

(2013) 12 DEL CK 0216

In the Delhi High Court

Case No : Writ Petition (C) No. 97 of 2013

Mr. S.P. Sharma

APPELLANT

Vs

I.F.C.I. Ltd. and Another

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0216

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Ankur Chhibber, for the Appellant; Dinakar Singh, Advocate for respondent No. 1 and Mr. Sumeet Pushkarna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—By this writ petition, the petitioner impugns the letter dated 11.9.2012 issued by the respondent no. 1 terminating the services of the petitioner. This letter reads as under:-

No. HR/PF/S-325/2012-100907

September 11, 2012

To

Mr. S.P. Sharma

Vice President

IFCI Ltd.

IFCI Tower

61, Nehru Place

New Delhi 110019

Subject: Termination

Owing to the lapses committed by you in the handling of the Jupiter Bioscience Ltd. case, the Competent Authority has decided to terminate your contract of employment with immediate effect. The payment of dues including the Notice Pay will be settled in due course.

(Michael Mili)

Sr. Associate Vice President

Human Resources

Petitioner was appointed in terms of the letter dated 19.9.2008 as a Senior Associate Vice President. Paras 7 and 8 of the appointment letter read as under:-

7. Probation Period:

Your performance shall be reviewed after a period of six months and if found satisfactory you would be re-designated as Vice President. However, you will be eligible for confirmation on successful completion of one year of probationary period. On the successful completion of probation period, subject to suitability, you would be absorbed as a regular employee of IFCI. The Institution however reserves the right to extend the probation period in its discretion. During the probation period, the Institution can terminate the employment by giving you one month's notice or on payment of one month's pay, in lieu thereof, without assigning any reason.

8. General Rules and Regulations:

You will be governed by "IFCI Staff Regulations" and by various rules and regulations/service conditions framed by the Institution from time to time.

2. Petitioner, after completion of period of six months of probation, was re-designated as Vice President in terms of first line of para 7 of the appointment letter which is reproduced above.

3. On behalf of the petitioner, following arguments are urged before this Court to impugn the termination of services:-

(i) Petitioner became a confirmed employee and was no longer on probation after the period of one year in terms of para 7 of the appointment letter dated 19.9.2008. This argument is urged to be read with Regulations 18 and 20 of IFCI Staff Regulations, 1974 that there is a deemed confirmation after a maximum period of three years and the period of three years since expired on 19.9.2011, termination by a subsequent letter dated 11.9.2012 is illegal.

(ii) Petitioner's termination from services is by a stigmatic order and hence termination, without following the principles of natural justice, is illegal. This argument is further buttressed by the fact that since the counter-affidavit shows that enquiry has been conducted against the petitioner, he could not have been removed without following the principles of natural justice.

4. So far as the first argument is concerned, besides reference to paras 7 and 8 of the appointment letter, language of Regulations 18 and 20 would be relevant and these regulations read as under:-

18. EMPLOYEES IN CLASS I & II

An employee in Class I & II directly recruited to the Corporation's service shall be required to be on probation for a period which shall not be less than one year and not more than two years as may be fixed by the appointing authority at the time of his appointment:

- i) Provided that the appointing authority may at his discretion waive, in special cases, the period of probation of any individual employee directly recruited to Corporation's service.
- ii) Provided that where an employee is appointed to a Class I & II post by promotion or selection in a permanent vacancy, he shall be deemed to be holding that post in an officiating capacity, until he is confirmed in that post and shall not, unless otherwise specifically provided, be deemed to be on probation.

20. POWER TO EXTEND PERIOD OF PROBATION

Notwithstanding anything contained in Regulations 18 and 19, the period of probation of an employee may be extended at the discretion of the authority competent to appoint, but in no case may this period exceed three years.

5. The issue before this Court is whether a conjoint reading of para 7 of the appointment letter and Regulations 18 and 20 quoted above results in deemed confirmation of the petitioner after three years of appointment i.e. on completion of three years of probationary period which is found to be the maximum period of probation as per Rule 20 is there a deemed confirmation. The law with respect to requirement of actual confirmation or whether there is deemed confirmation has been dealt with by the Supreme Court in its recent judgment in the case of Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu and Another, . In this judgment, the Supreme Court speaking through Hon'ble Mr. Justice Dipak Misra has referred to the earlier judgments on the issue of deemed confirmation and it has been held that if the rule in question uses the expression "if confirmed" there is no automatic confirmation after the maximum period of probation. Paras 25 to 31 and 37 to 39 of the said judgment are relevant and the same read as under:-

25. It is apt to note here that the Learned Counsel for both the sides have heavily relied on the decision in High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, . In the said case, the three-Judge Bench was considering the effect and impact of Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Services) Rules, 1955.

26. It may be mentioned that the decision rendered in Dayaram Dayal Vs. State of M.P. and another [OVERRULED], , which was also a case under Rule 24 of the said Rules, was referred to the larger Bench. In Dayaram Dayal (supra), it had

been held that if no order for confirmation was passed within the maximum period of probation, the probationer judicial officer could be deemed to have been confirmed after expiry of four years period of probation.

27. After referring to the decisions in Dharam Singh (supra), Sukhbans Singh (supra) and Shamsher Singh (supra) and other authorities, the three-Judge Bench expressed thus:

11. The question of deemed confirmation in service Jurisprudence, which is upon language of the relevant service rules, has been subject matter of consideration before this Court times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. Other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry order of termination has not been passed. The last line of cases is where though under the rules maximum period of probation is prescribed, but the same require a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

(emphasis supplied)

28. After so stating, it was further clarified as follows:

37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh (supra). But it cannot be said that merely because a maximum period of probation has been provided in Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to Seven Judge Bench judgment of this Court in the case of Shamsher Singh (supra) and Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra).

29. Regard being had to the aforesaid principles, the present Rule has to be

scanned and interpreted. The submission of Mr. Viswanathan, learned senior Counsel for the Appellant, is that the case at hand comes within the third category of cases as enumerated in para-11 of Satya Narayan Jhaver (supra). That apart, it is urged, the concept of deemed confirmation, ipso facto, would not get attracted as there is neither any restriction nor any prohibition in extending the period of probation. On the contrary, the words "if confirmed" require further action to be taken by the employer in the matter of confirmation.

30. On a perusal of Rule 4.9 of the Rules, it is absolutely plain that there is no prohibition as was the rule position in Dharam Singh (supra). Similarly, in Om Prakash Maurya (supra), there was a restriction under the Regulations to extend the period of probation. That apart, in the rules under consideration, the said cases did not stipulate that something else was required to be done by the employer and, therefore, it was held that the concept of deemed confirmation got attracted.

31. Having so observed, we are only required to analyse what the words "if confirmed" in their contextual use would convey. The Division Bench of the High Court has associated the said words with the entitlement of the age of superannuation. In our considered opinion, the interpretation placed by the High Court is unacceptable. The words have to be understood in the context they are used. Rule 4.9 has to be read as a whole to understand the purport and what the Rule conveys and means.

37. Bearing in mind the aforesaid conceptual meaning, when the language employed under Rule 4.9 is scrutinised, it can safely be concluded that the entitlement to continue till the age of superannuation, i.e., 55 years, is not absolute. The power and right to remove is not obliterated. The status of confirmation has to be earned and conferred.

38. Had the rule making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the Rule which clearly postulates "if confirmed". A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed.

39. The Division Bench has clearly flawed by associating the words "if confirmed" with the entitlement of the age of superannuation without appreciating that the use of the said words as a fundamental qualifier negatives deemed confirmation. Thus, the irresistible conclusion is that the present case would squarely fall in the last line of cases as has been enumerated in paragraph 11 of Satya Narayan Jhaver (supra) and, therefore, the principle of deemed confirmation is not

attracted.

(Underlining added)

6. When we see the ratio of the judgment of the Supreme Court in the case of Head Master, Lawrence School, Lovedale (supra) alongwith Regulations 18 (ii) & 20 it is clear that a probationary employee unless specifically confirmed is deemed to be on probation i.e. there will have to be a specific order of confirmation of probation and in the absence of any specific order of confirmation of probation merely because the period of three years of probation expires, it cannot be said that probationary employee's services are deemed to be confirmed after three years as per Regulation 20. At this stage, I may state that the expression "not" appearing in Regulation 18(ii) is actually a typing mistake and this expression should not have been there and which becomes clear from the immediately succeeding words of the said Regulation 18(ii). I accept the argument with respect to typing mistake in Regulation 18(ii) of the IFCI Staff Regulations, 1974 that the expression "not" should not exist, and as urged on behalf of respondent no. 1. Since therefore petitioner has not filed or shown any order to this Court of actual confirmation after completion of period of probationary services of the petitioner, it is not possible for this Court to hold that petitioner was confirmed in his employment after completion of probationary period.

7(i) Counsel for the petitioner however sought to urge that petitioner should be taken to be a confirmed employee in view of two documents which are handed over in the Court today for the first time. First of these two documents pertains to grant of housing loan and second is the document being a letter dated 2.1.2012 giving stock options to the petitioner. On the basis of first document read with Housing Loan Rule (1) of the respondent no. 1 pertaining to house building advances it is argued that since the housing loan can only be granted to permanent employees therefore petitioner once has been granted housing loan, he should be treated as a permanent employee. On the basis of second document being the letter dated 2.1.2012 it is argued by placing simultaneous reliance upon the Board of Directors resolution of respondent No. 1 dated 28.7.2011 item No. 12 (2)(a), that since ESOP (Employee Stock Option) are only granted to permanent employees, petitioner as was granted ESOP should be treated as a permanent employee.

(ii) In my opinion, both the fresh arguments which are addressed for the first time by placing reliance upon the aforesaid two documents do not carry any weight for the very simple reason that it is an admitted position that confirmation of services of a probationary employee is only by a specific order of the Board of Directors of the respondent no. 1 which is the competent authority to decide the confirmation of a probationary employee. Not only the petitioner has failed to file any confirmation order or any resolution passed by the Board of Directors with respect to his confirmation, counsel for the respondent no. 1 states that no resolution in fact has been passed by the respondent no. 1's Board of Directors

for confirming the services of the petitioner's probationary term. Once it is only the Board of Directors which is the competent authority for confirmation of services of the petitioner's probationary employment, merely because house building advances and ESOP were given to the petitioner, would not make petitioner a confirmed employee. If I accept the argument of the petitioner, it means the authority other than the authority which is competent to confirm the services of a probationary employee will by giving of house loan advances or ESOP be able to substitute itself for the Board of Directors for confirming the services of probationary employee, and therefore this argument urged on behalf of the petitioner cannot be accepted. There are many reasons why the house building advances or ESOP may be given, and one of such can be of a mistake or secondly it may be as a special case as is specifically mentioned in the house building advance document filed before this Court, however, I need not venture any further into this aspect for the reason that I refuse to agree that issuance of documents by authorities other than the Board of Directors, which is the only competent authority, can lead to confirmation of services of a probationary employee. In view of the aforesaid discussion, the arguments urged on behalf of the petitioner of deemed confirmation in terms of para 7 of the appointment letter and Regulations 18 and 20, as also the arguments of being a permanent employee in view of the two additional documents filed in this Court today, are accordingly rejected.

8. So far as the issue as to whether the impugned letter dated 11.9.2012 casts a stigma, in my opinion, stating that there are lapses committed while performing the job will not amount to casting a stigma in view of various recent judgments of the Supreme Court. These judgments of the Supreme Court have been considered by me in the judgment in the case of Himanshu Bhatt Vs. Indian Railway Catering and Tourism Corporation Limited and Ors. in W.P. (C) No. 5293/2013 decided on 27.8.2013. Paras 4 to 9 of the said judgment are relevant and the same read as under:-

4. Law with respect to termination of services of a probationer is now well-settled. Termination has to be by a non-stigmatic order. However, it has been held that stating that the performance is not satisfactory will not amount to the termination order being a stigmatic one. Also the principles of natural justice have not to be followed before termination of services of a probationer. If an enquiry is held and the enquiry report forms the foundation of termination of services of a probationer, only then, principles of natural justice are required to be followed, however, where the enquiry against a probationer is only for determining his suitability for continuing in service or the enquiry report only forms the motive for removal, as differentiated from a foundation for removal, then a detailed enquiry in terms of the service rule is not necessary. In the recent judgment in the case of Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, Supreme Court has observed that even if the termination order states that services of a probationer has been terminated on account of the work being not satisfactory, the order cannot be said to be

stigmatic. It is also held in this judgment that the principles of natural justice need not be followed for termination of service of the probationer. Paras 44 to 46 of the said judgment are relevant and the same read as under:-

44. Also in the case of Registrar, High Court of Gujarat and Anr. v. C.G. Sharma it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.

45. This Court's decision in the case of P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in State of Madhya Pradesh v. Virendera Kumar Chourasiya also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.

46. We are also of the view that the award of the Labour Court is perverse as it had directed grant of back wages without giving any finding on the gainful employment of respondent No. 1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of respondent No. 1 was in any manner stigmatic. The decision in the case of MP State Electricity Board v. Jarina Bee (Smt) (supra), this Court held that payment of full back wages was not the natural consequence of setting aside an order of removal. In the instant case, though the termination was as far back as in 1983, the Industrial Adjudicator has not given any finding on unemployment. This Court in a recent case of State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636 has held that even if the termination order of the probationer refers to the performance being "not satisfactory", such an order cannot be said to be stigmatic and the termination would be valid.

5. In a very similar case to the facts of the present case, the Supreme Court in the judgment in the case of State of West Bengal and Others Vs. Tapas Roy, has held that where the discharge order mentions other instances of unauthorized absence of the probationer and concluding that he was not interested in training and had no respect for discipline, making of such remarks in the termination order cannot be said to make the termination order a stigmatic one. Paras 4, 5 7 and 8 of the judgment in the case of Tapas Roy (supra) read as under:-

4. The High Court allowed the writ petition holding that Rule 10 of the Rules did not apply in the facts of the case. It was also of the view that the statement, quoted below; in the order of discharge casts a stigma on the respondent. Since no opportunity of hearing had been granted to the respondent, therefore, the order could not be sustained. The decision of the Tribunal was, accordingly, set aside and the appellants were given liberty to take appropriate action against the respondent on the same grounds in accordance with law.

5. The particular passage from the order of discharge which the High Court found to be stigmatic reads as follows:

I am convinced that he is not likely to make an efficient constable and is unsuitable for the Police Department. His frequent unauthorised absence from training centre also indicates his lack of interest in training and his scant respect for discipline.

7. The order of discharge has, as we have already indicated, set out several instances of the respondent absenting himself unauthorisedly from the training centre. These facts have been relied upon for the purpose of concluding that the respondent was not interested in the training and had no respect for discipline. This conclusion was a ground for holding that the respondent was unsuitable for the Police Department.

8. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that a stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. In our view, the language quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly, of the view that the appeal must be allowed. It is, accordingly, allowed and the impugned order is set aside.

(emphasis added)

6. Also, the Supreme Court in the judgment reported as *Chaitanya Prakash and Another Vs. H. Omkarappa*, has held that there is no need for following the principles of natural justice while terminating the services of a probationer and even if the termination order refers to the unsatisfactory services of the probationer, the order is not stigmatic. Paras 18 and 21 of this judgment read as under:-

18. It is no longer *res integra* that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In this connection, we make a reference to the decision of the decision of the Supreme Court in *Abhijit Gupta v. S.N.B. National Centre, Basic Sciences (supra)*, wherein also a similar letter was issued to the concerned employee intimating him that his performance was unsatisfactory and, therefore, he is not suitable for confirmation. We have considered the ratio in light of the facts of the said case and we are of the considered opinion that the basic facts of the said

case are almost similar to the one in hand. There also, letters were issued to the concerned employee to improve his performance in the areas of his duties and that despite such communications the service was found to be unsatisfactory. In the result, a letter was issued to him pointing out that his service was found to be unsatisfactory and that he was not suitable for confirmation, and, therefore, his probation period was not extended and his service was terminated, which was challenged on the ground that the same was stigmatic for alleged misconduct. The Supreme Court negated the said contention and upheld the order of termination.

21. In *Abhijit Gupta (Supra.)*, this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination i.e. whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, ; where it is stated thus:

14....As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.

7. In the case of *Rajesh Kumar Srivastava Vs. State of Jharkhand and Others*, Supreme Court has held that while taking a decision to terminate the services of the probationer, no notice is required to be given to the probationer nor is the probationer required to be given any opportunity of hearing. Para 10 of the said judgment reads as under:-

10. The aforesaid decision to release him from service was taken by the Respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the Appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the Appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

8. In the case of *Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others*, the Supreme Court has held that even when a termination order of a probationer referred to earlier letters which called the probationer a person of "perverted mind" and "dishonest, duffer having no capacity to learn" yet, the order would not be stigmatic one, and merely that if such an order was read by a prospective employer which would prejudice the probationer's future employment, the same is not to be a correct test to determine the termination

order as stigmatic. Paras 4, 5, 8, 10, 13, 15, 16 and 17 are relevant which read as under:-

4. On 20th November 1995 the appellant was served with a letter informing him that his performance during the probationary period was "far from satisfactory" and that it had been observed that he lacked drive, imagination and initiative "in the performance of his duties". He was informed that, despite being told time and again to improve performance in the said areas, but with no effect. He was advised to improve "in order to enable us to consider your case for confirmation favourably". He was issued several such letters drawing his attention to the fact that his services left much to be desired. His probationary service came to be extended from time to time, the last such extension being granted till 9th April 1998. Finally, by the letter dated 7.4.1998 the petitioner was informed that his service was "unsatisfactory in the areas of drive, initiative, promptness and leadership" and that despite advised verbally and through letter, what were deficiencies in his work he had shown no improvement. His attendance, office work and attention to the academic work and the affairs of the guest house were also unsatisfactory. The first respondent, therefore, said "your performance, ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have to. The governing body is of the view that your performance was unsatisfactory and you are not suitable for confirmation". For these reasons the appellant's probationary period was not extended on the expiration of his probation period on 9th April 1999.

5. The appellant challenged the order of termination of his service on the ground that it was a stigmatic termination by way of punishment for alleged misconducts. The learned single Judge of the High Court allowed the writ petition and quashed the order of termination and directed reinstatement of the appellant with full back-wages. The Division Bench of the High Court, however, allowed the letters patent appeal and held that the letter dated 7th April 1998 was not stigmatic and that it was a legitimate exercise of assessment of probationer's service by the employer, and, therefore, there was no scope for judicial interference therewith. In this view of the matter, the Division Bench allowed the appeal, set aside the judgment of the learned single Judge and dismissed the writ petition. Hence, this appeal.

8. Heavy reliance was placed on *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, , where this Court held that the termination of service of the employee in similar circumstances amounted to misconduct. We may mention here that it is common ground that while the matter was pending before the learned single Judge, sometime in the year 2005, the appellant attained the age of superannuation. The learned Counsel for the appellant contended that in the letter dated 7.4.1998 there is reference to certain earlier letters in which the appellant had been called a person of "perverted mind" and "dishonest, duffer having no capacity to learn". A

reading of all the letters referred to in the letter of 7.4.1998 would clearly make out a case of allegations of misconduct against the appellant, in the submission of the learned Counsel.

10. In Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, this Court considered what should be the best to determine whether a letter of termination of service was termination simpliciter or stigmatic termination. After referring to a number of authorities including the judgment in Parshotam Lal Dhingra Vs. Union of India (UOI), and Dipti Prakash Banerjee (supra) the Court observed (vide para 19):

Courts continue to struggle with semantically indistinguishable concepts like motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.

13. In the case of the appellant before us, the record in uncertain terms makes it clear that every time the appellants attention was drawn to his deficiencies and he was repeatedly advised to improve his behavior, conduct and discharge of work. True, that in some of the letters there was intemperate language used (the appellant was also equally guilty of doing that). Notwithstanding the intemperate language, we are unable to accept the contention of the appellant's counsel that the letter dated 7.4.1998 indicates that the appellant was being charged with the misconduct and, therefore, being removed from service. Read as a whole, the letter gives the impression that the removal of the appellant from service was only because the respondents, after giving a long rope to the appellant, had come to the conclusion that the appellant's service was unsatisfactory and there was no hope of his improvement.

15. The learned Counsel for the appellant, however, strongly contends that the "stigma" cast on the employee may not be confined to his personal character but may also affect his capacity to work. The test, learned Counsel for the appellant submitted, is that, if what is stated in the order of termination is read by a future employer, it prejudices the future employment of the employee. In the face of the law laid down in the judgment just referred, we are unable to accept this as the correct test.

16. In Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another, this Court pointed out that in a large corporation administration is bound to be impersonal and in regard to public officers assessment of service has got to be in writing for purposes of record, though it cannot be assumed that such an assessment recorded and the order of termination made with reference to that record would automatically take a punitive character.

17. The High Court has carefully considered all the circumstances placed before it and arrived at the conclusion that the respondent's work was under observation during the probationary period and that he was given repeated opportunities to

improve his performance for which purpose his probation was extended from time to time. The fact that the authority did not find him fit for confirmation was also brought to his notice several times and yet he was given opportunities of improving by extending his probationary service. The High Court has correctly found that the letter dated 7.4.1998 was not punitive in nature and stated, albeit in prolix fashion, that the service of the appellant were unsatisfactory. The High Court points out, and we agree, that detailed reference to all other correspondence was not necessary, but it did not reflect any malice or bias. Finally, as this Court pointed out in P.N. Verma's case (supra) "a termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic (underlining added)

9. A reference to the impugned order dated 21.9.2012 shows that the petitioner has been found guilty of taking unauthorized leaves. Nothing could be pointed out to me that the leaves which were taken were sanctioned by the respondent No. 1. Therefore, the undisputed position which emerges before me is that the petitioner has decided at his own convenience when to report for duty and when not to, and therefore, there is nothing stigmatic by stating facts in the termination order. In terms of various judgments of the Supreme Court stated above narration of facts and giving the motive for termination cannot make the termination order stigmatic in a case like this where it is an undisputed fact which has emerged on record that the petitioner not once but repeatedly was guilty of taking leaves without sanction. If therefore it is stated in the impugned order that services of the probationer were hence not satisfactory, the termination order will not be stigmatic in view of ratios of the Supreme Court judgments in the cases of Muir Mills Unit (supra), Tapas Roy (supra), Chaitanya Prakash (supra), Rajesh Kumar Srivastava (supra) and Abhijit Gupta (supra). However, in the interest of justice, I direct that the respondent No. 1 will now issue a formal few lines order of termination of services in terms of para 7 of the appointment letter. The termination order now to be issued by the respondent No. 1, which should be a simpliciter termination order, will however operate from 21.9.2012, the date of the original termination order. This I am doing so in the interest of justice and to benefit the petitioner.

9. Accordingly, there is no requirement of following the principles of natural justice before termination of services of a probationary employee such as the petitioner and nor the impugned order is stigmatic in nature. In any case, in order to help the petitioner so that his future prospects are not affected, I direct that the respondent no. 1 should now issue the order of termination of services simpliciter without giving any reason, and which is of course, not in any manner a reflection on the stand of the respondent no. 1. I may also state that the present is not a case where the charge against the petitioner is a foundation for his removal and the same is only a motive for removal of the petitioner inasmuch as I do not find any stand of the petitioner stating that the petitioner has been held guilty in terms of an enquiry conducted and therefore termination pursuant

to enquiry amounts to foundation for removal and not a motive for removal. An employer is entitled to find out and take a prima facie view by considering of records, the issue of lapses in performance of an employee and which issue of performance including the issue of lapses is to decide nature of satisfactory services or otherwise of an employee in order to decide whether the probationary employee should or should not be confirmed after completion of probationary period. Accordingly, there is no requirement to follow the principles of natural justice in the facts of the present case before terminating the services of the petitioner. In view of the above, though the writ petition is dismissed, respondent no. 1 in terms of today's judgment will now issue a simplicitor termination letter to the petitioner within a period of two weeks from today. Copy of this letter be also sent to the counsel for the petitioner who has appeared in this Court. Parties are left to bear their own costs.