstated in service and posted as ADA, Bathinda.

After the police presented the challan against the petitioner before the trial Court at Amritsar on 01.08.2018, the petitioner approached this Court by filing CRM-M-41256 of 2018, seeking quashing of FIR No.273/2016. Notice of motion in the said petition was issued on 19.09.2018 (Annexure P-12) and by way of interim protection to the petitioner, this Court directed the trial Court to adjourn the trial proceedings. The said interim protection continued, vide orders dated 09.10.2018 (Annexure P-13).

Surprisingly, vide order dated 17.11.2020 (Annexure P-14), the services of the petitioner were ordered to be terminated with immediate effect while invoking provisions of Rule 7.2(a) of the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994, by stating that the grade of the petitioner in his Annual Confidential Reports was less than the required level and criminal proceedings against him were pending in FIR No.273/2016 for provoking Ms. Pardeep Kaur (deceased) daughter of Smt. Surinder Kaur for committing suicide, as such, while considering him to be unbecoming of a Government servant. The said order has been impugned in the present writ petition.

3. Notice of motion as well as notice regarding stay in the present case was issued on 07.12.2020 for 11.12.2020. Thereafter, the



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operation and effect of the order dated 17.11.2020 was stayed by this Court, vide order dated 11.12.2020.

4. Reply by way of affidavit of Satnam Singh Kaler, Director, Prosecution and Litigation and Additional Secretary to Government of Punjab, on behalf of respondents No.1 to 3 has been filed, wherein it has been stated as under: -

“7. That the services of the petitioner, who has not completed his probation period successfully, were terminated by the State Government invoking the proviso under Rule 7.2(a) of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as 1994 Rules). The grading of his Annual Confidential Reports being less than the required level and due to pendency of criminal case against the official, the Competent Authority opined that the officer conducted himself in the manner unbecoming of a public servant. The amended Rule 7 of the 1994 Rules is as under:

7. Probation.- (1) A person appointed to any post in the service shall remain on probation for a period of [three] year, if recruited by direct appointment and one year if appointed otherwise:

Provided that.-

(a) any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) in the case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the discretion of the appointing authority, be allowed to count towards the period of probation;

(c) any period of officiating appointment to the Service shall be reckoned as period spent on probation; and

(d) any kind of leave not exceeding six months, during or at the end of period of probation,



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shall be counted towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or if he has failed to pass the departmental examination, if any, prescribed in Service Rules within a period not exceeding [one] and a half year from the date of appointment, it may.-

(a) if such person is recruited by direct appointment, dispense with his services, or revert him to a post on which he held lien prior to his appointment to the Service by direct appointment; and

(b) if such person is appointed otherwise-

(i) revert him to his former post; or

(ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of probation of a person, the appointing authority may-

(a) if his work and conduct has in its opinion been satisfactory -

(i) confirm such person, from the date of his appointment or from the date he completes his period of probation satisfactorily, if he is not already confirmed; or

(ii) declare that he has completed his probation satisfactorily, if he is already confirmed; or

(b) if his work or conduct has not been in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules-

(i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit;



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(ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub-rule (1):

[Provided that the total period of probation including extension, if any, shall not exceed four years, if recruited by direct appointment and three years if appointed otherwise.]”

8. *That by an amendment to the 1994 Rules, vide Notification No.G.S.R.44/Const./Art.309/Amd.(20)2017, dated 4th October, 2017, the State Government extended the probation period of a candidate from 3 years to 4 years w.e.f. the date of publication of the same. The petitioner, however, joined the service on 23.12.2014.*

9. *That since the relevant clause in the offer letter of appointment and the relevant rules stipulate an affirmative and positive act on the part of the employer to confirm the probationer, it cannot be said that the petitioner is confirmed by way of implication, as there is no order confirming him on the said post. That Rule 7 of the 1994 Rules stipulates the satisfaction of the appointing authority as a condition precedent for the issuance of an order of confirmation. Though the 1994 Rules prescribe a maximum period of probation and the probationer is continued beyond the expiry of the probationary period, the substantive appointment of the probationer is subject to a specific act on the part of the appointing authority of issuing an order of confirmation. In the absence of an order of confirmation in service, the petitioner, who was under probation, was rightly terminated by the competent authority.*

10. *That a probationer should hold good record and his performance and conduct should match the required level so that the competent authority may decide whether the probationer is fit to be confirmed in service. It is submitted that the competent authority found the Annual Confidential Reports of the petitioner from 01.04.2014 to 31.03.2019 not up to the mark for clearance of his probation period and there is also allegation against him regarding abetting the suicide of Ms. Pardeep Kaur (deceased). Police after completing the investigation filed chargesheet under section 173 of Cr.P.C., 1973 against the petitioner in the Ld. Trial Court at Amritsar.*



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11. *That in view of the allegations made against the petitioner and his unsatisfactory ACRs, the Competent Authority opined that the petitioner conducted himself in a manner unbecoming of a public servant and terminated his services vide order dated 17.11.2020. Since there are sufficient grounds on record against the petitioner for terminating his services, so the order of the Respondent No. 2 dated 17.11.2020 is legally valid and sound in law.*

12. *That a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation, on account of general unsuitability for the post in question. As in the present case, services of the petitioner during probation period have been terminated without waiting for the result of departmental enquiry, so it cannot be said that the termination order is punitive and stigmatic in nature. Though the primary ground for terminating the services of petitioner is the pendency of criminal case No. 273 of 2016 against him alleging abetment of suicide along with his ACRs being less than the required level, it is the satisfaction of the competent authority regarding the suitability of the probationer to the post on which he is appointed, which matters and not the quashing of FIR, if the petitioner succeeds in the same.”*

5. In nutshell, the stand taken by the respondents is that the petitioner was appointed on probation for a period of two years and no order of confirmation was passed and his services have been terminated during the period of probation without waiting for the result of the departmental enquiry and, therefore, the same cannot be said to be punitive and stigmatic in nature, though the primary ground for terminating the services of the petitioner was pendency of criminal case and his ACRs being less than the required level.

6. Learned counsel for the petitioner has submitted that the impugned order of termination is punitive and stigmatic and the same has been passed without waiting for the result of the disciplinary



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proceedings which are pending against the petitioner and having initiated the disciplinary proceedings, the respondents ought to have waited for the final outcome of the said proceedings, which were to be concluded after the conclusion of the criminal trial in FIR No.273/2016. He further submitted that the services of the petitioner have been terminated mainly on two grounds i.e. pendency of criminal case in FIR No.273/2016 and the grade of his ACRs being less than the required level. He further submitted that the said FIR has been quashed by the Hon'ble Supreme Court vide judgment dated 27.10.2025, passed in SLP(Crl.) No.7309 of 2025, which was preferred by the petitioner against the judgment dated 17.03.2025, passed by this Court, dismissing the petition of the petitioner seeking quashing of FIR. He further submitted that so far as the ACRs of the petitioner are concerned, the same are 'very good' for the period from 01.04.2015 to 31.03.2016, 'outstanding' for the period from 08.08.2018 to 31.03.2019, 'excellent' for the period from 01.04.2019 to 07.08.2020 and for the remaining period the same has not been written and, therefore, the impugned order of termination is liable to be set aside. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Madan Gopal v. State of Punjab and others, AIR 1963 SC 531*** and the judgment of this Court in ***CWP-19281 of 2018 – Rashmi Sharma v. Mewat Development Agency and others dated 14.10.2019.***



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7. *Per contra*, learned State counsel has submitted that services of the petitioner have rightly been terminated during the period of probation as he has been found to be unbecoming of a Government servant as he was involved in criminal case in FIR No.273/2016 and the grade in his ACRs was less than the required level.

8. I have heard learned counsel for the parties and perused the record.

9. The facts are not in dispute that the petitioner was initially appointed as ADA on 22.09.2014 on probation for a period of two years and joined as such on 23.12.2014. While he was in service, an FIR No.273/2016 was registered against the petitioner on the complaint of Smt. Surinder Kaur alleging abetment to suicide by Ms. Pardeep Kaur. He was placed under suspension vide order dated 28.11.2016, followed by issuance of chargesheet dated 27.04.2017 for taking departmental action under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. In the said disciplinary proceedings, enquiry officer and presenting officer were appointed and thereafter enquiry proceedings have been stayed by respondent No.2 till the final outcome of the criminal case, vide its order dated 12.03.2018, as the allegations in the chargesheet and the criminal case were the same. Without waiting for the final outcome of the enquiry proceedings, petitioner's services have been abruptly terminated vide order dated 17.11.2020 on two grounds i.e. pendency of criminal case in FIR No.273/2016 and the grade of his ACRs being less than the required level.



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10. Perusal of the termination order clearly indicates that the same is punitive and stigmatic in nature. Admittedly, FIR No.273/2016 registered against the petitioner has been quashed by the Hon’ble Supreme Court vide order dated 27.10.2025, passed in SLP(Crl.) No.7309 of 2025. So far as grading of the petitioner in his ACRs is concerned, the same is as under:

<i>Sr. No.</i>	<i>Period</i>	<i>Grading</i>
<i>1.</i>	<i>1.4.2014 to 31.3.2015</i>	<i>No report certificate</i>
<i>2.</i>	<i>1.4.2015 to 31.3.2016</i>	<i>Very Good</i>
<i>3.</i>	<i>1.4.2016 to 31.3.2017</i>	<i>No report certificate</i>
<i>4.</i>	<i>1.4.2017 to 31.3.2018</i>	<i>No report certificate</i>
<i>5.</i>	<i>1.4.2018 to 7.8.2018</i>	<i>No report certificate</i>
<i>6.</i>	<i>8.8.2018 to 31.3.2019</i>	<i>Outstanding</i>
<i>7.</i>	<i>1.4.2019 to 7.8.2020</i>	<i>Excellent</i>

11. The grading of the petitioner for the period from 01.04.2015 to 31.03.2016 is ‘very good’; for the period from 08.08.2018 to 31.03.2019 is ‘outstanding’; for the period from 01.04.2019 to 07.08.2020 is ‘excellent’ and for the remaining period the same have not been written. Therefore, the reasoning given by respondent No.2 that the grading of the ACRs of the petitioner is less than the required level is totally incorrect.

12. The Hon’ble Supreme Court in **Madan Gopal’s** case (supra) while dealing with similar issue of an employee who was appointed on temporary basis and his services were terminated on the basis of certain allegations, has held as under: -



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“4. The appellant was a temporary employee, and his employment was liable to be terminated by "notice of one month" without assigning any reason. The Deputy Commissioner however, did not act in exercise of this authority: the appellant was served with a charge-sheet setting out his misdemeanour, an enquiry was held in respect of the alleged misdemeanour and his employment was terminated because in the view of the Settlement Officer - with which view the Deputy Commissioner agreed - the misdemeanour was proved. Such a termination amounted to casting a "stigma affecting his future career". In State of Bihar v. Gopi Kishore Prasad, AIR 1960 Supreme Court 689 the learned Chief Justice in dealing with cases of termination of service or discharge of public servant on probation set out five propositions of which the 3rd is enunciated thus :

"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."

It is true that in that case the Court was dealing with the case of a public servant on probation whereas the appellant was a temporary employee, but, in principle, it will make no difference whether the appellant was a probationer or a temporary employee. The appellant had been served with a charge-sheet that he had received illegal gratification from one person and had demanded illegal gratification from another. The appellant was given an opportunity to make



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his defence and it appeals that witnesses in support of the charge and in defence were examined before the Settlement Officer. The Settlement Officer reported that on the evidence he was satisfied that the appellant had received Rs. 150/- as illegal gratification and that the appellant did not "enjoy good reputation and was a person of doubtful integrity. It is now well-settled that the protection of Article 311(2) of the Constitution applies as much to a temporary public servant as to permanent public servants. By virtue of Article 311 of the Constitution the appellant was not liable to be dismissed or removed from service until he had been given reasonable opportunity against the action proposed to be taken in regard to him. The appellant was given no such opportunity and Article 311 of the Constitution was therefore not complied with.

5. Counsel appearing for the State of Punjab contended that the order dated March 17, 1955 was not the order pursuant to which employment of the appellant was terminated, the effective order being one passed by the Settlement Officer on March 30, 1955. No such order is however, found on the record, and it appears that in the written statement filed by the State in the High Court it was expressly admitted that the employment of the appellant was terminated on March 17, 1955. Counsel also contended that enquiry was made by the Settlement Officer for the purpose of ascertaining whether the appellant who was a temporary employee should be continued in service or should be discharged under the terms of his employment, and to a termination made pursuant to such an enquiry the protection of Article 311(2) of the Constitution was not attracted, and in support of his submission counsel relied upon a judgment of this Court in State of Orissa v. Ram



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Narayan Das, (1961) 1 SCR 606 . In Ram Narayan Das's case, (1961) 1 SCR 606 enquiry was made pursuant to Rules governing the conduct of public servants for ascertaining whether the probation of the public servant concerned should be continued and a notice to show cause in that behalf was served upon him. On the report of the enquiry officer that the work and conduct of the public servant was unsatisfactory, an order of termination of employment was passed without affording him an opportunity of showing cause against the action proposed to be taken in regard to him. This Court pointed out that the public servant had no right to the post he occupied and under the terms of his appointment he was liable to be discharged at any time during the period of probation. It was observed that mere termination of employment does not carry with it "any evil consequences" such as forfeiture of his pay or allowances, loss of seniority, stoppage or postponement of future chances of promotion etc. and, therefore, there was no stigma affecting the future career of the public servant by the order terminating his employment for unsatisfactory work and conduct. "The enquiry against the respondent was for ascertaining whether he was up to be confirmed. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately to be regarded as one by way of punishment, but an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed is not of that nature XXXXXX. The third proposition in the latter of Gopi Kishore Prasad's case, AIR 1960 Supreme Court 689 refers to an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to



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imposing punishment and not to an enquiry whether a probationer should be confirmed. Therefore the fact of the holding of an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment, in the light of the tests laid down in Parshottom Lal Dhingra case.

6. In this case the enquiry made by the Settlement Officer was made with the object of ascertaining whether disciplinary action should be taken against the appellant for his alleged misdemeanour. It was clearly an enquiry for the purpose of taking punitive action including dismissal or removal from service if the appellant was found to have committed the misdemeanour charged against him. Such an enquiry and order consequent upon the report made in the enquiry will not fall within the principle of Ram Narayan Das case.”

13. To the similar effect is the judgment of this Court in **Rashmi Sharma** (supra), wherein it has been held as under: -

*“I have heard learned counsel for parties, appraised the paper book and of the view that there is force and merit in submissions of Mr. Malik, for, the law with regard to initiation of enquiry proceedings against the contractual employee, having attributed of misconduct, is no longer res integra, in view of ratio decidendi culled out by Hon'ble the Supreme Court in **“A.P. State Fed. of Coop. Spinning Mills Ltd. V/s P.V. Swaminathan”** 2001 (10) SCC 83 and by the Division Bench of this Court in **“Union Territory of Chandigarh and others V/s Central Administrative Tribunal, Chandigarh Bench and others”** 2011 (1) SCT 777. For the sake of brevity, relevant findings of the judgments read as under:-*



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"Para No.3 of A.P. State Fed. of Coop. Spinning Mills Ltd.'s case (supra)

3. The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simplicitor without casting any stigma may not be interfered with by court. But the court is not debarred from looking to 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 decision of this Court relied upon by Mr. K. Ram Kumar also stipulates 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 of 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 paragraphs 13 and 14 of the counter-affidavit, in the



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present case it would be difficult for us to hold that in the case in hand, the employer appellant really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question.

Para No.10 of Union Territory of Chandigarh's case (supra)

A perusal of the aforesaid para would show that even in a case of contract of service if the termination is founded on a misconduct then it has to be regarded as a punishment because it is manifest in the order itself. The aforesaid judgement holds the field even today which is evident from the perusal of judgements of Hon'ble the Supreme Court in the cases of State of U.P. v. Kaushal Kishore Shukla 1991(1) SCC 691 and P. V.Swaminathan's case (supra). However, in the aforesaid judgements it has been observed that a temporary government servant has no right to hold the post and whenever the competent authority is satisfied that work and conduct of a temporary government servant is not satisfactory or that his continuation in service is not in public interest on account of his inability, misconduct or inefficiency it may either terminate the service in accordance with the terms and conditions of service or the relevant rules or it may decide punitive action against the government servant. The observations made in para 7 of the judgement in the case of Kaushal Kishore Shukla's case (supra) reads thus:

“7. A temporary Govt. servant has no right to hold the post, his services are liable to be



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terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants. Since, a temporary Govt. servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Govt. servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it 'is by way of punishment. It is now wellsettled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India AIR 1958 SC 36 a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against the Govt. servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Govt. servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary



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Govt. servant is by way of punishment. It must be borne in mind that a temporary Govt. servant has no right to hold the post and termination of such a Govt. servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) do not include the termination of services of a temporary Govt. servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and Anr.v. Ram Narayan Das AIR 1961 SC 177; R.C. Lacy v. The State of Bihar and Ors. C.A. No. 590/62 decided on 23.10.1963; Champaklal Chimanlal Shah v. The Union of India AIR 1964 SC 1854; Jagdish Miner v. The Union of India AIR 1964 SC 449; A.G. Benjamin v. Union of India C.A. No.1341/66 decided on 13.12.1966 and Shamsher Singh and Anr. v. State of Punjab (1974)2 SCC 831, These decisions have been discussed and followed by a three Judge Bench in State of Punjab and Anr. v. Shri Sukh Raj Bahadur AIR 1968 SC 1089.”

If at all, the Department/respondent was so concerned about the conduct of petitioner, nothing prevented, to hold an appropriate enquiry after confronting the petitioner with all allegation, if any and prove. It would be very convenient for the employer to do away with enquiry by taking the aid of the terms and conditions of the



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appointment letter. The act of partiality or biasness cannot be ruled out. There were allegations and cross-allegations, which, in my view, were required to be gone in detail and that can be done only by examining the witnesses and proof of the documents. All these facts have not been taken into consideration by the Tribunal. Accordingly, order of the Tribunal as well as termination order, being unsustainable, illegal and fallacious, are hereby set aside. The respondents/Department are directed to allow the petitioner to continue to work and grant all permissible benefits. However, this will not prevent the respondents/Department to hold appropriate enquiry, in accordance with law, if they chose so.”

14. Now, coming back to the facts of the present case it is clear that FIR against the petitioner has already been quashed and grading of his ACRs for three years is ‘very good’, ‘outstanding’ and ‘excellent’ and for the remaining period the same have not been written. The impugned order of termination is totally punitive and stigmatic as the same has been passed by way of punishment without proving the said allegations in the disciplinary proceedings, though couched in innocuous terms, it is founded upon the pendency of FIR No.273/2016 and adverse ACRs, which directly impinge upon the petitioner’s conduct and integrity. The very allegations forming the basis of the criminal case were also the subject-matter of the departmental proceedings, which were kept in abeyance, yet the respondents proceeded to terminate the petitioner without awaiting their outcome.

Such action amounts to circumventing due process. Once the



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foundation of the order is misconduct, it cannot be treated as a simpliciter discharge of a probationer. Consequently, in the absence of adherence to principles of natural justice, the termination order is unsustainable in law.

15. In view of the above, the writ petition is allowed. The impugned order is set aside and respondents are directed to reinstate the petitioner in service w.e.f. 17.11.2020 and grant him the benefit of continuity in service, with all consequential benefits, within a period of three months from the date of receipt of certified copy of this order.

23.04.2026
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No