

(2001) 08 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 5412 of 2000

Maharaja Sayajirao University

APPELLANT

Vs

Ram Mangaram Mirchandani

RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 21 GLH 488 : (2002) 1 GLR 861

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : N.V. Anjaria and Mitul K. Shelat, for the Appellant; S.I. Nanavati and Deepak Shukla, of Nanavati and Nanavati, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—The present Special Civil Application is filed by the petitioner-University challenging the order passed by the Gujarat Services Tribunal in Application No. 98 of 1993 dated 28th December, 1999.

The respondent approached the Tribunal by way of the aforesaid application, challenging the decision of the University by which his services were put to an end.

2. The respondent applied for the post of Lecturer in Archaeology in response to the advertisement which was published in the daily newspaper. The respondent was interviewed by the Interview Committee and was appointed on probation for a period of two years on the post of Lecturer of Archaeology.

It is the case of the original applicant before the Tribunal that after appointment, he secured Ph. D. in Archaeology subject. It is also his case that he was also teaching Sindhi subject in the Arts Faculty, and accordingly, he was discharging additional work. It is further the say of the applicant that he was also appointed as Chairman of Sindhi subject and was also appointed as Examiner in the Sindhi subject by the University. Initially, one Shri R. N. Mehta was the Head of the

Department, but as soon as he retired in December, 1982, one Mr. Hegde came to be appointed as Head of the Department in the Archaeology Department. However, said Mr. Hegde was keeping bias against the respondent-original applicant and because of the said aspect, his services came to be terminated by an order dated 23-4-1983. The said order, by which his services were terminated, was communicated to the respondent by the Registrar of the University. The respondent herein initially approached the civil Court by filing Regular Civil Suit No. 198 of 1986. However, the said suit was subsequently withdrawn on 9-3-1989 as the respondent wanted to appear in the fresh interview. Liberty was, however, reserved in favour of the plaintiff, i.e. the respondent herein, to file fresh suit on the same cause of action, if he so desired. It seems that the respondent was not selected even in the fresh interview and he again filed a suit, being Civil Suit No. 1111 of 1989 on 28-6-1989. It seems that, during the pendency of the aforesaid subsequent suit, Gujarat Universities Services Tribunal came to be established in the year 1993, and therefore, the said suit was transferred to the Tribunal under the provisions of Section 13(2) of the Gujarat Universities Services Tribunal Act, 1993. After such transfer, the said proceedings were renumbered as Application No. 98 of 1993.

3. The Tribunal, after recording the evidence of the parties and after hearing the arguments of the respective Advocates, by its order dated 28th December, 1999, came to the conclusion that the order of termination was passed by way of penalty, and that, since the same was passed without holding regular enquiry, the same was treated as unjustified and unlawful. The University was accordingly directed to reinstate the respondent-original applicant on the original post with continuity of service and with all other consequential benefits. It is required to be noted that while the aforesaid matter was pending before the Tribunal, on behalf of the petitioner-University, applications at Exhs. 69 and 70 were filed for the purpose of production of documents. However, by order dated 16-7-1999, the Tribunal had rejected the said application and refused the production of the documents. Having been dissatisfied with the final order of the Tribunal, the University has filed this petition under Arts. 226 and 227 of the Constitution of India on various grounds.

4. At the time of hearing of this petition, it was submitted by Mr. Anjaria, learned Advocate of the petitioner-University, that the Tribunal has committed grave error of law in coming to the conclusion that the order in question is penal in nature, and thereby, in setting aside the said order and reinstating the respondent on his original post. Mr. Anjaria further argued that it is an admitted fact that the respondent was appointed as a probationer for a period of two years and that, during the probationary period, the work of the respondent was not found satisfactory, and therefore, ultimately, it was found that he was not suitable for the post in question. He further submitted that, on various occasions, attention of the respondent was drawn by the University to improve his performance, but, unfortunately, the respondent was not in a position to discharge his duty satisfactorily as a Lecturer in Archaeology subject, and

therefore, even during that period, he was asked to give lectures in the subject of Sindhi. It was, therefore, submitted that since the performance of the respondent was not satisfactory during the probationary period, ultimately, his services were terminated and it is open for the employer to Judge the suitability of the employee who is on probation and if it is found that during probationary period, he was not discharging his services satisfactorily, there is nothing wrong if decision is taken to terminate his services as it was not possible for the University to confirm the respondent as he was not found fit for the job of Lecturer of Archaeology subject.

Mr. Anjaria also further submitted that the Syndicate, in its meeting dated 23rd April, 1983, resolved that the respondent be not confirmed in the University's service and his service be terminated from 23-4-1983 after office hours after giving him one month's notice pay as per the Rules. The said item is incorporated at item No. 68 in the Resolution which is at page 24 in the compilation. In his submission, therefore, the question of confirmation of the respondent was discussed by the Syndicate and considering his performance, it was resolved not to confirm him on the post of Lecturer in the Archaeology Department. However, the Registrar, while communicating the said order to the respondent, informed the respondent that charges levelled against him are proved at the enquiry held in the matter and that, still, since he was on probation, he was informed that he is relieved from the services of the University. At the time of communicating the said order, he was also given Rs. 15,552.90 Ps., being salary for one month as Notice Pay. Mr. Anjaria, therefore, submitted that if the Registrar has not properly communicated the order and even if he has mentioned in the order that the charges levelled against him are proved, the same is not a conclusive fact for reaching the conclusion that the order in question is a penal order or that the same is bad for want of holding departmental enquiry against the respondent. He submitted that the aforesaid order is not drafted in a proper manner, but the said order of the Registrar is nothing but the communication of the decision taken by the Syndicate and the decision of the Syndicate is very clear, wherein it is clearly stated that the respondent is not required to be confirmed as Lecturer in the Archaeology Department. Mr. Anjaria also submitted that simply because in the order it is stated that the charges levelled against the respondent are proved, is not sufficient for coming to the conclusion that the order in question, is penal and if the entire material on record is considered, it is clear that the services of the respondent is terminated only in view of his unsatisfactory work and not otherwise. He also submitted that the workings mentioned in the order are not conclusive and if the veil is to be lifted, it is clear that the order in question does not cast any stigma and that the same is not penal and it is merely a simpliciter order of termination on the ground of non-satisfactory performance of the respondent during probationary period. He also submitted that the Court can examine the said fact by lifting the veil and that the order in question is a simpliciter discharge order which is not penal in nature and does not cast any

stigma. It was also submitted by Mr. Anjaria that, in any case, the termination order was passed against the respondent on 23rd April, 1983, while the second suit was filed in the Civil Court on 28-6-1989. In his submission, therefore, the second suit was filed after about more than five-and-half years and the same was, therefore, clearly time-barred as the suit for a declaration and injunction ought to have been filed within a period of three years from the date of cause of action. Therefore, the Tribunal ought to have dismissed the application which was a transferred case before the Tribunal u/s 13(2) of the Act, and therefore, if the suit itself was time-barred, no relief could have been granted to the respondent in the aforesaid application. He, therefore, submitted that, in any case, no relief could have been granted to the respondent-applicant by the Tribunal as the Tribunal is virtually exercising the same power which the Civil Court was exercising as a transferee Court and it cannot give any relief to the respondent which the civil Court could not have granted in view of the fact that the suit is time-barred.

5. Against the aforesaid argument, it was argued by the respondent that the order in question is penal in nature. As per the impugned order of the Registrar, even though it is stated therein that the charges against the respondent were held to be proved, yet, he was not given a copy of any of the documents. He submitted that, no enquiry was held against the respondent and, it was therefore, difficult to imagine how the charges against the respondent were proved. He further submitted that since no regular enquiry was initiated against the respondent, his services could not have been terminated on the ground that the charges against him are proved. He, therefore, submitted that the Tribunal has rightly allowed his application.

On the ground of limitation, it was submitted by the respondent that since the Tribunal was entitled to entertain application at any point of time and since there was no question of any limitation period so far as the application before the Tribunal is concerned, the Tribunal was perfectly justified in entertaining his application on merits. He, therefore, submitted that the order of the Tribunal is required to be upheld by this Court and the petition is required to be dismissed.

6. As stated earlier, it is not in dispute that the respondent was appointed on probation and the probation period was for two years. The question, therefore, which requires consideration is whether the impugned order of termination can be said to be a stigmatic order or a simpliciter termination order. The Tribunal has observed in Paragraph 12 of its judgment that before putting an end to the services of the applicant, no show-cause notice was issued to the applicant and no notice or charge-sheet was given to him. Not only that, the University has not appointed the Enquiry Officer and no departmental enquiry was conducted against the respondent. The Tribunal has also further observed that no charge-sheet was framed and no charges are proved in enquiry and that the impugned letter dated 23-4-1983 is false. The Tribunal, under the aforesaid circumstances, came to the conclusion that the aforesaid order of termination was illegal and

unjustified. The Tribunal also came to the conclusion that since the suit was withdrawn, with a liberty to file a fresh suit and the second suit was filed, which was transferred to the Tribunal at a later point of time, the Tribunal was competent to decide the application on merits. The Tribunal also came to the conclusion that the first suit was withdrawn from the civil Court on 9-3-1989, with a liberty to file a fresh suit on the same cause of action, and thereafter, subsequent suit was filed, being Civil Suit No. 1111 of 1989 on 22-6-1989, and therefore, the said suit was absolutely within the limitation period from the date of withdrawal. So far as the aforesaid part of the reasoning of the Tribunal is concerned, it is required to be noted that the said reasoning, on the face of it, is contrary to the provisions of law. The Tribunal ought to have seen that the cause of action was not required to be considered from the date on which the earlier suit was withdrawn and cause of action was required to be considered from the date on which the original order was passed. There is total non-application of mind on the part of the learned Judge in coming to the conclusion that the second suit was within a short period of withdrawal of the first suit, and therefore, it is within the period of limitation.

7. So far as the impugned order of termination is concerned, it is, no doubt, true that there is a reference about enquiry, and there is a reference about charge being proved in such enquiry at page 25, but the aforesaid order at page 25 is merely a communication of an order and decision of the Syndicate by the registrar to the respondent. The Registrar is not the authority who is passing any order of termination or otherwise. So far as the basis of the original order is concerned, the same is reflected in the resolution of the Syndicate, which is at page 24, and which clearly states that the services of the respondent are terminated and he is not confirmed in the University service. It is required to be noted that during the probationary period, it was open for the University to assess the merits and suitability of the respondent in order to find out whether he is required to be retained on the post of Lecturer in Archaeology or not. It is the say of the University that the performance of the respondent was highly unsatisfactory and he was not in a position to teach the subject of Archaeology in the Archaeology Department, and therefore, he was assigned to teaching even G.R. 109 Sindhi subject in the Arts Faculty though he was recruited as a Lecturer in the Archaeology subject. It is an admitted fact and the Advocate for the respondent has also fairly conceded that the respondent was teaching Sindhi in the Arts Faculty, but, in his submission, it was merely an additional work which he was discharging. Reference is also required to be made to the letter dated 17th January, 1983, which is addressed to the respondent, wherein it is stated that, in the academic year 1981-82, he was not assigned any teaching work in the Department and he was assigned to teach the students studying Sindhi language at First Year B.A. It is also stated in the last paragraph of that letter that the reason for not giving the respondent the teaching work in the Department was that the respondent needed to study the subject, and therefore, the respondent was asked to give details of the books on Archaeology and

Ancient History which he had studied during his probation period.

It is also required to be noted that, from time to time, the respondent was informed about his unsatisfactory work. Not only that, by letter dated 1-2-1983, he was asked to give lectures in the Department Lecture Hall on (1) lower Paleolithic Period; (2) Middle Palaeolithic Period; and (3) Upper Palaeolithic Period (all are concerned with the Archaeology subject). However, by his letter dated 12th February, 1983, the respondent informed the Head of the Department that the lectures are meant for M.A. students and teachers and it requires lot of preparation, and therefore, he wanted two months' time for preparation. The respondent was asked to give lectures on the said three subjects in order to find out whether he has improved himself or not, and therefore, the University gave him opportunity to improve and to find out whether he is really fit for the job or not. By another letter dated 18-2-1983, the respondent was asked to give lectures in three more subjects of one hour duration each in the Department Lecture Hall. It is required to be noted that the Registrar also wrote a letter on 21st February, 1983, informing the respondent that he is duty-bound to carry out the advice and instructions of the Head of the Department and that even though 16 days' time was given for preparation of only three lectures, he could not prepare himself for the same.

By another letter dated 10th March, 1983, the Head of the Department informed the Registrar that on 9th March, 1983, the respondent stated that he was unable to give lectures and he would only read notes and for 20 minutes, he slowly read a Note on excavations at Vagad. It is also stated in the said letter that the respondent was also not knowing as to what he was reading and particulars are also given in the said letter in this behalf. There are also on record further correspondence in this behalf. This shows that the University gave ample opportunity to the respondent to improve himself and was trying to find out whether the respondent was really fit for the job in question and whether he was required to be confirmed on the aforesaid post of Lecturer.

8. By letter dated 20-3-1983, the Head of the Department informed the respondent that the refusal to give the lectures shows that there was incompetence, lack of will and interest in the subject on the part of the respondent. It is stated that the respondent could not give lecture on 9-3-1983 and admitted that he was unable to give lecture and that he can only read notes. Further particulars regarding this aspect are also given in this letter. In paragraph 7 of the said letter of the Head of the Department, it is mentioned that he has also instigated the students to go against a particular teacher and that if he is placed in place of the said teacher, he will give very high internal test marks to the students. The respondent, was therefore, asked to give his explanation and the respondent gave reply on 2nd April, 1983, page 20, Annexure "D".

It is required to be noted that the letter at page 18 dated 20th March, 1983 is written by the Head of the Department to the respondent. The Head of the

Department is not even the appointing authority and the Head of the Department is concerned about the administration of the Department of which he is the Head. The Head of the Department also does not possess any superior power. He has no disciplinary control over other Lecturers as he is not the Disciplinary Authority at all. So, the aforesaid letter dated 20th March, 1983, as such, has no basis for coming to the conclusion as to whether the impugned order is penal in nature or not. As stated earlier, the main question which is required to be considered is whether the impugned order of termination is penal in nature or is passed in view of the unsatisfactory performance on the part of the respondent during his probationary period. In the petition, in Ground "D", it has been mentioned by the University that since the respondent was on probation, he was informed by the Head of the Department as well as by the Registrar to improve his performance and he was given ample opportunity to improve his performance. The work of the respondent, however, was found unsatisfactory. A Committee was appointed by the Vice-Chancellor in order to judge the suitability of the respondent. He was served with a statement of charge and he has filed his reply and he was given an opportunity of hearing. It is required to be noted that, as such, the respondent was informed about the Statement of Points, which is produced at page 18, Exh. "C". It was submitted on behalf of the University that, therefore, in order to give full opportunity to the respondent and to assess his work and in order to find out whether he was really fit for the job or not, the University made this discreet enquiry and the respondent was also kept informed from time to time about the aforesaid proceedings. In my view, therefore, considering the aforesaid documents on record and considering the fact that, from time to time, the respondent was informed even by the Head of the Department to improve his performance and he was asked to give live demonstration before the members, which he could not do, itself is sufficient for coming to the conclusion that his performance during the probationary period was not satisfactory. It is required to be noted that even though he was appointed to give lectures in Archaeology subject, ultimately, he was asked to give lectures in the Sindhi subject in the Arts Faculty. It is on record in the form of correspondence that he could not even give lectures before the Members of the Committee, stating that he can read notes, but he cannot give lectures. The aforesaid material is sufficient for coming to the conclusion so far as the University is concerned that he was not fit for the post in question and his performance during probationary period was not satisfactory. As stated earlier, the Registrar, while communicating the order, has used the word "inquiry" or "charges". However, looking to the original Resolution of the Syndicate, it is clear that his services are terminated purely on the ground of unsatisfactory work during probationary period and it was not thought fit to confirm him as Lecturer in Archaeology subject. Considering the material on record, therefore, it cannot be said that the performance of the respondent during probationary period was satisfactory so as to confirm him on the said post. In any case, it was open for the University to consider the suitability of the respondent for the post in question and for that purpose, after some discreet enquiry, if decision is reached to the effect that he was not suitable for the post

in question, it cannot be said that the order in question is penal in nature or is illegal or mala fide. It cannot be said that the order is passed by way of penalty. It is required to be noted that the respondent was given sufficient opportunity to improve his performance and it was in that context that he was subjected to certain instructions in the form of letters, etc. In my view, therefore, the Tribunal has committed error in coming to the conclusion that the order in question is contrary to the principles of natural justice and that without holding appropriate enquiry or without framing proper charges, the order in question was passed, and therefore, the same is bad in law. Even otherwise, in order to find out the real motive for passing the order if entire material is taken into consideration, it cannot be said that the order in question is penal in nature, and therefore, simply because the Registrar, while communicating the order, made some reference to charges or enquiry, it cannot, ipso facto, be said that the said order is a penal order. If the entire material is taken into consideration, it is clear that after considering the service record of the respondent it was found that his performance was not satisfactory and, that he was not required to be confirmed. In that view of the matter, it is not possible to sustain the order of the Tribunal in this behalf.

8th August. 2001

9. It is, no doubt, true that the Management, while conducting enquiry for the purpose of coming to the conclusion whether the respondent is required to be confirmed or not, has made reference about the respondent instigating students against another teacher, with a promise to give them high internal marks, and this was considered as a serious charge. However, if the entire material, as it is, taken into consideration, in toto, it is clear that, in order to find out the suitability of the respondent, the University tried to find out his performance by judging his conduct by way of judging his performance and even for that purpose, he was asked to give some practical lectures and it was found that he was not in a position to give the said lectures. On that basis, ultimately, it was found that he was not suitable for the post, and therefore, the Syndicate passed the order, not confirming him on the post in question. If the entire material is taken into consideration, it cannot be said that the order in question is passed by way of penalty, and ultimately, on the basis of the aforesaid documents on record, the University came to the conclusion that the respondent No. 1 was not required to be confirmed since he was not suitable for the post in question.

Mr. Anjaria further argued that the fact that the respondent was asked to give lectures in Sindhi subject itself is indicative of the fact that he was not suitable to be confirmed on the post of Lecturer in the Archaeology subject.

10. On behalf of the petitioner, reference is made to certain case laws on the subject. Learned Advocates of both the sides have relied upon the judgment of the Apex Court in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, . In the said judgment, the Apex Court has found that if findings are arrived at in an enquiry as to misconduct,

behind the back of the officer or without a regular departmental enquiry, simple order of termination is to be treated as "founded" on the allegations and will be bad. If however, 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 employer did not want to enquire into truth of allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be motive and not foundation and simple order of termination would be valid. It was argued by Mr. Anjaria that, as such, no departmental enquiry was held against the respondent as there was no reason to hold such enquiry, but some sort of enquiry, only in order to find out the suitability of the respondent, was held by the Management and only for that purpose, reference to some document is made. Considering the Resolution of the Syndicate as well as considering the fact that opportunity was given to the respondent to improve his performance, it cannot be said that it is a case where, on the basis of some misconduct on the part of the concerned teacher or some serious allegations, ultimately, he was subjected to an order terminating his services. Reference to one or two incidents in the letter at page 18 cannot be said to be the foundation for passing the impugned order of termination.

11. Mr. Anjaria for the petitioner has relied upon the judgment of the Apex Court in 1998 (1) PLJR 77 (SC) . In the aforesaid case, it is found that in case of termination of services of a probationer for unsuitability, principles of natural justice are not attracted and that there is no obligation to communicate the adverse remarks to the respondent before taking a decision for terminating his services on the basis of the adverse material. It is held that a probationer does not have a right to hold the post during the period of probation. In the said case, it has been held as under :-

"The decision to terminate the services of respondent 1 was taken by the High Court after considering the entries in the service record of respondent 1 covering the entire period of probation. It cannot be said that the said decision of the High Court was founded on any particular act of misconduct. Merely because in the letter dated 5-3-1986, reference had been made to the complaints touching the integrity of respondent 1 with respect to his judicial work and complaints regarding his character and morality and that he used to drink heavily and play "flush" in the town with different rich persons, that does not lead to the inference that the order was passed by way of punishment for particular acts of misconduct. These reports were taken into account for assessing the performance of respondent 1 during the period of probation and for determining whether he was fit for confirmation on the post of Munsif. The said remarks, could legitimately form the basis for deciding whether respondent 1 was suitable for retention in service or not. It is, therefore, not possible to hold that the order for termination of the services of respondent 1 dated 28-8-1986 was passed by

way of punishment for misconduct."

12. Mr. Anjaria has also further relied upon the judgment of the Apex Court in *Bishan Lal Gupta Vs. The State of Haryana and Others*, . It is held in Paragraph 17 as under :-

"17. There is, however, another point of view also, already indicated above, from which the case could be considered. It is that the High Court held that this was not really a case of punishment. On this aspect of the case, the High Court rightly seems to us to have proceeded on the view that there should be at least some difference, as to the nature of or the depth of the inquiry to be held, as between a probationer whose services can be terminated by a notice and a confirmed Govt. servant who has a right to continue in service until he reaches a certain age. It is true that neither he can be "punished" without a formal charge and inquiry. But, a less formal inquiry may be sufficient, as it was here, to determine whether a probationer, who has no fixed or fully formed right to continue in service (treated in the eye of law as a case of "no right" to continue in service), should be continued. A confirmed Govt. servant's dismissal or removal is a more serious matter. This difference must necessarily be reflected in the nature of the inquiries for the two different purposes. We are satisfied that, on facts found, the findings on petitioner's suitability to continue in service were rightly not interfered with. It was, in the eye of law, not a case of punishment but of termination of service simpliciter. The petitioner should be thankful that a more serious view was not taken of his shortcomings."

Relying upon the said judgment, Mr. Anjaria argued that only in order to find out the suitability of the respondent, some enquiry was conducted by the Management and it was not in the nature of departmental enquiry and it should not be equated with full-fledged departmental enquiry or serving charge-sheet or appointing enquiry officer, etc. He also further submitted that the impugned order will never be treated as a stigma and cannot be treated as a stigma against the respondent.

13. Mr. Shukla, on the other hand, has relied upon the judgment of the Supreme Court in *D.K. Yadav Vs. J.M.A. Industries Ltd.*, . He relied upon paragraphs 14 and 15 of the aforesaid judgment, which read as under :-

"14. It is thus well-settled that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress*, the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order

terminating the service of the employees was set aside.

15. In this case, admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2)(iv). Otherwise, it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice."

14. Mr. Shukla has also relied upon the judgment of the Apex Court in *V.P. Ahuja Vs. State of Punjab and Others*, . It has been held by the Supreme Court that a probationer like a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily or in a punitive manner without complying with the principles of natural justice.

However, in my view, in the instant case, the University has merely tried to find out the suitability of the respondent for the purpose of his confirmation on the post in question and, therefore, whatever enquiry the University had held on their own was only with the object to see whether the respondent was required to be confirmed in the post or not after completing the probation period. It was not the basis for establishing the guilt or finding any fault against the respondent. The aforesaid judgment, therefore, cannot be said to be applicable looking to the facts of the case, especially when it cannot be said that there is a stigmatic or punitive order or that any misconduct was the foundation for passing the order of termination against the respondent.

15. Mr. Shukla has also relied upon the judgment of the Supreme Court in *State of Gujarat v. R. G. Teredesai and Anr.* 1969 (2) SCC 157, which is under Article 311 of the Constitution. It is argued that, in view of the aforesaid judgment, enquiry officer's report was required to be made available to the respondent-employee. However, in the instant case, no regular departmental enquiry was initiated. In fact, there was no question of holding enquiry against the respondent and the nature of the so-called enquiry, which has already been narrated above, was confined only to find out the suitability of the respondent for the post in question. It is also required to be noted that, in the instant case, it was open for the University even to terminate the services of the respondent straightaway on the ground that his performance was not satisfactory during the probationary period. However, in order to reach a definite conclusion as to whether really the respondent is to be confirmed in the post in question, the University made some enquiry and it is true that, in that process, certain letters were addressed to me respondent. It is required to be noted that no show-cause notice or charge-sheet was issued nor was any enquiry, in fact, held in order to

find out the guilt of the respondent, as it was not required to be done, in the instant case, as stated earlier, and the entire exercise of the University was only within the limited sphere of finding out the suitability of the respondent for the post in question.

16. Mr. Shukla has relied upon the judgment of the Supreme Court in *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, to substantiate his say that whenever there is an order of removal, rules of natural justice are required to be followed and that the order in question should be a speaking order. However, in the instant case, the order cannot be said to be passed by way of penalty or it cannot be said to be a punitive order, as such, and in view of the Resolution of the Syndicate, of which reference is made earlier, it was decided not to confirm the respondent in the post in question. Therefore, there is no question of informing the charges to the respondent or giving detailed reasons as to why the respondent was not required to be confirmed on the post of Lecturer in the subject of Archaeology.

17. Mr. Shukla has relied upon the judgment of the Allahabad High Court in *Parmeshwari Dayal Saxena v. The President, U. P. Basic Shiksha Parishad, Uttar Pradesh and Ors.*, 1993 Education & Service Cases 42. The aforesaid judgment was in the context of Sections 5 and 14 of the Limitation Act. Relying on the said judgment, it was argued by Mr. Shukla that when the respondent was permitted to withdraw the earlier suit, with a liberty to file a fresh suit, u/s 5 of the Limitation Act, if there was any delay, the same was required to be condoned. In my view, the said judgment has no application to the facts of the case. Further, when liberty to file a fresh suit is granted, the second suit is also required to be filed within the original limitation period, i.e. from the date of original cause of action, and simply because liberty to file such fresh suit is given, it can never be said that the period of limitation for filing the suit based on the original cause of action cannot be taken into consideration.

18. Under the aforesaid circumstances, though the Registrar has communicated the order against the respondent, which gives an impression as if some charges against the respondent were proved, the Registrar has not properly communicated the order, which is, in fact, passed by the Syndicate and there was an error in drafting the said order by the Registrar, who is merely a communicating authority and if the original Resolution of the Syndicate is taken into consideration, it cannot be said that the order in question is punitive in nature. Even otherwise, as stated earlier, the wordings in the order themselves are not indicative factors and the entire material is required to be taken into consideration by lifting the veil. It is clear that the basis for passing the order was non-suitability of the respondent for the post in question and there were no other grounds for terminating his services. Under these circumstances, I am of the opinion that since the respondent was not confirmed on the post because he was not found to be suitable, there was no question of holding any enquiry and the order in question cannot be said to be punitive in nature in any manner. It is

accordingly also declared that the order in question is not to be treated as a punitive order in any manner and, naturally, it will not come in the way of the respondent in getting employment elsewhere. Therefore, it is not to be treated as stigmatic and accordingly, the impugned order is to be treated to be an order passed for not confirming the respondent on the post of Lecturer since he was not found suitable for the aforesaid post and his performance during the probationary period was not found satisfactory. The order in question is to be treated only in the aforesaid context.

19. In view of the aforesaid reasoning, the petition is required to be allowed and it is accordingly allowed. The impugned order of the Tribunal is quashed and set aside. Rule is made absolute with no order as to costs.