
(2017) 06 SHI CK 0065
In the High Court Of Himachal Pradesh
Case No : 22 of 2010

State of Himachal Pradesh and another	APPELLANT
Vs	
Baldev Kumar	RESPONDENT

Date of Decision : 29-06-2017

Acts Referred:

[Himachal Administrative Tribunal Act, 1985](#), Section 27(3)

Citation : (2017) 06 SHI CK 0065

Hon'ble Judges : Sanjay Karol, Sandeep Sharma

Bench : Division Bench

Advocate : Shrawan Dogra, Anup Rattan, M.A. Khan, Kush Sharma, Archana Dutt

Judgement

1. By way of instant Letters Patent Appeal, appellant-State has laid challenge to judgment dated 8.1.2010 passed by a learned single Judge of this Court in CWP-T No. 2152 of 2008, whereby termination order dated 15.9.1992 (Annexure A-1) and subsequent order dated 27.12.2005, passed on the representation of respondent, have been quashed and set aside, with further direction to the State to reinstate the respondent as Excise & Taxation Inspector, within a period of four weeks, with all consequential benefits.

2. Briefly stated facts as emerge from the record are that respondent was appointed as Excise & Taxation Inspector on 7.9.1988 on probation for a period of two years. But despite extension of his probation period upto two years, vide order dated 12.3.1992, respondent failed to qualify the departmental examination, as a result of which, his services came to be terminated vide order dated 15.9.1992. Being aggrieved and dissatisfied by his termination order dated 15.9.1992, respondent preferred an original application before the Himachal Administrative Tribunal i.e. OA No. 42/1999, which was dismissed vide order dated 15.7.2002, on the ground of limitation. However, fact remains that subsequently, this Court vide order dated 31.12.2002, passed in CWP No. 1224 of 2002, remanded back the case to the Tribunal, with the direction to proceed in the matter in light of observations made in the judgment as well as in

accordance with Section 27(3) of Himachal Administrative Tribunal Act, 1985. In view of the judgment having been passed by this Court, original application having been filed by the respondent came to be restored and Tribunal, vide order dated 23.9.2005, directed that original application may be treated as a representation. Competent authority i.e. Excise & Taxation Commissioner, Himachal Pradesh rejected the representation vide order dated 27.12.2005, on account of non-clearance of departmental examination and unsatisfactory work and conduct of the respondent.

3. Respondent being aggrieved and dissatisfied with the aforesaid order dated 27.12.2005, filed an OA No. 3 of 2006 before the Himachal Administrative Tribunal, which subsequently came to be registered as CWP-T No. 2152 of 2008, after abolition of the Himachal Administrative Tribunal. By way of aforesaid OA, respondent prayed for quashing of termination order dated 15.9.192 and order dated 27.12.2005, passed on his representation by the appellate authority. Respondent further sought direction to reengage him with all consequential benefits. The learned single Judge of this Court, vide judgment dated 8.1.2010, directed the appellant-State to reinstate the respondent, within a period of four weeks, with all consequential benefits. In the aforesaid background, appellant-State, by way of instant proceedings, has prayed for setting aside judgment dated 8.1.2010 passed by the learned single Judge.

4. Mr. Shrawan Dogra, learned Advocate General duly assisted by Mr. Anup Rattan, learned Additional Advocate General, vehemently argued that the impugned judgment passed by learned single Judge is not sustainable in the eyes of law, on the basis of aforesaid termination order passed by competent authority, wherein definitely nothing has been said against the conduct, if any, of the respondent. Learned Advocate General further contended that bare perusal of order dated 27.12.2005 passed by appellate authority on the representation having been filed by respondent suggests that each and every aspect of the matter has been dealt with meticulously by the authority concerned, while considering grounds/ prayer made in the representation and as such, there is no illegality or infirmity in the same. Learned Advocate General, while referring to the impugned judgment passed by learned single Judge, forcefully contended that since order dated 15.9.1992 was passed by authority concerned before completion of probation, there was no occasion as such for the authority to hold regular inquiry as has been observed by learned single Judge. Mr. Dogra, learned Advocate General further contended that there was no occasion for the department to afford one more opportunity to clear departmental examination at par with Shri Inder Singh and Ranjit Attri, who approached Himachal Administrative Tribunal, well within time and accordingly, were afforded one more opportunity to clear the departmental examination. While concluding his arguments, Mr. Dogra, specifically invited attention of this Court to the findings returned by the learned single Judge, whereby respondent has been exempted from qualifying departmental examination, and strenuously argued that there was no occasion whatsoever, for learned single Judge to exempt the respondent

from qualifying the departmental examination, especially when same was a condition precedent as contained in appointment letter date 12.9.1988 for successful completion of probation.

5. Ms. Archna Dutt, learned counsel representing the respondent forcefully contended that there is no illegality or infirmity in the judgment passed by learned single Judge, rather same is based upon proper appreciation of Rules occupying the field as well as law laid down by Hon''ble Apex Court from time to time on the subject in question. Ms. Dutt, further contended that bare perusal of order dated 22.9.2005 passed by Excise & Taxation Commissioner on the representation of the petitioner suggests that appellate authority failed to appreciate judgment rendered by Sessions Judge on 8.9.2002, whereby sentence imposed upon the respondent by the trial Court was quashed and set aside. She further contended that since condition of passing departmental examination was done away by way of amendment carried out in the rules on 3.9.2001, services of persons, who failed to qualify the departmental examination within prescribed period, could not be dispensed with.

6. We have heard the learned counsel for the parties and gone through the impugned judgment carefully.

7. After having carefully gone through pleadings as well as impugned judgment passed by learned single Judge, sole controversy appears to be with regard to termination order dated 15.9.1992, having been passed by Excise & Taxation Commissioner, in exercise of powers conferred by Sub- Section 5(1) of Temporary Service Rules, 1965. It also emerges from the aforesaid order dated 15.9.1992 that one month's pay and allowance at the same rate, which he was getting immediately before termination, were also paid on account of termination of service. Before advertng to the merits of the submissions having been made by learned counsel for the parties, vis-a-vis impugned judgment, this Court deems it fit to take note of contents of initial appointment letter dated 12.9.1988, whereby petitioner was appointed as Excise & Taxation Inspector in the Department, subject to terms and conditions as reproduced in the impugned order passed by trial Court. Since terms and conditions stand reproduced in the impugned judgment passed by trial Court, this Court would only be referring to the specific condition, with regard to passing of departmental examination, within the probation period: "15. This appointment is further subject to the condition that candidate is found eligible for appointment on the basis of their original certificate for this such candidate will produce original certificate of matric and B.A./B.sc. at the time of joining. According to the Recruitment and Promotion Rules, 1976 of the Inspectorate staff of this department, Excise & Taxation Inspectors are required to pass the departmental examination within the probation period. Rule 11 of the aforesaid rule is reproduced as below: - Part-III Condition of Service 11(1) Persons appointed to the service shall remain on probation for a period of two years. Provided that:- (a) The incumbent shall within two years of the appointment pass the departmental examination

prescribed by the Govt., from time to time. 11(2) If in the opinion of the appointing authority the work or conduct of a person during the period of the probation is not satisfactory or he fails to pass the prescribed deptt. Examination within two years of his appointment if may- (a) If such person is recruited by the direct recruitment, dispense with his services and (b) if such person is recruited other-wise. (i) Revert him to his former post or deal with him in such manner as the terms and conditions of the previous appointment permits. 11(3)b(ii) Extend his period or probation and thereafter pass such order as it could have passed on the expiry of the first period of probation. This shall also apply mutatis-mutandis to the departmental examinations. Provided that the total period of probation and time allowed for passing the departmental examination including extension if any shall not exceed four years."

8. Careful perusal of aforesaid condition suggests that as per recruitment and promotion Rule, 1976 of the Inspectorate staff of Excise & Taxation Department, Excise & Taxation Inspectors are /were required to pass departmental examination within probation period. Rule 11 of the aforesaid Rules, as reproduced above, clearly suggests that person appointed to the service would remain on probation for a period of two years, provided that he/she, within two years of appointment passes departmental examination, prescribed by the government, from time to time.

9. Similarly, Rule 11 (2) as reproduced above, suggests that, if work and conduct of a person during period of probation is not found to be satisfactory by the appointing authority or he/she fails to qualify prescribed departmental examination, within two years, services of such person, if recruited through direct recruitment, may be dispensed with. Rule 11(3)b(ii) further suggests that total period of probation and time allowed for passing departmental examination, including extension, if any, should not exceed four years.

10. In the instant case, as clearly emerges from pleadings that respondent was appointed purely on temporary basis and he despite repeated extensions, failed to qualify departmental examination, as such, order dated 15.9.1992 came to be passed by appellant No.2. This Court, after having carefully perused order dated 15.9.1992, sees substantial force in the arguments of the learned Advocate General that order dated 15.9.1992 neither casts stigma nor is punitive, rather, services of the respondent came to be terminated on account of his failure to pass departmental examination, within stipulated period. We have no hesitation to conclude that finding returned by learned single Judge on this point is not correct, rather contrary to record as well as settled law.

11. Similarly, we find that order of termination came to be passed on 15.9.1992, whereas condition of passing departmental examination was abolished by way of amendment carried out on 3.9.2001, meaning thereby that prior to 3.9.2001, respondent was required to qualify departmental examination, within the prescribed period, as such, learned single Judge erred in concluding that services of person, who has not qualified departmental examination, could not be

dispensed with as per amendment carried out in departmental examination Rules, as such, respondent is exempted from qualifying departmental examination.

12. True, it is that vide judgment dated 8.5.2002, learned Sessions Judge, acquitted the respondent of the charges framed against him but same has /had no bearing on the decision dated 15.9.1992, whereby services of respondent, who was on probation, came to be terminated on account of his failure to pass departmental examination. Since in the instant case, very genesis of order dated 15.9.1992, is/was unsuccessful completion of probation period by the respondent, no benefit, if any, could be extended to the respondent, on account of acquittal by the learned Sessions Judge in the appeal having been preferred by the respondent. Otherwise also, perusal of impugned judgment passed by Sessions Judge suggests that respondent came to be acquitted purely on technical grounds and not on merits. As far as order dated 22.9.2005 passed by Excise & Taxation Commissioner is concerned, there appears to be no illegality or infirmity in the same.

13. Mere reference of unsatisfactory service of a person in termination order can not be said to be 'stigmatic'. It is well within the domain of the authorities to examine service record of the incumbents before deciding extension, if any, of the probation period. It is always open for the authorities to record such satisfaction regarding unsatisfactory service and mere mention of same in the order, in no manner, would amount to casting any aspersions on the incumbent. In this regard, reliance is placed upon judgment of Apex Court in *Rajesh Kohli v. High Court of J & K* reported in (2010) 12 SCC 783, wherein it is held as under: "21. In the present case, two orders are challenged, one, which was the order of the High Court based on the basis of the resolution of the full court and the other one issued by the Government of Jammu & Kashmir on the ground that they were stigmatic orders. 22. In our considered opinion, none of the aforesaid two orders could be said to be a stigmatic order as no stigma is attached. Of course, aforesaid letters were issued in view of the resolution of the full court meeting where the full court of the High Court held that the service of the petitioner is unsatisfactory. Whether or not the probation period could be or should be extended or his service should be confirmed is required to be considered by the full court of the High Court and while doing so necessarily the service records of the petitioner are required to be considered and if from the service records it is disclosed that the service of the petitioner is not satisfactory it is open for the respondents to record such satisfaction regarding his unsatisfactory service and even mentioning the same in the order would not amount to casting any aspersion on the petitioner nor it could be said that stating in the order that his service is unsatisfactory amounts to a stigmatic order. 23. This position is no longer res integra and it is wellsettled that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI Of Medical Sciences* reported in (2002) 1 SCC 520, this Court has explained at length the

tests that would apply to determine if an order terminating the services of a probationer is stigmatic. On the facts of that case it was held that the opinion expressed in the termination order that the probationer's "work and conduct has not been found satisfactory" was not ex facie stigmatic and in such circumstances the question of having to comply with the principles of natural justice do not arise. 29. One of the issues that were raised by the petitioner was that he was granted two increments during the period of two and a half years of his service. Therefore the stand taken by the respondents that his service was unsatisfactory is belied according to the petitioner because of the aforesaid action even on the part of the respondents impliedly accepting the position that his service was satisfactory. 30. The aforesaid submission of the petitioner is devoid of any merit in view of the fact that since the petitioner was continuing in service, therefore, the case for granting increment was required to be considered which was so granted. The mere granting of yearly increments would not in any manner indicate that after completion of the probation period the full court of the High Court was not competent to scrutinize his records and on the basis thereof take a decision as to whether or not his service should be confirmed or dispensed with or whether his probation period should be extended."

14. Apex Court, in a catena of cases, has held that, if a probationer is discharged on the ground of unsatisfactory service or inefficiency or for similar reason without proper inquiry and without giving a reasonable opportunity to show cause against his discharge, it may, in the given facts, amount to removal from service within the meaning of Article 311 (2) of the Constitution of India and, in such a case, the simplicity of the form of the order will not give any sanctity. Apex Court in recent judgment in *Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences* reported in (2015) 15 SCC 151, has held that if ex-parte enquiry or report is the motive for the termination order, then the termination is not to be called punitive merely because the principles of natural justice have not been followed. Apex Court further held that if the facts revealed in the enquiry are not the motive but the foundation for the termination of the services of the temporary servant or probationer, it would be punitive and principles of natural justice are bound to be followed and failure to do so would make the order legally unsound.

15. In the aforesaid judgment, Apex Court, while dealing with the case of a person, who was offered appointment for a period of two years on probation, has specifically dealt with the issues; (i) Whether the order of termination passed by the authority is stigmatic or not; and, (ii) whether there had been violation of principles of natural justice, since no regular enquiry was conducted. In the aforesaid judgment, Apex Court taking note of various judgment passed by it while dealing with the issue of termination of services of probationer held as under: "14. The aforesaid submissions have been controverted by the learned counsel for the respondents. 15. To appreciate the controversy, we may refer to certain authorities which are pertinent to appreciate the controversy. In *Samsher Singh v. State of Punjab*[1], a seven-Judge Bench was considering the legal

propriety of the discharge of two judicial officers of the Punjab Judicial Service who were serving as probationers. The majority laying down the law stated that:- "No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution." And again:- "The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside."

16. In *Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another*[2], the services of the appellant were terminated as he was a probationer. He challenged the order of termination before the Administrative Tribunal, Lucknow, U.P., alleging that though the termination order appeared to be innocuous, it was really punitive in nature, inasmuch as it was based on an ex-parte report of enquiry which indicated that he had accepted the bribe and, therefore, it was not merely the motive, but the very foundation of the order of termination. The tribunal allowed the application of the appellant and quashed the order of termination. The High Court in the writ petition, placing reliance on the decisions rendered in *State of U.P. vs. Kaushal Kishore Shukla*[3], *Triveni Shankar Saxena vs. State of U.P.*[4] and *State of U.P. vs. Prem Lata Misra*[5], came to hold that the order of termination had not been founded on any misconduct, but on the other hand, the competent authority had found that the employee was not fit to be continued in service on account of unsatisfactory work and conduct. The High Court also observed that even if some ex-parte preliminary enquiry had been conducted or a disciplinary enquiry was initiated to inquire into some misconduct, it was the option of the competent authority to withdraw the disciplinary proceedings and take the action of termination of service under the terms of appointment and the same would not be by way of punishment. This Court after taking note of the submissions of the learned counsel for the parties posed the following question:- "Whether the report of Shri Ram Pal Singh was a preliminary report and whether it was the motive or the foundation for the termination order and whether it was permissible to go behind the order?"

17. This Court noticed that there are two lines of authorities. In certain cases of temporary servants and probationers, it had taken the view that if the ex-parte enquiry or report is the motive for the termination order, then the termination is

not to be called punitive merely because the principles of natural justice have not been followed; and in the other line of decisions, this Court has ruled that if the facts revealed in the enquiry are not the motive but the foundation for the termination of the services of the temporary servant or probationer, it would be punitive and principles of natural justice are bound to be followed and failure to do so would make the order legally unsound. The Court referred to the judgments rendered in *Samsher Singh (supra)*, *Parshotam Lal Dhingra vs. Union of India*[6], *State of Bihar vs. Gopi Kishore Prasad*[7] and *State of Orissa vs. Ram Narayan Das*[8] and, eventually, opined that if there was any difficulty as to what was "motive" or "foundation" even after the *Samsher Singh*'s case the said doubts were removed in *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha*[9]. The clarification given by the Constitution Bench in the said case, being instructive, the two-Judge Bench reproduced the same, which we think we should do:- "53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used. 54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

18. On that basis, the Court proceeded to opine thus:- "In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the

enquiry is the foundation and the termination will be bad."

19. After stating the said principle, the Court traced the history and referred to Anoop Jaiswal vs. Govt. of India[10], Nepal Singh vs. State of U.P.[11] and Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena[12] and opined as follows:- "33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed - if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case and in Benjamin case. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive. 34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against

the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee - even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases."

20. Appreciating the facts of the said case, the Court set aside the judgment of the High Court and restored that of the tribunal by holding that the order was punitive in nature.

21. In *Chandra Prakash Shahi vs. State of U.P. and Others*[13] after addressing the history pertaining to "motive" and "foundation" and referring to series of decisions, a two- Judge Bench had held that:- "28. 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". 29. "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 action? 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."

22. A three-Judge Bench in *Union of India and Others vs. Mahaveer C. Singhvi*[14], dwelled upon the issue whether the order of discharge of a probationer was simpliciter or punitive, referred to the authority in *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences*[15] and came to hold thus:- "It was held by this Court in *Dipti Prakash Banerjee* case that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the cause of the termination are the motive or foundation. It was observed that if findings were arrived at in

inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, a simple order of termination is to be treated as founded on the allegations and would be bad, but if the enquiry was not held, and 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's services, it would only be a case of motive and the order of termination of the employee would not be bad."

23. At this juncture, we must refer to the decision rendered in Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another[16], wherein a two-Judge Bench struck a discordant note by stating that:- "Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

24. The said decision has been discussed at length in State Bank of India and Others vs. Palak Modi and Another[17] and, eventually, commenting on the same, the Court ruled thus:- "The proposition laid down in none of the five judgments relied upon by the learned counsel for the appellants is of any assistance to their cause, which were decided on their own facts. We may also add that the abstract proposition laid down in para 29 in Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences is not only contrary to the Constitution Bench judgment in Samsher Singh v. State of Punjab, but a large number of other judgments- State of Bihar v. Shiva Bhikshuk Mishra, Gujarat Steel Tubes Ltd. v. Mazdoor Sabha and Anoop Jaiswal v. Govt. of India to which reference has been made by us and to which attention of the two-Judge Bench does not appear to have been drawn. Therefore, the said proposition must be read as confined to the facts of that case and cannot be relied upon for taking the view that a simple order of termination of service can never be declared as punitive even though it may be founded on serious allegation of misconduct or misdemeanour on the part of the employee." We respectfully agree with the view expressed herein-above.

25. In Palak Modi's case, the ratio that has been laid down by the two- Judge Bench is to the following effect:- "The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general

unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

26. In the facts of the case, the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a nonstigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct." 16. Similarly, Apex Court in *State of Punjab and others v. Sukhwinder Singh* decided on 14.7.2005, has held that period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he/she is found not suitable for the post, the master reserves a right to dispense with his/her service without anything more during or at the end of the prescribed period, which is styled as period of probation. The Apex Court has held as under: "18. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to

his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong.

19. In the present case neither any formal departmental inquiry nor any preliminary fact finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon the misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in *Ajit Singh and others etc. vs. State of Punjab* and another (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules."

17. Careful perusal of aforesaid judgments having been rendered by the Apex Court, clearly suggests that satisfactory completion of probation and successful passing of training/test held during or at the end of period of probation are sine qua non for confirmation of a probationer and authorities, while deciding issue of suitability of the probationer can take note of conduct of probationer during period of his probation. Order, if any, of termination, if is based upon inquiry, then principles of natural justice are required to be adhered to by affording due opportunity of hearing to the person concerned. But, in the instant case, there

was no occasion for the Department to conduct inquiry before dispensing with the services of petitioner as he failed to complete the probation satisfactorily and, on the top of it, he failed to qualify departmental examination.

18. Accordingly, in view of aforesaid law laid down by the Hon''ble Apex Court, instant appeal is allowed. Judgment passed by learned Single Judge is set aside. Pending applications, if any, are disposed of.