

(1999) 03 OHC CK 0036
In the Orissa High Court
Case No : O.J.C. No. 5157 of 1994

Akshaya Kumar Mohapatra

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 226, 227, 311

Citation : (2001) 91 CLT 266

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : M/s S.K. Palit, A.K. Patnaik, A. Das, S.K. Nayak and J.Katikia, for the Appellant; A.G.A., M/s B.S. Misra, Ganapati Mishra and M.R. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—Order of termination passed by the Governing Body of Deva Raya Nayapalli College (hereinafter referred to as the "college") is the subject-matter of challenge in this writ application, after its confirmation by the Director of Public Instruction, Higher Education Orissa.

2. Main plank of petitioner's argument is that though the order of termination was termed to be a simpliciter one, the background facts clearly show that it was a camouflage to avoid proceedings in the matter of termination. Reference is made to various allegations made by the college authorities and the allegations of misconduct made immediately prior to the order of termination and threats given for action. When the college authorities were satisfied that they have no material to substantiate the allegations, they adopted the novel method of labelling the, order of termination to be simpliciter one while in the background there is desire to harass the petitioner. The allegations of involvement in unauthorised and irregular financial transactions of college funds have not been touched and unauthorised absence of various occasions were highlighted by the

college authorities with oblique motive, and there can be doubt that the decision to terminate was solely on the basis of allegations made above and therefore, the order of termination was bad. The Director of Higher Education, who heard the appeal filed by the petitioner referred to the connected matters and confirmed the order of termination. Stand of the college was to the effect that there is distinction between the motive for order of termination and the foundation thereof. The college authorities proceeded on the basis of materials available against the petitioner, but they thought it appropriate not to attach any stigma, and to terminate the services of the petitioner, whose continuance in the institution would have resulted in chaos.

3. The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the statutory provisions. In such a case the simplicity of the form of the order will not give any sanctity, A Bench of 7 Judges in *Samsheer Singh Vs. State of Punjab and Another*, held so. Earlier the Apex Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, held that the use of the expressions "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests, namely, (1) whether the servant had a light to the post or the rank, or (2) whether he has been visited with evil consequences of the kind desired in the judgment itself. If the case satisfied either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service. The fact that an enquiry was held earlier is not always conclusive. What is decisive is whether the order is really by way of punishment. In order to decide the question, the concept of motive and foundation is to be judged. In *Ravindra Kumar Misra v. U. P. State Handloom Corporation Ltd.*, and another : AIR 1587 SC 2408 it was observed that if the delinquency of the officer in temporary service is taken as the operating motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. In *The State of Orissa and Another Vs. Ram Narayan Das*, it was held that holding of an enquiry is not decisive of the question.

4. It is settled law that the court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. If misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated, in terms of the order of appointment or rules governing the field. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment. This view was highlighted by the Apex Court in *State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and*

others, .

5. Now, there are two lines of cases decided by the Apex Court which deal with the question in issue. In certain cases of temporary servants and probationers, the Apex Court has taken the view that if the ex parte inquiry or report are the motive for the termination order, then the termination is not to be called punitive merely because principles of natural justice have not been followed. On the other hand, there is another line of cases, where the Apex Court has held that the facts revealed in the inquiry are not the motive but the foundation for the termination of the services of the temporary servant or probationer, and hence punitive as principles of natural justice have not been followed, and such orders are to be declared void. The Apex Court has held that for finding out whether a given case falls within either of these two categories, it is permissible for the High Court or Administrative Tribunal to go behind the order and look into the record of the proceedings, the antecedent and attendant circumstances culminating in the order of termination,

6. In what situations the allegations of misconduct will , be the motive and in what cases they will be the foundation, it is argued, is not clear enough.

7. In fact, Krishna Iyer, J. in his characteristic style described the words "form", "substance", "motive", and "foundation" as the faces of an inscrutable sonink, beffling lawyers and judges alike. (See *Samsher Singh Vs. State of Punjab and Another*, . According to him, the need in this branch of law is to lay down a simple test which can be grasped by the administrator or civil servant without much subtlety. 8. De Smith says, as to procedural fairness where preliminary inquiries are conducted (See 5th Ed , 1995 - page 491, para 10.027) that the question of "proximity between investigation and act or decision" depends on the degree of proximity so far as the person affected claiming a right of hearing is concerned. He says .

"Thus, a porson empowered or required to conduct a preliminary investigation with a view to recommending or deciding whether a formal inquiry or heating (which may lead to a binding and adverse decision) should take place, is not normally under any obligation to comply with rules of fairness (*Beetham v. Trinided Cement Co.* 1960 A. C. 132 ; *Medical Board of Queens Land v. Byrne* 1958 100 CLR 582; *Saskatchewan College of physicians. ex P Samuels* 1966 58 DLR DLR622; *Re : Drummoyne M. C.* 1962 S R 193. But he may be placed under such an obligation if his investigation is an integral part of a process which may terminate in action adverse to the interest of a person claiming to be heard before him. (*Wiseman v. Borneman.* 1971 A C 297. *Re : All General Canada and Canadian Tobacco Manufactures" Council:* 1986 26 DLR 677,"

9. The above principles stated in De Smith are, as we shall presently see, very close to what is laid down in *Samsher Singh*'s case and other cases decided by the Apex Court.

10. It is, therefore, necessary to refer to the development of the law in this

branch between 1958 to 1974 in the first phase -a development which was noticed by Krishna Iyer, J. in the above case and also by E. S. Venkataramiah, J. (as he then was) in *Anoop Jaiswal Vs. Government of India and Another*, .

11. There are at least seven constitution Bench judgments and a judgment of seven judges of the Apex Court on this issue. It will be seen that from stage to stage, the law has been developed.

12. The first decision of the Constitution Bench was in *Parshotom Lal Dhingra's* case (supra). There a twin test was laid down - whether the order in terms of the appointment gave a right to terminate and whether the order was punitive in nature. If misconduct was motive, the order was not punitive but if it was the foundation it was punitive. In that case, the employee was working in a higher post in an officiating capacity and that appointment was terminated and he was reduced in rank. S. R. Das, C. J. stated (para 28) (page 49) that misconduct negligence, inefficiency or other disqualification might be the motive or the inducing factor which influenced the Government to take action under the terms of the contract of employment or the specific service rule, and the motive was irrelevant. But if the termination was founded on misconduct, negligence, inefficiency or other disqualification, it would have to be treated as a punishment. It was also held that the use of the word "termination", or "discharge" was not conclusive. In spite of the use of such innocuous expressions, the Court could still hold it to be punitive. On the facts of the case the termination of the officiating appointment was based upon certain adverse remarks and it was held that it was not by way of punishment.

13. Next came the decision of the Constitution Bench in *The State of Bihar Vs. Gopi Kishore Prasad*, . Here a test of inquiry was laid down. That was a case of probationer. The Government had come to the conclusion, on inquiry, that the respondent was unsuitable for the post held on probation. Because of the inquiry, Sinha, C. J., held this to be "clearly by way of punishment". Termination (without notice) but after holding an inquiry into the alleged misconduct or inefficiency or some similar reason would be punitive. Government could not, "brand him dishonest and incompetent without inquiry". If it did so, it would be by way of punishment, but not if the position "was that he was found unsuitable", without holding an inquiry. Both *Dhingra* and *Gopi Kishore Prasad* were decided when the law in this branch was developing.

14. However, Shah, J. (as he then was) *State of Orissa v. Ram Narayan Das* : 1961 1 SCR 605, gave a new dimension to the legal principles. That case also related to a probationer but was governed by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which was a special provision and which stated that "where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity for show cause against it, before orders are passed by the authority competent to

terminate the employment". If the test of inquiry laid down by Sinha, C. J. was to be applied, every termination of a probationer made by following the rule and conducting an inquiry would become punitive. The "inquiry test" (as pointed out by Krishna Iyer, J. in *Samsher Singh's* case) broke down. A new test had to be invented. Therefore, Shah, J. (as he then was) laid down a new test which required that one should look into "object or purpose of the inquiry" and not merely hold the termination to be punitive merely because of an antecedent inquiry. J, C. Shah, J. (as he then was) said :

"Whether it amounts for an order of dismissal depends upon the nature of the inquiry, if any, the proceedings therein and the substance of the final orders passed on such inquiry."

15. The learned Judge pointed out that the employee being a probationer, "the inquiry against the respondent was for ascertaining whether he was fit to be confirmed". His Lordship pointed out that this inquiry was not of the same nature as an inquiry into charges of misconduct, negligence, inefficiency or other disqualification. On the facts of the case, the termination of a probationer was upheld inasmuch as the purpose of the inquiry was to find out if the employee could be confirmed. The purpose of the inquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.

16. We then come to the third case decided by the Constitution Bench of the Apex Court in *Madan Gopal Vs. State of Punjab*, . Here Shah, J. (as he then was), applied the same principle laid down earlier by him but held the order was punitive. That was a case of a temporary employee. There was a report of the Settlement Officer about the misconduct of the employee and the termination was based on the said report. It was, therefore, held that though the order of termination was an order simpliciter still the Court could go behind the same and further if the foundation was the finding as to misconduct, then the order was punitive. The termination order was quashed, even though the employee participated therein because the statutory procedure for a regular departmental inquiry was not followed. Emphasis was again made on the "purpose of the inquiry". The distinction between the earlier case and this case was that while in *Ram Narayan Das's* case (supra), the inquiry was made to find out if the probationer could be continued and confirmed and was, therefore, not punitive, the position in: the *Madan Gopal's* case (supra) was that the inquiry by the Settlement Officer was to find out if the employee was guilty of misconduct. In fact the termination order was based, on the inquiry held behind his back and was held to be punitive. In *Ranendra Chandra Banerjee Vs. Union of India (UOI)*, , being a case of a probationer to whom Rule 55-B of the Central Rules applied, *Wanchoo, J.* (as he then was) upheld the order on the ground that the limited purpose of the inquiry was to find out whether he could be retained or not in the service. In other words, the inquiry was not with a view to see if the employee had misconducted in his duties. This case was similar to *Ram Narayan Das's* case (supra).

17. The theory of "object of the inquiry" was further emphasised by the Constitution Bench of the Apex Court in Jagdish Mitter Vs. The Union of India (UOI), . That was a case of a temporary employee. The discharge from service was by way of an order "simpliciter". But there, an inquiry was held and the termination order was based on it as it stated on its face that it was "found undesirable" to retain the employee and hence his services were being terminated. The order was held to be punitive on its face and was quashed, Gejendragadkar, J. (as he then was) discussed the earlier cases and held that in every case the purpose of the inquiry was crucial. If the inquiry was held only for the purpose of deciding whether the temporary servant should be continued or not, it could not be treated as punitive and that the motive Operating in the mind of the authority was not relevant. But the form in which the order terminaling the service is expressed will not be decisive. It was held that "what the Court will have to examine in each case would be, having regard to the material facts existing upto the time of discharge, is the order of discharge in substance one of dismissal ?" Therefore, the "form" was not of importance but the "substance" was.

18. Finally, we come to the seventh case, Champaklal Chimanlal Shah Vs. The Union of India (UOI), , a case strongly relied counsel for the respondent, Shri J.M. Khanna. Here, it was the case of a preliminary inquiry which was intended to find out if a prima facie case was made out to start a regular departmental inquiry. The question was whether a termination order passed soon after the completion of the preliminary inquiry could be treated as punitive. Wanchoo, J. (as he then was) held that it could not be so held. Once the preliminary inquiry was over, it was open to the employer not to make a regular inquiry for providing the guilt of the employee. The employer could stop at that stage and pass a simple order of termination. The facts as gathered or revealed in the preliminary inquiry would be the "motive" and not the "foundation" since there was no inquiry as to their correctness made. The order could not be quashed as being punitive.

19. We finally come to the seven Judgment rendered in Samsheer Singh's case (supra) to which we made a brief reference at the beginning of this judgment. The case concerned two Judicial Officers. So far as the termination order passed against Sri Ishwar Chand Aggarwal was concerned, it was quashed holding it to be punitive as it was based on the report of an Inquiry Officer appointed by the Director of Vigilance. The Inquiry Officer recorded statements of witnesses behind the back of the officer and definitive findings therein were the basis for the termination. It was not a preliminary inquiry, A. N. Ray, C. J. held that the object of the said inquiry was (see page 855) (paras 79 and 80) :

"to ascertain the truth of the allegation of misconduct. Neither the report nor the statements recorded by the Enquiry Officer reached the appellant. The Inquiry Officer gave his findings of misconduct.....The order of termination was because of the recommendation in the report. The order of termination of the services of

Ishwar Chand Aggarwal is clearly by way of punishment in the facts and circumstances of the case.....The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may, in the facts and circumstances of the case establish that an inquiry into allegation of serious and grave character of misconduct involving stigma has been made in infraction of Article 311. In such a case, the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Aggarwal. The order of termination is illegal and must be set aside."

20. If there was any difficulty as to what was "motive" or "foundation, even after Shamsher Singh's case (supra), the said doubts, in our opinion, were removed in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , again by Krishna Iyer, J. No doubt, it is a labour matter but the distinction so far as what is "motive" or "foundation" is common to labour cases and cases of employees in Government or public sector. The learned Judge again referred to the criticism by Shri Tripathy in this branch of law as to what was "motive" or what was "foundation", a criticism to which reference was made in Shamsher Singh's case (supra). The clarification given by the learned Judge is, in our opinion, very instructive. It reads as follows (as pages 616-617) :

"Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to physis processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings on documents connected with the formal order of termination what the true ground for the termination is. If, thus, scrutinised, the order a punitive favour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servants it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceedings from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits is on simple termination, are given and non-injurious terminology is used, On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons of punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

21. In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth, but decides merely not to continue a dubious employee.. The master does not want to decide or to direct a decision about the truth of the allegations. But if he conducts an inquiry only for purpose of proving the misconduct and the employee is not heard, it is a case where the inquiry is the foundation and the termination will be bad.

22. Subsequent to the above cases, there have been a number of other cases where the above principles have been applied. We shall refer to a few of them where some more principles have been discussed. In *The State of U.P. Vs. Ram Chandra Trivedi*, , the employee's service were terminated as he allowed some other employees to impersonate him in an examination. The order was innocuous but the case was preceded by an inquiry and it was held that the petitioner in his pleadings had not made out a case for calling for departmental records to examine if it was a case of punishment. That was now this case was explained by Pathak, J. (as he then was) in *State of Maharashtra v. S. R. Saboji* : 1971 4 SCC. 466. In *Anoop Jaiswal*'s case it was held while quashing the order of termination, that it was open to the Court to go behind the order and find out if the report/recommendation of the superior authority was a camouflage and if that was the basis or foundation for the order the report/recommendation, then it should be read along with the order for the purpose of determining the true character of termination, If on a reading of the two together, the Court reached the conclusion that the alleged finding of misconduct was the cause or basis of the order, and that but for the report containing such a finding, the order would not and could not have been passed, the termination order would have to fall to the ground as having been passed without the officer being afforded a reasonable opportunity. It was also held that it was wrong to presume that an order would be punitive only if a regular inquiry was conducted ex parte or behind the back of the officer. Even if it was not a regular inquiry, any other inquiry where evidence was taken and findings were arrived behind the back of the officer, would make the subsequent termination bad. Vankataramiah, J. (as he then was) pointed out in the above case the shift in the law as brought about by *Shamsher Singh*'s case (supra).

23. So far as *Triveni Shankar Saxena*'s case (supra) and *State of U.P. and another Vs. Km. Prem Lata Misra and others*, , are concerned, in the former case, the termination order was a simple order which did not cast any stigma and there were several adverse entries in his confidential reports. The termination was as per rules. In the latter case the employee's superiors complained that the employee was not regular in her work, and was in the habit of leaving office during office hours. A simple order of termination was passed in terms of the order of her temporary appointment. There was no prior inquiry. In both these cases, the termination orders were upheld.

24. We shall now refer to a different type of cases where a departmental inquiry was started, then dropped and a simple order of termination was passed. In

State of Punjab v. Sukh Raj Bahadur : 1963 3 SCR 234, the charge memo was served, reply given and at that stage itself, the proceedings were dropped and a termination order was passed. The High Court felt that the object of departmental inquiry being to punish the employee, the order of termination must be treated as punitive. This was not accepted by a three Judge Bench consisting of Justice Shah (as he then was) who had laid down in Madan Gopal's case (supra) the principle of object of the inquiry. The Apex Court reversed the High Court judgment and held that neither Madan Gopal's case nor Jagdish Mitter's case (supra) applied. This was because in the case before them the inquiry did not go beyond the stage of the explanation. No finding were given and no inquiry report was submitted as in the above two cases. In that case (i. e. Sukh Raj Bahadur), the Apex Court felt that the decision in A. G Benjamin v. Union of India : (C. A. No. 134 of 1966 dated 13-12-1966) was more direct. In Benjamin's case (supra) a charge memo was issued, explanation was received and an Enquiry Officer was also appointed but before the inquiry could be completed, the proceedings were dropped stating that ", "departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities, we will be able to deal with the accused in the way he deserves". There also, the order was held not to be punitive, Following the above case, the Apex Court in Sukh Raj Bahadur's case (supra) stated that the position before them was similar to what happened in Benjamin's case (supra) and concluded as follows :

".....the departmental inquiry did not proceed beyond the stage of submission of a charge-sheet followed by the respondent's explanation thereto. The inquiry was not proceeded with, there were no sittings of any inquiry officer, no evidence recorded and no conclusion arrived at in the inquiry."

25. The under lined words are very important and demarcate the line of distinction. If the inquiry officer held no sittings, did not take evidence nor recorded any conclusions and if at that stage the inquiry was dropped and a simple order of termination was passed, the same would not be punitive.

26. In Ishwar Chand Jain Vs. High Court of Punjab and Haryana and Another, a three Judge Bench held the order to be punitive as it was passed after issuing a charge memo, a reply received, even though no evidence was adduced and no findings were given. But in a latter three Judge Bench case in State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , Napali Singh's case was not followed as being a judgment rendered per incuriam as it did not consider Champak Lal's case (supra). Of course, the above case, i. e., Kaushal Kishore Shukla's case (supra) was one where there was an adverse entry and only a preliminary report and then a simple order of termination was issued. That order was upheld. Similarly, in Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another, , the facts were that the departmental inquiry was stated and dropped and the Apex Court held the order not to be punitive.

27. It will be noticed from the above decisions that the termination of the services of a temporary servant; or one on probation, on the basis of adverse entries or on the basis of an assessment that his work as not satisfactory will not be punitive in as much as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the Officer, as stated by Shah, J, (as he then was) in Ram Narayan Das's case (supra). It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary inquiry is held because the purpose of a preliminary inquiry is to find out if there is prima facie evidence or material to initiate a regular departmental inquiry. It has been so decided in Champaklal's case (supra). The purpose of the preliminary inquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental inquiry is started, a charge memo issued, reply obtained and an enquiry officer is appointed if at that point of time, the inquiry is dropped and a simple notice of termination, is passed; the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh. Raj Bahadur's case (supra) and in Benjamin's case (supra). In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes' case (supra), the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer, by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career, if a dismissal of other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive. The position was reiterated in Radhey Shyam Gupta v. U. P. State Agro Industries Corporation Ltd., and another : 1998 (9) SC 504.

28. It is to be noted that before the Director stand of the petitioner was that he was being victimised. In the counter affidavit filed to rebut the contentions raised, the authorities highlighted the conduct of the petitioner like misappropriation of funds, deficiency in teaching and lapses in discharge of duties. The petitioner has never questioned innocuousness of the order. On the contrary he tried to highlight certain materials which according to him showed oblique motive of the authorities to harass him. By way of reply the materials were brought on record by the college authorities to assert that the stand of the petitioner about mala fide, oblique motive is without any basis. The Director has found that the petitioner has admitted to have collected a sum of Rs. 5750/-

from the students and not to have deposited the same in the account of the college and when asked about it gave an undertaking to pay back the same. Similarly he had collected a sum of Rs. 1190/- from seven private candidates for allowing them to appear at the annual examination and he again did not pay the money to the college fund. When he was detected and asked about it, he gave an undertaking to refund the amount to the college, The allegation was of victimisation. Challenge was that the termination was not preceded by any inquiry, and without assigning any reason. The said stand is factually and contextually different from what is pleaded presently, that is, the background for termination. Stand taken before the Director during the course of hearing of the appeal as evident from the memorandum of appeal is significant. It has been stated that the Governing Body was not functioning, and was illegally constituted. It is evident from the prayer in them memorandum of appeal which reads as follows :

"Hence I pray that you will be goodhand enough to grant my application by reinstating me in my service and by giving a perfect G. B. but which I as well as the whole staff will be grateful to you."

Considering these aspects, the Director held that the order of termination was in order.

29. The writ application is without any merit in view of the position in law as elaborately dealt with above, and is accordingly dismissed, but in the circumstances without any order as to costs.

P.C. Naik, J.

30. I agree.

31. Writ application dismissed.