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**(2009) 10 AP CK 0006**  
**In the Andhra Pradesh High Court**  
**Case No : A.S. No. 876 of 2001**

Dr. S. Usha Vidya Rani

APPELLANT

Vs

Medical Superintendent, B.C. Hospital

RESPONDENT

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**Date of Decision :** 23-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 311  
Contract Act, 1872 — Section 23  
Industrial Disputes Act, 1947 — Section 25F, 25G  
Maternity Benefits Act, 1961 — Section 12  
Specific Relief Act, 1963 — Section 14

**Citation :** (2010) 2 ALT 340

**Hon'ble Judges :** G. Bhavani Prasad, J

**Bench :** Single Bench

**Advocate :** K. Subhakar, for the Appellant; P. Gopal Das, for the Respondent

**Final Decision :** Dismissed

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## Judgement

G. Bhavani Prasad, J.—The aggrieved plaintiff in O.S. No. 87 of 1991 on the file of Senior Civil Judge's Court, Nellore, filed the appeal against the dismissal of the suit without costs by the judgment and decree dated 11-09-2000.

2. The plaintiff filed the suit contending that she was appointed as Medical Officer in B.C. Hospital, Nellore, on 7-5-1990, initially as a probationer in a permanent post with a furnished quarters and she joined on 7-5-1990. She was discharging her duties and responsibilities diligently and to the satisfaction of the appointing authority, patients and the public. Her services were appreciated and commended by a certificate issued by the former Medical Superintendent of the Hospital. The plaintiff informed the authorities of the hospital that she required maternity leave for one month and the defendant, with a view to deprive her of maternity leave and other benefits conferred by the Maternity Benefit Act, issued a letter of termination with effect from 6-5-1991 influencing the Administrative Committee. The plaintiff was asked to vacate the quarters on that day itself and the termination orders without either confirming her or extending her probation

on determination of her fitness were malafide, arbitrary and without reasons amounting to a stigma, though it was a temporary appointment. No notice or memo was given to the plaintiff about any deficiencies in service and the defendant appointed Dr. Annie Raja Ratnam and Dr. Lalitha Kumari Voola (wife of the Medical Superintendent of the defendant hospital) on 15-2-1991 and Dr. Syed Zakir Hussain on 8-4-1991. The plaintiff at an advanced stage of pregnancy as certified by a Government doctor on 29-4-1991 was advised rest for two weeks from 29-4-1991 apprehending premature labour. The plaintiff was earlier Medical Officer in K.L.M. Hospital, Renigunta, on a permanent basis and she resigned that permanent job and joined the defendant hospital on the assurance of a permanent post as a Medical Officer. The defendant, thus, committed a breach of contract with mala fide motives by the unilateral termination causing mental shock and agony to the plaintiff resulting in threatened premature delivery. She had to apply for maternity leave on medical advice, which was not granted, which again affected her general health. The plaintiff was not employed anywhere, suffered a lot of pain and financial loss and hence, she sued for declaring her termination to be illegal, inoperative and arbitrary and for a permanent injunction in consequence, apart from damages and costs valuing the reliefs at Rs. 1,22,000/-.

3. The defendant resisted the suit contending that the performance of the plaintiff during the period of probation was not satisfactory as she was not conforming to the working hours or duty hours. The defendant gave a memo on 20-03-1991 asking her to follow the timings of the hospital and the certificate obtained from a former Medical Superintendent, who was leaving the country, was not correct. Dr. Annie Rajaratnam was sponsored for medical studies at Vellore by Samavesam of Telugu Baptist Churches, the parent body of the defendant hospital, and hence, she had to be appointed. Dr. Lalitha Kumari Voola is a diploma holder in Gynaecology and obstetrics and after Dr. M.O. Boehr left the hospital, a senior doctor with the said qualification was required for the hospital. Dr. Syed Zakir Hussain holds diploma in Child Health and thus, all the three are better qualified than the plaintiff. Maternity Benefit Act has no application to the plaintiff. The Administrative Committee of the hospital met on 05-04-1991 and considered the confirmation of the plaintiff and on their unanimous conclusion about the performance of the plaintiff being not satisfactory, they decided to relieve the plaintiff being not satisfactory, they decided to relieve the plaintiff with effect from 06-05-1991. A notice was served on 11-04-1991 to that effect and on the letter of the plaintiff on 18-04-1991 to reconsider her case, the Administrative Committee met again on 23-04-1991 and finding no ground to revise the decision taken earlier, communicated the same to the plaintiff by a letter dated 26-04-1991. While a resolution was also passed by the Administrative Committee on 05-04-1991 on the performance of the plaintiff during probation, no reasons were assigned in the termination order in order not to adversely affect the chances of the plaintiff for future appointment. The termination was for valid reasons and the contract of personal service cannot be

the subject of any declaration and injunction in respect of the institution managed by a religious organization without anything to do with the State or any statute.

4. The plaintiff obtained an ex parte temporary injunction from the Vacation Court and after contest, the said interim injunction was vacated on which the plaintiff got the plaint amended as per the orders of this Court in C.R.P. No. 3144 of 1994 dated 18-03-1996 including the relief of damages on various grounds, which plea was also contested by the defendant by filing an additional written statement. The defendant claimed that the plaintiff was and is working as a doctor and did not suffer any damages. The damages claimed were excessive and the claim and the suit reliefs were also barred by time.

5. On such pleadings, the following issues were settled for trial and determination of the suit.

(1) Whether the plaintiff is entitled for declaration as prayed for?

(2) Whether the plaintiff is entitled for permanent injunction as prayed for?

(3) To what relief?

Additional issue No. 1:

6. Whether the plaintiff is entitled to the damages claimed in the suit?

7. During trial, P.W.1 and D.Ws.1 and 2 were examined and Exs.A-1 to A-18 and B-1 to B-20 were marked.

8. The trial Court rendered the impugned judgment concluding that in respect of the contract of personal service, the plaintiff can seek neither any declaration concerning orders of termination nor can she claim any permanent injunction. The trial Court referred to Section 14 of the Specific Relief Act, 1963 in this regard and the trial court proceeded to consider the plaintiff's claim for damages. The plaintiff was noted to have been first employed in a Christian Hospital in Maharastra after completing the House Surgency in January, 1983 and then to be working in K.L.M. Hospital, Renigunta from 17-05-1989 to 03-02-1990. She was noted to have resigned on 02-04-1990 after Ex.A-1 letter was received from the defendant hospital about the option open to her to join the defendant Hospital as a lady Medical Officer working with the defendant resigned. The trial Court noted the employment of the husband of the plaintiff as a lecturer at Nellore, the stay of her father after retirement at Nellore and the plaintiff being brought up and having here education at Nellore as circumstances, which might have prompted the plaintiff to seek an appointment with the defendant, which appointment was made under Ex.A-2 dated 07-05-1990. The Administrative Committee of the hospital made the appointment, which was headed by the Medical Superintendent and the plaintiff appointed as a probationer in a permanent post was provided a furnished quarters. The appointment order also specified about the appointee reading the conditions of

service and agreeing to serve as per existing and modified terms from time to time. The first condition of appointment is about the same being on probation for a period of one year at the end of which the appointing authority shall determine the fitness of the appointee for confirmation and pass orders to confirm or to extend the probation or to terminate the appointment, for which no reasons need be assigned. The trial Court also referred to Ex.B-16 Rules and regulations relating to the defendant Hospital approved by the General Council of Samavesam of Telugu Baptist Churches, which reproduced the proforma of Ex.A-2 also and P.W.1 was stated to have not disputed the terms and conditions of Ex.A-2 order of appointment or the termination being within the scope and purview of the condition No. 1 of the terms and conditions of Ex.A-2. She was also noted to have admitted being on probation and not a confirmed employee. The plaintiff's account was also stated to have been settled and the amount due was noted to have been paid by way of cheque. The trial Court further noted that as per Ex.A-2, no reasons need be assigned by the defendant, while terminating the services of the plaintiff under Ex.A-4. After referring to the various precedents cited before it, the trial Court considered that the Administrative Committee passing a resolution terminating the services of the plaintiff was admitted by the plaintiff in cross-examination and it also noted the further representation of the plaintiff and Ex.B-13 resolution of the Administrative Committee deciding that there were no grounds to revise the action of termination. The resolution book was marked as Ex.B-12 concerning Ex.B-13, which made the trial Court accept the presence of the members of the Administrative Committee when the resolution was passed and when the members signed in the minutes as deposed by D.Ws.1 and 2. The trial Court accepted the explanation of D.W.2 about the two different inks in the contents of Ex.B-12. The meeting on 23-04-1991 resolving to confirm the plaintiff's termination was noted to have been admitted by P.W.1 in her cross-examination and the evidence of the plaintiff was interested and uncorroborated by any other evidence. The trial Court refused to accept that there was no meeting on 23-04-1991. The trial Court opined that it is not necessary for the defendant to determine the fitness of the plaintiff and the administrative action in issuing the innocuous termination without any stigma on the performance of the plaintiff was considered to be within the right of the defendant. Section 23 of the Contract Act or any principles of natural justice were observed to be not attracted in the absence of any substantive right for the appointee, who was on trial and when the termination was without any stigma. The trial Court referred to the allegations of the plaintiff being irregular in her timings and insubordinate in violating the instructions and other allegations made by way of suggestions during the cross-examination of P.W.1 and also through the evidence of D.W.2. As such reasons were not referred to in the termination order, the trial Court did not express any conclusive opinion on the same. While noting that the plaintiff was working as Civil Assistant Surgeon under the Government since 18-02-1994 and admitted that she cannot join the defendant's service even if offered, the trial Court noted the leave rules under Ex.B-16 Rules and regulations relating to

the defendant making any person not entitled to claim maternity leave before completing one full year of service. The trial Court also noted that the attempt of the plaintiff to get medical leave and the rejection of the same by the defendant was subsequent to the suit and similar was the attempt of the plaintiff to seek grant of an increment. In any view, in view of the plaintiff being bound by the terms of the contract under Ex.A-2, the trial Court considered the claim for damages to be unsustainable. Due to absence of proper quantification of damages claimed by the plaintiff also, the claim for damages without any particulars was considered unsustainable solely on the interested testimony of the plaintiff, who did not examine the Gynaecologist consulted and being a qualified doctor, was considered to have probably not remained idle during that period. The trial Court, therefore, refused to grant damages, which were not proved by any evidence including for the period for which the interim injunction was in force, as the plaintiff did not work with the defendant during the said period. The emphasis of the defendant to grant costs was also not accepted and the suit was dismissed without costs.

9. The plaintiff filed the present appeal contending that the trial Court failed to note the offer to the plaintiff to join as a Medical Officer in the existing regular vacancy, which was an invitation to the plaintiff. The trial Court relied on an impermissible condition under Ex.B-16 against the basic principles of service law as laid down by precedents and the termination order was contrary to the principles of natural justice, equity and good conscience. It was also opposed to public policy and was hit by Section 23 of the Contract Act. No notice or opportunity was given to the plaintiff before termination without assigning any reasons and the service rules of the defendant cannot be in conflict with the Government Service Rules. The termination resorted to avoid the appointment and continuation of the plaintiff in service and to avoid maternity leave salary ought to have resulted in grant of damages to the plaintiff. Hence, the plaintiff desired that the impugned order be reversed.

10. Sri K. Subhakara Rao, learned Counsel for the appellant/plaintiff and Sri P. Gopal Das, learned Counsel for the respondent/defendant strenuously reiterated their respective contentions with reference to various precedents.

11. The following points arise for consideration and determination herein,--

(1) Whether the plaintiff is entitled to any damages on the ground of her termination from the service of the defendant being illegal and if so, to what quantum?

(2) To what relief?

Point:

12. The facts are not seriously in dispute and it is only the legal consequences arising out of the admitted facts that are in question. The plaintiff completed her House Surgency in January, 1983 and worked elsewhere firstly in Maharastra and

then in Renigunta. When she was working at Renigunta, she received Ex.A-1 letter from the then Medical Superintendent of the defendant Hospital about the option available to the plaintiff to join the defendant as a Medical Officer, which offer, whether amounting to an invitation or not, was acted upon by the plaintiff by resigning from her earlier job and accepting the order of appointment given by the defendant under Ex.A-2 dated 07-05-1990 in pursuance of the decision of the Administrative Committee of the defendant, which is the appointing authority. The order of appointment is clear about the nature of appointment that the plaintiff will be only a probationer in a permanent post and had to accept the appointment subject to all the terms and conditions of service as existing or as modified from time to time. The first and foremost condition was about the period of probation being for one year at the end of which either the probation can be confirmed or extended or the appointment can be germinated without assigning any reason. The, terms and; conditions of the appointment were in tune with the Rules and regulations governing the defendant Hospital as approved by the General Council of Samavesam of Telugu Baptist Chruches, which regulates the affairs of the defendant, That the plaintiff was aware of the terms and conditions of Ex.A-3/Ex.B-16 and that she was also aware of being on probation and having been terminated within the scope and purview of the first condition of the terms and conditions was an admission in her cross-examination. While the nature of appointment was one of a contract of personal service, the reasons leading to the termination were not part of the order of termination, which is an innocuous order of termination simpliciter.

13. Any probe into the hidden or undisclosed reasons behind Ex.A-4 as alleged by both sides cannot in law make any difference to the validity or otherwise of Ex.A-4 whose legality has to be tested with reference to Ex.A-2 and Ex.B-16 only. While the claims of the plaintiff throwing any doubts on the two meetings of the Administrative Committee and the two resolutions passed in such meetings, firstly, deciding to terminate her services and secondly, deciding not to review the earlier decision are unsubstantiated by any independent evidence other than the interested testimony of P.W.1 and are effectively contradicted by the circumstances arising out of the oral evidence of D.Ws.1 and 2 as well as Ex.B-12 and B-13, apart from the admission of such decision by P.W.1 during cross-examination, the defendant cannot be considered to be not considerate in being silent in Ex.A-4 about the defendant's reasons for termination and the trial Court also appropriately did not arrive at any conclusions on the truth or otherwise of the allegations of both sides. Even if the orders of termination were motivated by the desire of the defendant to avoid maternity leave salary or to avoid continuation of the plaintiff in service, such motives probably could not have vitiated the order itself, if it was within the civil rights of the defendant to issue such an order. While events subsequent to the suit about the medical leave and claim for increment cannot be germane in deciding the suit, the appointment of three doctors after the termination of the plaintiff may not be a relevant circumstance, while it should be agreed that there was no positive evidence

before the Court to show that the plaintiff deprived of her job on termination was able to engage herself in any gainful employment till the suit and did not suffer any financial disadvantage due to the termination. However, even in the absence of such positive material and the probability of the plaintiff sustaining some financial loss due to the abrupt termination, any right to damages can arise only if the termination itself was illegal, irregular or improper.

14. Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another, referred to by the learned Counsel for the plaintiff is a case of a statutory body, which is an instrumentality of the State passing an order of dismissal of an employee without following the mandatory provisions of the Rules and regulations in gross violation of principles of natural justice, which will be an exception to the general principle that a contract of personal service cannot ordinarily be specifically enforced. That was a case where the order of termination was casting stigma being based on a set of charges of serious misconduct on the part of the delinquent without serving any charge sheet or show cause notice and thus, violating the principles of natural justice and fair play. The mandatory provisions of the Rules and regulations to be followed in such a contingency were admittedly violated. In the present case, the order of termination did not cast any stigma; it was not based on any charges or allegations of misconduct and it was a case of termination of services of a probationer as per the contract of employment not shown to be in violation of any prescribed mandatory procedure under any law.

15. Avagadda Pinnam Naidu Vs. Varrisimhadriappadu and Others, also relied on by the learned Counsel for the plaintiff was the case of a workman whose services were terminated in violation of the mandatory provisions of the Industrial Disputes Act, 1947. The Industrial Tribunal found that the workman was a person deemed to be in continuous service for a period of one year and any retrenchment could have been affected only in tune with Section 25F and Section 25G of the Industrial Disputes Act. It was, therefore, concluded that the termination of services of a workman must also conform to law and no illegal or arbitrary exercise can take place in termination of services of a workman in violation of the statutory provisions. Any such mandatory preconditions under any statute or otherwise before terminating the services of the plaintiff, a probationer, are not shown to be existing and the plaintiff's case cannot be compared with a case of termination in violation of mandatory statutory provisions.

16. R. Swaminathan v. Manipal Academy of Higher Education (3) 2002 (2) SLR 467 referred to by the learned Counsel for the plaintiff was also a case of discharge of a probationer from service in which it was laid down that an employer would have no power to terminate an employee during the period of probation, unless of course such a right has been reserved whether under the appointment order itself or by any relevant Rules and regulations relating to the same. The specific and relevant clause or condition in the appointment orders in question in that case was found to be entitling the employer to terminate the

services only after the expiry of the probation period, due to which reinstatement of an employee was directed with all consequential monetary benefits. In the present case, Exs.A-2 and B-16 specifically provided for the power of appointing authority to terminate the appointment of a probationer within the period of probation also without assigning any reason therefor. Even otherwise, the termination of services of the plaintiff, who joined on 07-05-1990 was stated to be only with effect from 06-05-1991 obviously with effect from the date of completion of the period of one year, which was the period of probation as per the appointment order.

17. Dr. K.T. Shivaiah v. G. Puttaswamy Gowda and Anr. (4) 2003 (4) SLR 321 also relied on by the learned Counsel for the plaintiff was a case where most of the issues involved were found in favour of the employee, which findings were not challenged by the employer. It was with that factual background that the employee was considered entitled for all consequential benefits once the termination was held to be illegal and when the employee was not shown to be gainfully employed, all consequential benefits ought to have been granted. In that background, a lump sum amount in full and final settlement of the compensation payable to the employee was directed to be paid and that basic premise of the termination being illegal not having been established on the evidence in the suit, consequential question of any damages or compensation may not arise.

18. State of A.P. and Others Vs. V. Narender Reddy and Others, relied on by the learned Counsel for the plaintiff was also a case where the termination of the workman Was found to be without complying with the mandatory provisions of Sections 25F and 25G of the Industrial Disputes Act and the Labour Court failed to consider the violations of the mandatory provisions. It was, therefore, held that the termination of service without giving notice and retrenchment compensation in violation of the statutory provisions was illegal, though the workman was only a probationer. As noted in the decision, even the probationer was entitled to the benefit of mandatory statutory provisions and in that background he was held entitled to be reinstated into service with all benefits, which is not the factual scenario in the present case where no such statutory mandate was alleged or proved to have been violated.

19. Sri Prabhat Kumar Patra v. West Bengal Surface Transport Corporation Limited (6) 2003 (6) SLR 172 cited in favour of the plaintiff was also in respect of a probationer. But, it was a case where an allegation of misconduct was brought against the employee, it was shown cause against by the employee and then the service of the employee was terminated without giving an opportunity of hearing. Though there was no allegation or stigma against the employee in the termination order, still the failure of the employer to conduct an enquiry in accordance with the Service Rules was held to help the employee to be reinstated into service with all benefits, as the Court on lifting the veil found the real nature of the order to be pen in nature, though it is couched in accordance

with the terms and conditions of the order of appointment. The real reason was found to be the alleged misconduct, but in the present case, though the Administrative Committee appeared to have been influenced by the irregularity in timings, the insubordination while on duty and other failings attributed to the plaintiff, they were never made part of the record. The plaintiff was never asked to explain any such misconduct in any attempt to enquire into any such charges and the order of termination was only a termination pure and simple. Any abrupt discontinuance of any disciplinary proceedings and any penalty behind the termination not being possibly presumable in the present case, the decision cited is distinguishable on facts.

20. *Paramjit Singh v. Reond Kalan Cooperative Agricultural Service Society Limited* (7) 2005 (1) SLR 320 also cited for plaintiff was also a case of an industrial dispute where the Labour Court gave a finding of fact categorically that the workman was not given an opportunity to prove his conduct and the termination of his services was not justified from any angle. The Labour Court held that the workman was not gainfully employed since the termination of his services and it was on such factual foundation that not only reinstatement but also full back wages were awarded to the workman. Here, the conduct of the plaintiff was not the subject of any enquiry and the plaintiff cannot fall back upon violation of any mandatory statutory provisions in terminating her services.

21. *Arjun Singh v. Labour Court, Jodhpur* (8) 2005 (1) SLR 160, was also about an industrial dispute and the termination was found to be in violation of Section 25F of the Industrial Disputes Act. As already stated, similar statutory violation is not deducible on facts.

22. In *Kendriya Vidyalaya Sangathan Vs. Arunkumar Madhavrao Sinddhaye and Another*, , the Apex Court was dealing with an appointee to a temporary post whose services were terminated. The employee pleaded that his services were terminated by way of punishment on the strength of an enquiry conducted behind his back in which some witnesses were examined and a report was submitted against him on completion of the enquiry in which he was not given an opportunity to defend himself. Still the Apex Court held the nature of enquiry conducted against the respondent to be merely a preliminary or fact finding enquiry and not a formal full scale departmental enquiry. The Apex Court also noted that the authorities did not hold a disciplinary enquiry, did not serve the employee with any articles of charges or take any further steps in that regard, but had chosen to exercise the power under the terms and conditions of the appointment order. The Apex Court also noted that the termination order was wholly innocuous and does not cast any stigma upon the employee nor it visits him with any evil consequences. The Apex Court, hence, upheld the dismissal of the suit filed by the employee and this decision appears to fit in more with the sustainability of the defence rather than the case of the plaintiff herein.

23. *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, was also a case wherein the employer was a statutory

body wholly controlled and managed by the Government and the employee was held entitled to compliance with rules of natural justice even in the absence of any statutory regulations. However, that was a case where the misconduct was the subject of a preliminary enquiry, during which the employee submitted his explanation to the allegations of misconduct and later the employee was dismissed from service without an opportunity to deny his guilt, to cross-examine the witnesses and to lead evidence against the charge, apart from an opportunity to answer any show cause notice against the proposed punishment. It was in that background that the employee succeeded before the Apex Court. Here the proceedings of termination are not based on any alleged misconduct to import the observance of the principles of natural justice as a precondition.

24. Learned Counsel for the defendant also referred to various precedents hereinafter referred to:

25. In *Jasmer Singh v. Chandigarh State Cooperative Bank Limited* (11) 1999 II LLR 118, a condition in terms of appointment about the liability of the services to termination during probation was held to be not attracting Section 23 of the Contract Act and to be not violative of any Rule. The employer was held to have a right to adjudge the suitability of an employee in the light of his performance when he is under trial during the period of probation and to terminate his services by passing an innocuous order.

26. In *Thirumalesh v. Bharatiya Reserve Bank Note Muduran Ltd.* (12) 2000 I LLJ 237, the term probation was held to imply a period during which the fitness and suitability of the person placed on probation is on trial and in the very nature of the appointment given to a probationer/his services are liable to be terminated.

27. In *Malik G.K. v. Hindustan Petroleum Corporation Ltd.* (13) 1998 (II) LLJ 243, the termination of services was stated to be due to the performance/services during the period of probation being not satisfactory, but still it was held that the order of termination cannot be considered to have been passed by way of penalty even though the unsatisfactory performance was the foundation for terminating the services, which order mentioned some of the lapses.

28. In *Unit Trust of India and Others Vs. T. Bijaya Kumar and Another*, , a Three Judge Bench of the Apex Court upheld an order of discharge from service simpliciter without attaching any stigma to the employee though the decision was based on the confidential reports and the office notes about the unsatisfactory performance of the employee. The Apex Court appreciated the sensitivity shown by the management in not mentioning the reason for termination of service in the order and in the absence of any bias or prejudice or mala fides proved against the employer, the Apex Court upheld the act of management, also observing that an order of discharge is not an order of punishment and there was no question of giving an opportunity of hearing before the termination of service. It was also laid down that the very purpose of a person being placed on probation is to try him during the probation period, to

assess his suitability in the job in question.

29. In *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, , the Apex Court was dealing with the termination of services of a probationer before the expiry of the period of probation and the Apex Court pointed out that the principle of tearing of the veil for finding out the real nature of the order shall be applicable only in cases where the court is satisfied that there is a direct nexus between the charges so leveled and the action taken. Termination during probation after any preliminary enquiry or investigation was held not to amount to removal on a charge or penal in nature.

30. In *P. Srinivasa Ramachander v. Central Machine Tool Institute, Bangalore* (16) 1996 (4) SLR 680, it was held that the termination of service of a probationer even without holding any enquiry was not vitiated and an order of termination simpliciter does not cast any stigma on the employee and need not be preceded by any enquiry.

31. In *Life Insurance Corporation of India v. Shri Raghavendra Seshagiri Rao Kulkarni* (17) 1998 II LLJ 1161 (SC), the Apex Court brought out the distinction between a probationer and a permanent employee and held that the requirement to hold a regular departmental enquiry before dispensing with the services of the probationer cannot be invoked especially when his services are terminated by an innocuous order, which does not cast any stigma on him.

32. In *Rajasthan State Road Transport Corporation Vs. Ramavtar Sharma*, , termination simpliciter during the period of probation was considered to be not punitive requiring an enquiry into the conduct or attracting the principles of natural justice.

33. In *Haribinder Singh v. State of Haryana* (19) 1993 (6) SLR 328, when there was nothing on record to show even remotely that service of the petitioner was terminated on extraneous considerations such as misconduct or by way of punishment, a simple order of termination on account of unsatisfactory work was upheld.

34. Thus, all the above precedents cited by the learned Counsel for the defendant are militating against any interference with the conclusions of the trial Court in the factual context, which is not seriously in dispute.

35. While any certification of credentials of the plaintiff by the former Medical Superintendent is as irrelevant as the dissatisfaction of the defendant with the services of the plaintiff, which was undisclosed in the order of termination, the Maternity Benefit Act, 1961, by Section 12 makes any dismissal of a woman during absence from working in accordance with the provisions of the Act to be unlawful and any deprivation of maternity benefit to a woman including due to discharge or dismissal at any time during her pregnancy was appealable to the prescribed authority within 60 days from the date of communication of the order

of deprivation or discharge or dismissal and it is not the claim of the plaintiff that any such remedy of appeal u/s 12 of the Act was availed or attempted to be availed by her to make it the foundation for any claim for damages in the present suit, apart from the question of applicability of the enactment to the plaintiff and the other question of her absence being in accordance with the provisions of the Maternity Benefit Act, 1961. The plaintiff on her own version did not establish about applying for any maternity leave prior to Ex.A-4 dated 05-04-1991 nor is there anything on record to show that the employer was intimated in writing about the state of pregnancy of the plaintiff before Ex.A-4 termination.

36. Apart from the condition of appointment disentitling the plaintiff to any maternity leave before completion of one year service, the terms and conditions of appointment under Exs. A-2 and B-16 were not shown to be violative of any fundamental right guaranteed by the Constitution of India or Article 311 thereof and in the absence of proof of any illegality or impropriety or irregularity in the termination of service of the plaintiff by the defendant, any relief of damages or compensation does not arise, as the very basis for any such claim can only be wrongful action on the part of the defendant. As such, irrespective of any economic loss or distress to which the plaintiff was put due to the termination, the plaintiff does not appear entitled either to any declaration or permanent injunction or any damages on the undisputed facts. Hence, the point is answered against the appellant.

Point No. 2:

37. Learned Counsel for the respondent/defendant again pressed for costs in the appeal, which were denied in the suit on the same grounds of embarrassment and expenditure due to unestablished allegations against the defendant. But, when the termination of service of the plaintiff was without assigning any reason, she cannot be considered wholly unjustified in approaching the competent Court for relief and her mere failure in the civil action need not lead to her being burdened with costs. The plaintiff as well also suffered the same expense and trouble and it will be a proper exercise of judicial discretion to direct the parties to bear their own costs in the appeal also.

38. In the result, the appeal is dismissed without costs.