

(2000) 08 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3067 of 1997

Om Prakash Bishnoi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2000) 4 RLW 231 : (2001) 4 WLC 221 : (2007) 2 WLN 596

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition is a unique example wherein neither the Statutory Authorities nor the Court had ever passed the order considering the law in correct perspective. When impugned order was challenged in appeal as well as in writ petition, the writ petition was disposed of issuing direction to the Appellate Authority to decide the appeal on merits without realising that the appeal itself was not maintainable and the Appellate Authority, in compliance of the order of this Court, decided the appeal on merits. The order of the Appellate Authority is under challenge before this Court. In a similar manner, the Executive, without realising the seriousness of the order passed earlier by this Court and pendency of the appeal as well as writ petition, resorted to disciplinary proceedings and passed order imposing punishment without waiting for final disposal of the writ petition or appeal.

2. The facts and circumstances giving rise to this case are that petitioner was appointed as Police Constable on probation vide order dated 19.6.1990. During probation, he picked up quarrel with another trainee constable Mr. Ram Chandra on 20.9.1991. The appointing authority, vide order dated 24.1.1992 (Annx. 1), discharged petitioner from service being a probationer without holding any inquiry in respect of the incident dated 20.9.1991 though that was the basis for discharge. The said order of discharge dated 24.1.1992 was challenged by

petitioner by preferring an appeal before the Deputy Inspector General of Police under Rule 23 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short, "the Rules"), as well as by filing Writ Petition No. 2227/1992, wherein this order passed an interim order to appoint him provisionally. In pursuance of the interim order of this Court, petitioner was reinstated vide order dated 9.9.1992 (Annx. 2). During the pendency of writ petition as well as appeal, petitioner was served with a charge sheet dated 24.12.1992 in respect of the incident dated 20.9.1991 under Rule 16 of the Rules. He submitted the reply on 12.1.1993 and after concluding the inquiry, the Disciplinary Authority converted the inquiry under Rule 17 and vide order dated 28.2.1994, imposed the punishment of withholding of one annual grade increment without cumulative effect for two years. It may also be pertinent to mention that without waiting the result of the appeal or writ petition, the appointing authority passed the order of confirmation of petitioner vide order dated 2.11.1993 (Annx. 5) with effect from 15.10.1993. The writ petition was disposed of by this Court, vide judgment and order dated 12.3.1996 (Annx. R/2), directing the appellate authority to decide the appeal within the stipulated period. The Appellate Authority, vide order dated 15.5.1996 (Annx.7), confirmed the order of discharge dated 24.1.1992. Hence this petition.

Appellate order dated 15.5.1996 (Annx. 7)

3. The impugned order dated 15.5.1996, purported to have been passed in appeal by the Appellate Authority under the Rules against the order of discharge dated 24.1.1992, is certainly without jurisdiction and, therefore, nullity for the reason that discharge order was not passed after holding any inquiry and the impugned order dated 24.1.1992 was not an out-come of any inquiry under the Rules. Appeal provided under Rule 23 is against the order passed after completing, the inquiry either under Rule 16 or 17 of the Rules and imposing the punishment as provided under Rule 14, thus, the order dated 15.5.1996 cannot be held to be an order passed under the Rules and, therefore, without jurisdiction.

4. The Hon"ble Supreme Court, in Poona City Municipal Corporation Vs. Dattatraya Nagesh Deodher, , while interpreting the provision under the Bombay Provincial Municipal Corporation Act, 1949, observed as under:

The benefit of this section would be available to the Corporation only if it was held that this deduction often percent, was an act done or purported to be done in pursuance or execution or intended execution of this Act." We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of Section 127(4) (to which we have already referred) the levy could not be said to be "purported to be done in pursuance or execution or intended execution of the Act." For, what is pLainly prohibited by the Act cannot be claimed to be purported to be done in pursuance or intended execution of the Act.

5. The Hon"ble Supreme Court, in *Municipal Corporation v. Niyamatullah* AIR 1971 SC 97, interpreted Section 135(2) of the Indore Municipal Act, 1909, in the following terms:

The provisions contained in Section 135 of the Indore Municipal Act will be applicable to things done under the Act. It is manifest that in the present case the order of dismissal passed by Shri Ghatpande was beyond his jurisdiction and is, therefore, not an act done under the Act.

6. The aforesaid judgment were reconsidered and approved by the Hon"ble Supreme Court in *J.N. Ganatra Vs. Morvi Municipality, Morvi*,

7. Appeal is a creation of statute and it cannot be created by acquiescence of the party or by the order of the Court. (*Vide The United Commercial Bank Ltd. Vs. Their Workmen, ; Kesar Singh and Others Vs. Sadhu*, The finding of a Court or a Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. (*Vide State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another*,

8. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. In *Union of India v. Devkinandan Agrawal* AIR 1992 SC 96, the Hon"ble Apex Court has observed that "the Court cannot usurp legislative functions. The Court cannot re-write the legislation for the reason that it had no power to legislate. The power of legislation has not been conferred on the Courts."

9. In *Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, ,* the Hon"ble Supreme Court has observed that acquiescence does not confer jurisdiction and an erroneous interpretation equally should not be perpetuated and perpetrated defeating of legislative animation. A similar view has been taken in *U.P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. and others*,

10. In *Sardar Hasan Siddiqui and Others Vs. State Transport Appellate Tribunal, U.P., Lucknow and Others, ,* the Division Bench of Allahabad High Court has observed that a Court or a Tribunal cannot derive jurisdiction apart from the Statute. No amount of acquiescence, waiver or the like can confer jurisdiction if a Tribunal is lacking, the doctrine of nullity will come into operation and any decision taken or given by such a Tribunal will be a nullity.

11. Similarly in *A.R. Antuley (supra)*, the Hon"ble Supreme Court has observed as under:

A decision touching the jurisdiction...has to be not only consistent with the fundamental rights guaranteed by the Constitution, the same cannot even be inconsistent with substantive provisions of the statutory law...The criteria of a right to an appeal is an act which requires legislative Authority neither an inferior Court nor the Superior Court nor both combined, can create such a right, it being one of the limitations and exception of jurisdiction.

12. In view of the above, any concession made by any lawyer which is contrary to the provisions of law or even a consent decree which is in violation of the statutory provisions, remains unenforcible and inconsequential. (Vide Smt. Nai Bahu Vs. Lala Ramnarayan and Others, and Natraj Studio Pvt. Ltd. v. Navrang Studio and Anr. AIR 1981 SC 531.

13. In Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, the Hon''ble Supreme Court held as under:

It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigant being a substantive statutory right it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before an appeal can be maintained and no Court has the power to add to or enlarge those grounds. The appeal cannot be decided on merit on merely equitable jurisdiction.

14. In view of the above, it is evident that the appeal is a statutory right which can be created only by the legislature and it does not lie by acquiescence/ consent of the parties or even the writ court is not competent to create the appellate forum if not provided under the statute. In the instant case, as the order dated 24.1.1992 had not been passed after holding disciplinary proceedings under Rule 16 or 17 of the Rules, the appeal itself was not maintainable. The order dated 12.3.1996 passed by this Court remains inconsequential and the impugned order dated 15.5.1996 passed by the Appellate Authority is nullity for want of jurisdiction.

Discharge of a Probationer:

15. The issue involved herein has been considered by the courts time and again. In Parshotam Lal Dhingra Vs. Union of India (UOI), a Constitution Bench of the Supreme Court held that appointment even to a permanent post on probation means that the employee was taken on trial and such an appointment comes to an end even during or at the end of the probation if the person so appointed is found to be unsuited and his services are terminated.

16. A Seven Judges Bench of the Hon''ble Apex Court, in Samsher Singh Vs. State of Punjab and Another, has held that an appointment on probation or on an officiating basis, is of a transitory character with an understanding/implied condition that such an appointment is terminable at any time. The appointment on temporary basis or on probation cannot be equated with holding the permanent post, for the reason that when a person is appointed on probation, he does not have a right to hold the post and if it is found that he was not suitable for the post, his probation can be terminated at any time. (Vide State of Maharashtra v. Veerappa R. Saboji and Anr. : (1979)IILLJ393SC ; and Union of India and Ors. v. P.S. Bhat AIR 1981 SC 957.

17. The period of probation is a period of test, during which the work and conduct of an employee is under scrutiny. If on an assessment of his work and

conduct during this period it is found that the employee is not suitable for the post, it would be open to the employer to terminate his services, as the same cannot be equated with that of a permanent employee, who, on account of his status, is entitled to be retained in service which cannot be terminated abruptly without any plausible cause and without following the law provided for termination. It is only a permanent employee, who substantively holds a permanent post, has a right to continue on the post till he reaches the age of superannuation or is removed from service by following the due process of law. (Vide *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* ; and *Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni*,

18. It has consistently been held that the a probationer can be terminated from service for "failure to satisfactorily completing the period of probation." The termination of services on the ground of unsatisfactory work cannot be termed as penal and does not require any enquiry. (Vide *State of Punjab Vs. Baldev Singh Khosla*,

19. In *K.V. Krishnamani Vs. Lalit Kala Academy*, , the Supreme Court observed as under:

The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has the power to terminate the services of the employee. Under these circumstances it cannot but be held that the reasons mentioned constitute the motive and not foundation for termination of services.

20. In *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, . the Apex Court has held that termination of services of temporary government servant, in terms of contract of service, by passing an order of termination simplicitor on assessment of suitability after considering his work and service record, must be held as valid and not punitive. A similar view has been taken by the Apex Court in *Ram Chandra Tripathi Vs. U.P. Public Services Tribunal IV and Others*,

21. In *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, . the Hon''ble Supreme Court has observed as under:

But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simplicitor after some preliminary enquiry, it cannot be held that as some enquiry had been made against him before issuance of order of termination, it really amounts to his removal from service on a charge, as such penal in nature...The principle of tearing of the veil for finding out the real nature of order shall be applicable only in the case where the Court is satisfied that there is a direct nexus between the charges so levelled and the action taken. If the decision is taken to terminate the services of an employee during the period of probation after taking into consideration the over-all performance and some

action or in action on the part of such an employee, then it cannot be said that it amounted to his removal from service as punishment. It need not be said that the appointing authority, at the stage of confirmation or while examining the question as to whether the services of such employee be terminated during continuation of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee." (Emphasis added).

22. While deciding the aforesaid case the Apex Court had placed reliance on its earlier judgment in *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, wherein it was held that if a person is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained even if misconduct, negligence or inefficiency may be the motive, or the influencing factor which induced the employer to terminate the services of the employee, which such employer admittedly held under the terms of appointment, such termination can not be held to be punitive.

23. In *K.K. Shukla (supra)*, the Apex Court considered the averment that discharge order had been passed after holding preliminary inquiry. The Hon'ble Supreme Court held that inquiry, which was held, was of a preliminary nature and the object of holding such an enquiry was to ascertain the suitability of the employee for his continuation in service and there can be no element of punitive proceedings as no charge has been framed, no enquiry officer was appointed and no findings were recorded. Same view has been taken by the Supreme Court in *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, and in *Jagdish Mitter Vs. The Union of India (UOI)*,

24. The issue was, also, considered in *Anoop Jaiswal Vs. Government of India and Another*, and the Supreme Court came to the conclusion that as the discharge was based on a particular incident which reflected on inefficiency of probationer, the termination could not have been made without holding proper enquiry and the Court held that if the probationer is discharged on the ground of misconduct or inefficiency or for similar reason without a proper enquiry and without giving him a reasonable opportunity to show cause against his discharge, it may be violative of the mandate of law and in such a case it is open to the Court to examine whether the order, which apparently looks innocuous, has been passed for some other reason.

25. Similarly, in the case of *Jarnail Singh and Others Vs. State of Punjab and Others*, the Supreme Court held that the mere form of order is not sufficient to hold that the order of termination was innocuous. When an allegation is made by the employee assailing the order of termination as one based on misconduct, though goes in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In such a case the Court may lift the veil and see whether the order was made on the ground of misconduct/inefficiency or not; but for that an

allegation of serious magnitude must be alleged by the discharged employee and he must adduce sufficient evidence in support of it.

26. In *Life Insurance Corporation of India (supra)*, it has been held that the requirement to hold a regular departmental enquiry before dispensing with the services of a probationer, cannot be invoked in the case of a probationer, especially when his services are terminated by an innocuous order which does not cast any stigma on him.

27. In *Dr Amritlal Dharshibhai Jhankharia Vs. State of Gujarat and Another*, , the Hon''ble Supreme Court held that a probationer has no right to hold the post if he does not complete the probation period satisfactorily.

28. In *Ganganagar Zila Dugdh Utpadak Sahakari Sangh Ltd. and Another Vs. Priyanka Joshi and Another*, the Hon''ble Supreme Court observed as under:

In the order of appointment, it was clearly stipulated that the respondent's services could be terminated during probationary period if his services were unsatisfactory. When such is performance of a person, if his services are terminated during the period of probation, obviously there has to be a reason for such termination. If the services are terminated during probationary period without any reason whatsoever, it is possible that such an order may be impugned on the ground that it has been passed arbitrarily. On the other hand, when there is a reason for terminating the services during probationary period and the order terminating the services is worded in an innocuous manner, we do not see any force in the contention that such an order has to be regarded as by way of punishment.

29. In *State of U.P. and Another Vs. Ram Kishore and Another*, , it has been held by the Hon''ble Supreme Court that if the temporary appointment is subject to the condition that respondent's services could be terminated without any prior intimation and his services are terminated without holding any inquiry or without giving any notice, the termination order cannot be interfered with for the reason that his position was similar to that of an employee on probation and termination of his service was a result of review of his performance which was not found to be satisfactory. Such a termination order cannot be held to be bad in law.

30. In *Ashok Kumar Srivastav Vs. National Insurance Company Limited and Others*, the Apex Court held that an employee is not entitled to continue to be in employment if his services had been terminated during the period of probation in view of the terms and conditions incorporated in the letter of appointment.

31. In *State of Punjab and others Vs. Surinder Kumar and others*, , the Apex Court held that the services of a temporary employee are always governed by the terms and conditions incorporated in his appointment letter and there is no reason why such terms be not enforced.

32. In *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, , the Hon''ble Supreme Court considered the issue

of termination of services of the probationer elaborately. The Court placed reliance on a large number of its earlier judgments, including *The State of Orissa and Another Vs. Ram Narayan Das*, ; *State of Punjab v. Sukhraj Bahadur* AIR 1961 SC 1089; *Madan Gopal Vs. State of Punjab*, ; *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, ; and *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, , and held that as to in what circumstances an order of termination of the probationer can be said to be punitive or not, depends upon whether certain allegations, which are the cause of termination, are the motive or foundation. The Court observed as under:

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

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

33. In the High Court of Judicature at 1998 (1) PLJR 77 (SC) , the Hon"ble Apex Court held as under:

The position of a probationer cannot be equated with that of an employee who had been substantively appointed on a post and has a right to hold that post. An order terminating the services of a probationer can be questioned by way of punishment without complying with the requirements of Article 311(2) of the Constitution. Since a probationer has no right to hold the post on which he has been appointed on probation, he cannot claim a right to be heard before an order terminating his services is passed. The obligation to communicate the adverse material to a person before taking action against him on the basis of the said material is a facet of the principles of natural justice. The principles of natural justice have no application in the case of termination of the services of a probationer during the period of probation since he has no right to hold the post. It is, therefore, not possible to hold that there is an obligation to communicate the adverse material to a probationer before a decision is taken on the basis of the said material that he is not fit for being retained in service. Such material can be relied upon to show that such a decision does not suffer from the vice of arbitrariness and is not capricious.

34. A Division Bench of this Court in *Kanhaiya Lal v. State of Rajasthan and Ors.* 1998 WLR 25 ; placing reliance upon a large number of judgments of the

Hon"ble Supreme Court and particularly in Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, ; Chandu Lal Vs. Management of Pan American World Airways Inc., ; Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, ; Jagdish Parsad Vs. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another, , The State of Uttar Pradesh Vs. Madan Mohan Nagar, ; and Jagdish Mitter Vs. The Union of India (UOI), , held that if the order of termination reveals that appointment had been obtained by misrepresentation or he was found undesirable to be retained in service, such remarks cast a stigma and such an order cannot be held to be discharge simplicitor. Therefore, a case of discharge of a probationer has to be examined having an analytical view of the order impugned. Similar view has been reiterated in V.P. Ahuja Vs. State of Punjab and Others,

35. In AIR 2000 1706 (SC) the Apex Court held that if discharge of a probationer is based on the alleged act of misconduct, the order becomes punitive in nature and he is entitled for the protection of provisions of Article 311(2) of the Constitution. The Court observed as under:

The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive."

"Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this act? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

36. The Court came to the conclusion that termination was founded on the report of preliminary inquiry, and as the employer had not held the preliminary inquiry

to find out whether the appellate was suitable for further retention in service or for confirmation, rather the inquiry was held on the alleged misconduct, the order of discharge was definitely punitive in character.

37. Mr. Anand Purohit, learned counsel for respondents, has vehemently contended that it was a case of discharge simplicitor of a probationer without causing any stigma and, therefore, this Court should not interfere in equity jurisdiction. Much reliance has been placed by Mr. Purohit on the order of appointment of petitioner dated 19.6.1990 wherein the terms of appointment provide that in case a trainee indulges in any indiscipline, he will be discharged without issuing any notice and, therefore, according to Mr. Purohit, petitioner's discharge has been in terms of the appointment order itself. The submission made by Mr. Purohit is not sustainable for the reason that such a Standing Order was to be ignored in view of the judgments of the Hon"ble Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, ; Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, ; D.K. Yadav Vs. J.M.A. Industries Ltd., ; Scooters India v. Vijay E.V. Eldred (1998) 6 SCC 454 ; and Uptron India Limited Vs. Shammi Bhan and Another, , wherein it has categorically been held that imposition of such a condition was arbitrary and cannot be held having any binding effect.

38. In the cases like the instant, principles of natural justice are in-built in the Statutory Rules, even if not specifically provided. Thus, the said condition incorporated in the order of appointment is liable to be ignored.

39. In Ram Ganesh Tripathi and others Vs. State of U.P. and others, , the Hon"ble Apex Court held that if a Government order or Circular is not consistent with the statutory rules, it deserves to be quashed and the same cannot be enforced. Further, the submission made by Mr. Purohit that order of discharge dated 24.1.1992 is not stigmatic and cannot be held to be punitive, is preposterous for the reason that stigma means blamish, defect, disgrace, disrepute, imputation, marks of disgrace or same (Vide The Legal Thesaurus by Burton). Webster's New World Dictionary, defines "stigma" as something that detracts from the character or reputation of a person, a mark, sign, etc. indicating that something is not considered normal or standard. It may also be defined as a mark or label indicating a deviation from the norms or a matter of moral reproach.

40. In Kamal Kishore Lakshman (supra), it was held that loss of confidence by the employer amounts to stigma. In the context of service, stigma would mean a statement in the order indicating his misconduct or lack of integrity. (Vide Allahabad Bank Officers' Association (supra).

41. True transaction of the impugned order dated 24.1.1992 is as under:

Shri Om Prakash, Constable No. 1679, was appointed as temporary Constable vide order dated 19.6.1990 and was sent for training in Rajasthan Police Training

Centre, Jodhpur on 15.1.1991. The constable picked up the quarrel with Constable Ram Chandra on 20.9.1991 at the time of parade and pointed the rifle towards him. They were separated by the other recruits and Drill Inspector who were present at that time. After returning from the parade, Om Prakash Constable caused injuries to Constable Ram Chandra. The preliminary enquiry of the said incident was got conducted by the Commander, Rajasthan Police Training Centre, Jodhpur, through Police Inspector Shri Atru Rehman. Medical examination of Constable Ram Chandra was also got conducted. In the preliminary enquiry, it was found that Constable Om Prakash had not only indulged in the incident of "Marpeet" with Ram Chandra but also indulged in indiscipline and violated the rules of the training centre. It amounts to moral turpitude. Police Force is a disciplined force. Thus, maintenance of discipline is necessary. The Constable had shown the indiscipline during his training period. Therefore, it cannot be expected that after training he will remain in discipline. Continuation of such a Constable in police force is not in the public interest and it will also have bad effect on other trainees of the Centre. Thus, in view of the Standing Order No. 2 dated 13.3.1976 issued by the Inspector General of Police, Rajasthan, the recruit is held guilty and discharged from service with immediate effect.

42. By no stretch of imagination, the order dated 24.1.1992 can be held to be a discharge simpliciter or not to be punitive or stigmatic. Removal of petitioner from service was solely based on his misconduct in respect of which preliminary enquiry was held behind his back. Therefore, the order impugned cannot be sustained in the eye of law and accordingly liable to be quashed.

43. The case is required to be examined in the back-drop of subsequent developments. After being reinstated in pursuance of the interim order of this Court, inquiry under Rule 16 was held against the petitioner in respect of the same incident dated 20.9.1991 and punishment was imposed vide order dated 28.2.1994. Prior to that, the appointing authority passed the order of confirmation dated 2.11.1993 (Annex. 5) confirming him with effect from 15.10.1993. Therefore, it can safely be held that the appointing authority itself, after passing the order of discharge, did not consider him to have been working under the interim order of this Court as this Court had passed the order to appoint the petitioner provisionally. The appointing authority ought to have waited for the result of the writ petition or the appeal and ought not to have passed the order of confirmation dated 2.11.1993 and if petitioner stood confirmed vide order dated 2.11.1993 as the order of the Appellate Authority dated 15.5.1996 is nullity for want of jurisdiction, it cannot be assumed that petitioner is not a member of the force.

44. In the peculiar facts and circumstances of the case, the petition succeeds and is allowed. Petitioner shall be deemed to be in continuous service for all purposes. However, he shall not be entitled for back wages from the date of termination till 31.7.2000. Respondents are directed to allow petitioner to join the service forthwith. There shall be no order as to costs.