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**(2006) 01 AHC CK 0034**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 24 of 2006**

Lalmani Maurya

APPELLANT

Vs

Public Service Commission and Public Service Commission

RESPONDENT

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**Date of Decision :** 13-01-2006

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 311

**Citation :** (2006) 01 AHC CK 0034

**Hon'ble Judges :** Sudhir Agarwal, J;S. Rafat Alam, J

**Bench :** Division Bench

**Advocate :** Deepak Kumar Jaiswal and Santosh Kumar Singh, for the Appellant;  
M.A. Qadeer and P.S. Baghel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Heard learned Counsel for the appellant and Shri P.S. Baghel, learned Counsel for the respondents.

2. The special appeal arises out of the judgment dated 1.12.2005 passed by the Hon'ble Single Judge in writ petition No. 8599 of 1993 dismissing the writ petition of the appellant.

3. The brief factual background is that the petitioner appears to have been engaged on daily wage basis in the year 1989 but his services were dispensed with on 30.10.1992 after the assessment of his work and performance, as the same was not found satisfactory. The petitioner approached this Court by means of writ petition No. nil of 1993, which was disposed of on 11.1.1993 with the direction to the respondents to decide the representation of the petitioner within two weeks from the date of presentation of a certified copy of the order, contained in annexure 4 to the affidavit filed in support of the stay application.

4. From a perusal of the order of the Hon'ble Single Judge it appears that the Hon'ble Single Judge also permitted the petitioner to make a fresh representation, if he is so advised, and the same was also required to be decided

by the authorises concerned. It appears that the petitioner thereafter submitted a fresh representation, copy of which is annexure 5 to the affidavit filed in support of the stay vacation, and the same was rejected by the Secretary, U.P. Public Service Commission vide order dated 3.2.1993 after considering all the facts and circumstances, The order rejecting representation was challenged in the writ petition, which has been dismissed by the Hon''ble Single Judge vide judgment under appeal.:

5. Learned counsel for the appellant submitted that the order passed on the representation shows that the services of the petitioner were terminated on account of misconduct; that he disobeyed the direction of the higher authorities in discharge of work and, therefore, it amounts to termination of service with stigma. He further submitted that since his termination is not simpliciter but punitive, he was entitled for opportunity and his services could not be terminated without holding disciplinary proceeding/disciplinary inquiry. The learned Counsel for the appellant further submitted, the respondents have said in the order dated 3,1,1993 that if the appellant tenders apology, he may be re-employed but no such opportunity was afforded to the appellant-respondent.

6. In our view, none of the submissions made by the learned Counsel for the appellant has any force.

7. Admittedly, the appellant was engaged on daily wage basis by the commission on 24.10.1989. As disclosed by the appellant in para 2 of the affidavit filed in support of the application, he received wages @ Rs. 15/- per day from 24.10.1989 to 30.4.1990 and from 24.5.1990 to 15.10.1991. He further stated to have received Rs. 25/- per day for a period from 16.10.1991 to 30.9.1992. Thereafter he was disengaged. From 21.3.1993 to 4.7.1995 commission on daily wage basis again engaged him. Since the engagement of the appellant was on daily wage basis there was no occasion for the respondent to pass any written order for his -disengagement. However, when the petitioner-appellant was disengaged initially after 30.9.1992 he approached this Court by means of writ petition No. nil of 1993 and got the order directing the respondents to decide the representation of the petitioner. It is in these circumstances that the respondents have passed the order dated 3.11.1993 showing that he was disengaged on account of his work and performance. The assessment of work and disengagement thereafter neither amounts to any stigma nor the petitioner has been terminated by an order casting stigma. The order passed on the representation of the petitioner in pursuance of the direction of this Court cannot be said to be an order of termination casting stigma.

8. In the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, the Hon''ble Apex Court considered an order of termination mentioning the word "unsatisfactory work and conduct" and whether such an order of termination is stigmatic or not. After review of the entire case law the Hon''ble Apex Court held as under:

At the outset, we may state that in several cases and in particular in *State of Orissa v. Ram Narain Dass* it has been held that the use of the word "unsatisfactory work and conduct in the termination order will not amount to a stigma.

9. The aforesaid judgment has been followed by the Hon"ble Apex Court subsequently. In *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, following *Dipti Prakash Banerjee (supra)*, the Hon"ble Apex Court has held as under:

Returning now to the facts of the Case before us. The language used in the order of termination is that the appellant's "work and conduct has not been found to be satisfactory". These words are almost exactly those which have been quoted in *Dipti Prakash Banerjee's* case as clearly falling within the class of non stigmatic orders of termination. It is, therefore, safe to conclude that the impugned order is not ex facie stigmatic (para 31)

10. In *Pavanendra Narayan Verma (supra)* it was argued that mention of the reason for termination, which constitutes allegations of conduct, in the counter affidavit would also vitiate the order, since it would make the order stigmatic. Rejecting this contention the Hon"ble Apex Court in *Pavanendra Narayan Verma (supra)* held as under:

That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi....* When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise... (para 34)

Equally an order which is otherwise valid cannot be invalidated by Yeason of any statement in any affidavit seeking to justify the order. This is also what was held in *State of Uttar Pradesh v. Kaushal Kumar Shukla (supra)*:

The allegations made against the respondent contained in the counter affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination. (para 35]

11. In *State of Punjab and Others Vs. Balbir Singh*, the order of discharge mention the words unlikely to prove an efficient police officer". Further before passing the aforesaid order of discharge it appears that Shri Balbir Singh, who was found to have consumed liquor and misbehaved with a lady constable was medically examined and thereafter discharge order was passed. The appeal, which was filed before the Deputy Inspector General of Police, was rejected and while rejecting the appeal, he referred to the aforesaid facts and stated that the discharge order was correct. Shri Balbir Singh challenged the order of discharge on the basis of the averments contained therein as well as in the order of the Deputy Inspector General of Police. The Hon"ble Apex Court upholding the

aforesaid order of discharge held as under:

In the present case, order of termination cannot be held to be punitive in nature. The misconduct on behalf of the respondent was not the inducing factor for the termination of the respondent. The preliminary enquiry was not done with the object of finding out any misconduct on the part of the respondent, it was done only with a view to determine the suitability of the respondent within the meaning of Punjab Police Rule 12.21. The termination was not founded on the misconduct but the misbehaviour with a lady constable and consumption of liquor in office were considered to determine the suitability of the respondent for the job, in the light of the standards of discipline expected from police personnel. (para 17)

12. In *Dhananjay Vs. Chief Executive Officer, Zila Parishad, Jalna*, mention of the word "suspension" in the order of termination was not held to be stigmatic or punitive. In *State of U.P. and Others Vs. Ram Bachan Tripathi*, the Hon'ble Apex Court considering as to when the order of termination can be said to be stigmatic held as under:

We shall first examine the plea relating to the stigma. Usually a stigma is understood to be something that is detraction from the character or reputation of a person. It is blemish, imputation, a mark or label indicating a deviation from a norm. (para 6)

Mere description of a background fact cannot be called as stigma. In the termination order it was merely stated that the show cause notices were issued and there was no response. This can by no stretch of imagination be treated as a stigma as observed by the Tribunal and the High Court.(para 7)

13. In *State of Haryana and Another Vs. Satyender Singh Rathore*, the Hon'ble Apex Court referring to *Pavanendra Narayan Verma (supra)* and *Dipti Prakash Banerjee (supra)* held as under:

We find that the High Court did not consider the question of stigma or the effect of any enquiry held before the order of termination was passed. The question whether the enquiry purportedly held provided the motive or the foundation was required to be considered by the High Court in detail. That has not been done. The question whether termination of service is simplicitor or punitive has been examined in several cases e.g. *Dhananjay v. Chief Executive Officer, Zila Parishad, Jalna* and *Mathew P. Thomas v. Kerala State Civil Supply Corporation Limited and Ors.* An order of termination simplicitor passed during the period of probation has been generating undying debate. The recent two decisions of this Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta* and *Pavanendra Narayan Verma v. Sanjay Gandhi Post Graduate Institute of Medical Sciences* after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simplicitor and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of

probation. The learned Counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee (*supra*) after referring to various decisions it was indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus:

If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. From a long line of decisions it appears to us that whether an order of termination is simplicitor or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or on motive on the ground of unsuitability to continue in service. (para 9)

When the factual scenario of the present case is considered in the background of legal principles set out above, the inevitable conclusion is that the High Court was not justified in interfering with the order of termination. (para 10)

14. In Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, the Hon'ble Apex Court following its earlier judgment in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, has held as under:

In State of Uttar Pradesh and Anr. v. Kaushal Kishore Shukla this Court has observed in para 6 as under:

The High Court held that the termination of respondent's services on the basis of adverse entry in the character roll was not in good faith and the punishment imposed on him was disproportionate. It is unfortunate that the High Court has not recorded any reasons for this conclusion. The respondent had earned an adverse entry and complaints were made against him with regard to the unauthorised audit of the boys fund in an educational institution, in respect of which a preliminary inquiry was held and thereupon, the competent authority

was satisfied that the respondent was not suitable for the service. The adverse entry as well as the preliminary inquiry report with regard to the complaint of unauthorised audit constituted adequate material to enable the competent authority to form the requisite opinion regarding the respondent's suitability for service. Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination. (para 20)

15. In Registrar, High Court of Registrar, High Court of Gujarat and Another Vs. C.G. Sharma, the Hon''ble Apex Court has held as under:

We are also satisfied, after perusing the Confidential Reports and other relevant vigilance filed etc. that the respondent is not entitled to continue as a Judicial Officer. The order of termination is termination simplicitor and not punitive in nature and, therefore, no opportunity needs to be given to the respondent herein. Since the overall performance of there was found to be unsatisfactory by the High Court during the period of probation. It was decided by the High Court that the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simplicitor cannot be said to be violative of Articles 14, 16 and 311 of the Constitution of India. The law on the point is crystallized that the petitioner remains probationer unless he has been confirmed on the basis of the work evaluation. Under the relevant Rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on the regular establishment or post, and in that view of the matter, the contentions of the respondent that the respondent services were deemed to have been continued on the expiry of the probation period, are misconceived.

16. In Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Others, after following Dipti Prakash Benerjee (supra) and Pavanendra Narayan Verma (supra) the Hon''ble Apex Court has observed as under:

From a long line of decisions it appears to us that whether an order of termination is simplicitor or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or on motive on the ground of unsuitability to continue in service. If the form and language of the so called order of termination simplicitor of a probationer clearly

indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simplicitor or punitive. In cases where the services of a probationer are terminated by an order of termination simplicitor and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simplicitor, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simplicitor to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service as he is in reality removed from service on the foundation of his misconduct.(para 11)

17. In the case in hand merely because in the order deciding his representation it has been observed by respondent No. 2 that after the assessment of work and performance of the appellant it was found necessary to disengage him in order to maintain discipline in the office, it cannot be said that the appellant has been terminated casting stigma on his conduct and, therefore, his disengagement from service after 30.12.1992 is punitive.

18. The further submission of the petitioner that he ought to have been afforded opportunity to tender apology and for re-engagement thereafter, is also misconceived, as it is for him to tender apology and it is always open to the respondents, if they so desire, to re-employ him. It is not for this Court to pass any order, in this regard.

19. Even otherwise after the lapse of such a long time the Appellant, who was only a daily wager, cannot be directed to be employed or re-employed by the commission since the engagement of daily wager depends upon the requirement of authority concerned and no person has any legal or otherwise right to seek engagement on daily wage basis. A daily wager has no right either to hold the post or to claim continuance, in service. In the circumstances, we are of the view that the Hon"ble Single Judge has rightly dismissed the writ petition. However, he has Already protected the interest of the appellant by observing that the dismissal of the writ petition would not prevent the respondent from engaging the petitioner-appellant to work on daily wage basis or in other capacity, in case work is available.

20. In this view of the matter, the special appeal is devoid of merit and is accordingly dismissed.