

(2002) 02 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 1020 of 2000

Subhash Raghuvir Jaiswal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Bombay Judicial Services Recruitment Rules, 1956 — Rule 5(3)

Citation : (2002) 3 ALLMR 439 : (2002) 3 BomCR 461 : (2002) 3 MhLj 420

Hon'ble Judges : P.S. Patankar, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : K.P. Anilkumar, for the Appellant; G.E. Vahanwati, General and R.M. Sawant, Government Pleader, for the Respondent

Judgement

P.S. Patankar, J.—The petitioner by this petition filed under Article 226 of the Constitution of India is praying for a declaration that he came to be confirmed with effect from 5-6-1996 and is entitled for continuity as well as for consequential benefits from that date. He further prays for quashing the Notification issued by respondents Nos. 1 and 2 on 28th March, 2000 by which his service as a probationer Judge of the City Civil Court and Additional Sessions Judge, Greater Bombay, came to be terminated.

2. The petitioner came to be appointed as a Judge in the Bombay City Civil Court and Additional Sessions Judge for Greater Bombay with effect from 5th June, 1995. The Order dated 29th April, 1995 shows that it was on probation for one year. On 7-7-1997 by passing a Resolution it came to be extended for a period of one year from 5-6-1998 to 4-6-1999. Notification/Order dated 28th March, 2000 came to be issued. The said Notification/Order inter alia says :--

"But since, he did not complete the probation period satisfactorily he is incompetent to remain in service. Hence on the recommendation of High Court his service is being terminated from the date of receipt of this copy under Rule 5(v)(3)(ii) of Bombay Judicial Service Recruitment Rules 1956 amended. That be understood that his probation period is extended till the date of receipt of this

order by him. He be paid one month salary instead of notice."

This was issued in consequence of the High Court moving the State Government on 3/4-2-2000 as the Probation Committee recommended termination of the service of the petitioner.

3. The learned counsel for the petitioner first submitted that the petitioner cannot be treated as a probationer as immediately after the expiry of one year of his probation period, he ought to be treated as a confirmed Judge. In support of his submission, he relied upon the letter dated 15-12-1999 asking him his willingness to be appointed as a Member, Maharashtra State Co-operative Appellate Court, at Mumbai, Pune or Aurangabad.

The learned Counsel next submitted that the Notification/Order clearly casts a stigma upon the petitioner and hence, it is punitive termination. This has been done without holding any inquiry against the petitioner and is in violation of Article 311(1) of the Constitution of India. Hence, it requires to be set aside. He relied upon some Judgments in support. The learned counsel also submitted that the record of the petitioner was very good and there was no reason not to confirm him. In support of his submission, he relied upon the letters received from the High Court about his disposal. He also relied upon the letters issued to the petitioner by the Registrar of the City Civil Court, Bombay, dated 2nd January, 2001 and 3rd January 2001, by which it has been pointed out as to how many civil and criminal cases dealt with by him, how many orders passed by him came to be challenged in the High Court and how many are set aside. It is pointed out that hardly 2% of the orders have been set aside by the High Court.

4. The learned Advocate-General pointed out from the petition that the petitioner was fully aware that he was a probationer and continued to be so till the impugned Order was passed. He has accepted the continuation of his probation. He relied upon Rule 5(v)(3)(ii) and submitted that unless he was expressly confirmed by written order he cannot be treated as being confirmed. He pointed out that there is no maximum period prescribed under the said Rule. He submitted that the letter dated 15-12-1999 was written in a routine manner asking for willingness from some of the Judges from City Civil Court to act as member, Maharashtra State Co-operative Appellate Court. This cannot clothe the petitioner with a right to be treated as a confirmed Judge. He further submitted that a plain reading of the termination order shows that it is not stigmatic or punitive in nature. There is no violation of Article 311(1). It is submitted that his disposal may be good or majority of his Judgments might have been confirmed by the High Court, but his work was not satisfactory and hence not suitable to remain in office.

5. The first question that arises before us is whether the petitioner was a probationer or he can be deemed to have been confirmed after one year of his service i.e. on 5-6-1996. Rule 5(v)(3)(ii) of The Bombay Judicial Service Recruitment Rules, 1956 (hereafter, referred as Rules of 1956) reads as under :--

"5. Method of recruitment to the Senior Branch. -

(v) Judges of the City Civil Court Bombay :--

(1).....

(2).....

(3) (i) The person appointed by nomination from the members of the Bar shall be on probation for a period of one year which may be extended by the High Court from time to time, as it may deem fit. (ii) During the period of probation and until expressly confirmed by a written order the services of an appointee shall be terminable by one month's notice on either side, without any reason being assigned therefore or by payment of salary for the period of notice or the unexpired portion thereof.

The rule clearly provides that until it is expressly confirmed by written order, the service of an appointee on probation shall be terminable. It also shows that the initial probation shall be one year which can be extended by the High Court from time to time. It gives discretion. Thus, it is clear that there is no maximum period prescribed within which the confirmation should take place.

6. The learned counsel for the petitioner tried to rely upon a Circular dated 30th July, 1999 which says that in spite of giving repeated extensions of probation the High Court has noticed that there was no improvement in the performance of some judicial officers. Therefore, ordinarily, as a matter of policy, they may not be granted extension of probation beyond two years over and above the period of probation prescribed. This was to be made applicable to those judicial officers appointed on or after 1-6-1997. This would have no application to the case of the petitioner for two reasons :--

(1) He was not appointed on or after 1-6-1997; and

(2) After 30th July, 1999 there was no extension in his case.

7. It is also not possible to accept that the letter dated 15th December, 1999 asking his willingness to be appointed as a member, Maharashtra State Cooperative Appellate Court, Mumbai, Pune or Aurangabad his services were already confirmed. By filing affidavit-in-reply, it has been pointed out that this has been issued in routine course to some of the Judges asking their willingness. In the face of Rule 5(v)(3)(ii) quoted above, it is not possible to accept that issuance of such a letter confers upon him the status of a confirmed Judge.

8. The learned Advocate-General has relied upon the latest Judgment of the Apex Court reported in AIR2000 SCW 3112 High Court of Madhya Pradesh through Registrar and Ors. v. Satya Narayan Jhavar. The Apex Court observed in Para 11:--

"The question of deemed confirmation in service Jurisprudence, which is dependent 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."

Clearly, the present case falls under first line of cases mentioned by the Apex Court. Merely because the petitioner was continued on probation it cannot be accepted that he was deemed to have been confirmed. There was no bar for his termination after the said period. Assuming that it falls under the third line of cases mentioned, there is no order of confirmation issued and hence, he cannot be treated as a confirmed one. Hence, we reject this contention.

9. The Apex Court in High Court of Madhya Pradesh (cited supra) considered the Judgment in the case of Wasim Beg v. State of Uttar Pradesh and Ors., AIR 1998 SC 129 on which the learned Counsel for the petitioner placed reliance. In the Wasim's case, no maximum period of probation was prescribed either by the letter of appointment or the Rules. The Rules laid down that an employee shall be deemed to have become a confirmed employee after he has successfully completed the period of probation. From the affidavit filed by the Corporation, as well as the Report of the Managing Director, it was clear that the incumbent was considered by the Board as having satisfactorily completed his period of probation on 9-1-1979 i.e. before the expiry of one year period of probation and was considered as a regular employee from 10-1-1979. Hence, it was held that the subsequent termination simpliciter as a probationer was bad. This has no application to the present case.

10. The learned Counsel for the petitioner next relied upon the Judgment of the Division Bench of this Court reported in 7995 2 CLR 405 Subhash Vithal Pise v. Children's Film Society of India. In the said case, the incumbent was promoted as a Marketing Manager by Order dated 5th April, 1983. It was on probation.

From time to time his probation period was extended and finally, by letter dated 28th May, 1987 he was informed that he would be communicated about his confirmation. He continued to act as a Marketing Manager. The order of confirmation was not communicated. He claimed all the benefits on that basis and they came to be ordered with effect from 5th October, 1984. In the said case, there was Rule 6 which made it clear that the period of probation shall be one year which can be extended for a further period of 6 months only. Therefore, it was held that the incumbent should be treated as confirmed on 5-10-1984. Obviously, this has no application considering the facts of our case,

11. The learned counsel for the petitioner submitted that the impugned Order/ Notification itself shows that it casts stigma upon the petitioner and is punitive in nature. He particularly drew our attention to the sentence- "But since he did not complete the probation period satisfactorily, he is incompetent to remain in service". In our opinion, this only means that the petitioner has not completed the probation satisfactorily and hence, he cannot remain in service. Incompetent to remain in service does not mean that he was "incompetent". The learned counsel for the petitioner relied upon the various Judgments of the Apex Court. They are : The State of Bihar Vs. Gopi Kishore Prasad, , Samsher Singh Vs. State of Punjab and Another, , Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, , Anoop Jaiswal Vs. Government of India and Another, , Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , V.P. Ahuja Vs. State of Punjab and Others, , Parshotam Lal Dhingra Vs. Union of India (UOI), and Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another,

12. As against this, the learned Advocate General relied upon the latest Judgment of the Apex Court reported in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, . The Apex Court considered the Judgments reported in Samsher Singh Vs. State of Punjab and Another, , reviewed the law, considered the various Judgments, including many Judgments cited by the learned counsel for the petitioner.

We feel that it will be better to point out what is the law laid down by the Supreme Court in Pavanendra Narayan Verma (supra). Thanks God this would reduce our burden considerably. We shall heavily draw upon it as we feel that the position here is similar.

In the said case the appellant was appointed temporarily on 10-4-1996 to the post of Joint Director (Materials Management) for one year and the service was terminable on one month's notice from either side or payment of salary in lieu thereof. He was to be on probation for a period of one year from the date of appointment and the competent authority was given the discretion to curtail or extend the said period. In the said case, the period came to be extended on 23-6- 1997 for six months. It was further extended for a period of 3 months. On 6-2- 1998 his service came to be terminated. The order pointed out as to how the extensions were given and it was stated out that "During the extended period

of probation, his work and conduct have not been found to be satisfactory." This order came to be challenged on the ground that this was punitive in nature and casts stigma on the appellant and cannot be passed without a full-scale departmental inquiry. It was contended that the termination order was founded upon the allegation of misconduct, a summary inquiry has been held by the respondents in which charge-sheet had been issued to the appellant, a report was submitted by the Inquiry Officer to the respondent and a copy thereof was also made available to the appellant. Thereafter, immediately the order of termination came to be passed. Attention was also drawn by the appellant to the statements made in counter-affidavit filed on behalf of the respondents wherein it was alleged that the appellant's integrity and honesty were doubtful. On behalf of the respondent it was pointed out that the inquiry was held merely to assess the appellant's fitness of being confirmed. It was pointed out that the respondents have received various complaints regarding discharge of appellant's duties and in order to give an opportunity to the appellant the summary inquiry was held so that the suitability of the appellant can be fairly assessed. It was also contended that from the statements made in the counter affidavit the order cannot be termed as stigmatic or punitive and it would not change the order. The Apex Court observed:--

"29. 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." Reliance was placed on the words used in *The State of Orissa and Another Vs. Ram Narayan Das*, . The language in the order of termination "work and conduct not found to be satisfactory" held cannot be said to be stigmatic in nature. It was also held that the affidavit filed on behalf of the respondents cannot be relied upon to find out whether it is stigmatic in nature. It was observed :--

"35. Equally, an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order. This is also what was held in *State of V. P. v. Kaushal Kishore Shukla* (SCC p. 705 para 13)."

13. Majority of the Judgments cited by the learned Counsel for the petitioner have been considered by the Apex Court in the matter of *Pavenendra Narayan Verma* (supra). We feel best to quote from the said Judgment about what the Apex Court has to say about them. We shall first refer to the case of *Parshotam*

Lal Dingra (supra). The Apex Court in that respect observed :--

"8. Since the decision in Parshotam Lal Dhingra v. Union of India Courts have had to perform a balancing act between denying a probationer any right to continue in service while at the same time granting him the right to challenge the termination of his service when the termination is by way of punishment. The law has developed along apparently illogical lines in determining when the termination of a temporary appointee or probationer's services amounts to punishment.

9. In 1974, Krishna Iyer, J. had said :

"The need, in this branch of jurisprudence, is not so much to reach perfect justice but to lay down a plain test which the administrator and civil servant can understand without subtlety and apply without difficulty", (SCC p. 889, para 161).

10. Since "Dhingra is the Magna Carta of the Indian civil servant, although it has spawned diverse judicial trends, difficult to be disciplined into one single, simple, practical formula applicable to termination of probation of freshers and of the services of temporary employees", we have thought it best to refer to the facts of Dhingra case to understand what exactly was meant when the Court said : AIR 49 para 82. "It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C. J., has said in Shrinivas Ganesh v. Union of India, wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.

11. In that case the employee had been reverted back from an officiating post. The records showed that adverse remarks had been made against the employee in his confidential reports while he was officiating. These remarks were placed before the General Manager who said that he was "disappointed" to read them and that he should be reverted as a subordinate "till he makes good the shortcomings noticed.....". The order of reversion was passed by the General Manager soon after this. When the issue ultimately came before this Court, this Court upheld the order of reversion, saying AIR 50, para 29 .

"He had no right to continue in that post and under the general law the implied

term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. Nor did this reduction under Note 1 to Rule 1702 amount to his dismissal or removal. Further it is quite clear from the orders passed by the General Manager that it did not entail the forfeiture of his chances of future promotion or affect his seniority in his substantive post. In these circumstances, there is no escape from the conclusion that the petitioner was not reduced in rank by way of punishment and, therefore, the provisions of Article 311(2) do not come into play at all."

12. Therefore, although the General Manager had issued the order of termination on the basis of the adverse reports, the order was not considered as a punishment because it did not jeopardise the appellant's career prospects. It is also clear from the paragraph quoted that punishment means the deprivation of a right which the employee otherwise has. Thus, if he is already in service and is reverted from an officiating post, although he does not have a right to continue in the officiating post, he still has a right to be considered for promotion. If he is on probation or on a temporary appointment, he has a right to seek new employment if his appointment or probation is terminated. Anything which jeopardises these rights would be by way of punishment,"

14. In respect of Samsher Singh's case (supra), the Apex Court in Pavenendra Narayan Verma (cited supra) observed:--

"18. In Samsher Singh v. State of Punjab the Courts were asked to look behind the form of the order to find out whether the termination was in substance punitive. So when a full-scale inquiry is held against a probationer or a temporary appointee and he is found guilty, an order terminating his services for this reason has been seen as punitive and bad. It is this search for the "substance" behind the "form" of the order of punishment which has led to some apparently conflicting decisions." 19. Thus some Courts have upheld an order of termination of a probationer's services on the ground that the enquiry held prior to the termination was preliminary and yet other Courts have struck down as illegal a similarly worded termination order because an inquiry had been held. Court's 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."

15. About Radhey Shyam Gupta's case (supra), the Apex Court in Pavenendra Narayan Verma (supra) observed :--

"25. In Radhey Shyam Gupta v. U. P. State Agro Industries Corporation Ltd. a full-scale inquiry was held into the allegations of bribery against a temporary employee. The Court set aside the termination because it found that the report

submitted was not a preliminary inquiry report but it was in fact a final one which gave findings as to the guilty of the employee."

16. In respect of Dipti Prakash Banerjee's case (supra), the Apex Court in Pavanendra Narayan Verma (supra) observed :--

"In Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta the termination order itself referred to three other letters. One of the letters explicitly referred to misconduct on the part of the employee and also referred to an Inquiry Committee's report, which report in its turn had found that the employee was guilty of misconduct. The termination was held to be stigmatic and set aside."

17. The Apex Court in the matter of Pavanendra Narayan Verma (supra) held :--

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely, if any one of the three factors is missing, the termination has been upheld."

The said test is not satisfied in the present case. No such full-scale inquiry was held in respect of the complaints against the petitioner about which reference is made only in the affidavit-in-reply. There is no such finding of guilt recorded against the petitioner.

18. In our opinion, none of the tests pointed out by the Apex Court can be said to be attracted to arrive at the conclusion that the impugned Order has been founded on misconduct. We feel that the learned Counsel for the petitioner is trying to misread the Order to mean that the petitioner is condemned as "incompetent". That is not correct. It is only stated that as he has not completed the probation satisfactorily, he cannot remain in office or not competent to hold the office.

19. Now, we shall make a reference to some other Judgments cited by the learned Counsel for the petitioner, but were not for consideration before the Apex Court in Pavanendra Narayan Verma's case (supra). The learned counsel relied upon The State of Bihar Vs. Gopi Kishore Prasad, . We may point out at the very outset that it is a case of regular inquiry held against a probationer about his misconduct. A show-cause notice was also issued to him as to why his services should not be terminated. His services came to be terminated. The Apex Court approved the view of the High Court that it was founded on misconduct. The Apex Court further summarised the position as follows :--

"1. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant or

removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

4. In the last mentioned case, if the probationer is discharged on anyone of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to removal from service within the meaning of Article 311(2) of the Constitution and will, therefore, be liable to be struck down."

5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such case."

In the present case, in our opinion, it is a simpliciter termination order and cannot be said to cast any stigma or founded on misconduct. Hence, this Judgment speaks against the petitioner.

20. The learned counsel for the petitioner then relied upon the Judgment in *Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora*, . It was a case where the order of termination was passed. Along with the said order, resolution passed was sent and relied upon. The resolution was based on a report of the Manager, to which reference was made. The said report condemned the petitioner as disgraceful for the Organisation. In the light thereof, it was held that this was founded on misconduct and cast stigma. Hence, it was punitive in nature. It is difficult to see how it is attracted in the present case.

21. The learned counsel then relied upon the Judgment in the case of *Anoop Jaiswal Vs. Government of India and Another*, . Again, in the said case an inquiry was held behind the back of the incumbent. The order of discharging the petitioner was passed during the course of the probationary period. Even the explanation was called for from the petitioner regarding his indiscipline. In some other probationers were also similarly guilty. But their cases were not taken seriously. Hence, it is held that the alleged act of misconduct was the cause for termination. In our opinion, this is not attracted in the present case.

22. The learned counsel then relied upon the Judgment in the case of *V.P. Ahuja*

Vs. State of Punjab and Others, . In the said case the order of termination stated that the incumbent failed in the performance of his duties administratively and technically. Hence, it was held that it was stigmatic in nature. Again, this has no application in the present case.

23. The learned Counsel for the petitioner then contended that in the Affidavit-in-Reply filed on behalf of respondent No. 3 it has been pointed out that the Judgments, complaints, disposal etc. of petitioner were considered by the Committee and it was unanimously decided not to grant extension of probation to the petitioner. From this the learned Counsel for the petitioner submitted that some inquiry must have, been held about those complaints and considered by the Committee. This was done without giving any opportunity to the petitioner. Hence, the order of termination is punitive in nature. We reject this contention. First, this is not to be found in the impugned Notification/Order. However, to satisfy our conscience we have called for the files. We have gone through the service record and the complaints against the petitioner. We do not want to make any comment about it, except to say that the petitioner's conduct and the work was not found satisfactory. The first Committee of Judges unanimously found that the service record and the work of the petitioner was not satisfactory and hence, he does not deserve to be confirmed. However, to be on safer side, the learned Chief Justice asked to place the same before another Committee of Judges along with his Judgments and observations made by the earlier Committee. Again, the said Committee unanimously decided not to grant any extension to the petitioner. Even this is reflected in the affidavit-in-reply filed on behalf of respondent No. 3. Respondent No. 3 is the Controlling Authority for the subordinate judiciary under Article 235 of the Constitution of India and hence, recommended termination of the petitioner's service. Hence, we find no substance in this contention.

24. The learned counsel for the petitioner then contended that his disposal was good. The record shows that his disposal was good and majority of the Judgments have been confirmed in Appeal by the High Court. He was not communicated about any deficiency in his work and, therefore, it is contended that there was no reason to terminate the services of the petitioner. In support of his submission, he relied upon the Judgment of the Apex Court reported in Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others, . It was a case of ad-hoc employee employed for 6 months or till a regular candidate from the Maharashtra Public Service Commission became available, whichever is earlier. But even after 6 months, the employee was continued. She continued to work from February 1982 to February 1985. Nothing was told about deficiency or defect in the work. No duly selected candidate was available. Hence, it was held that termination was improper. This cannot be applied here.

25. The learned counsel for the petitioner then drew our attention to the Rejoinder filed in which it is alleged that the petitioner has come to know that on or about 6-8-1999 statement of his tenant's brother was recorded by the

Hon"ble Principal Judge of the City Civil Court and it appears that the report was prepared on the said inquiry and placed before the Committee for consideration. This was done behind the back. Therefore, it is not a mere case of scrutiny of service record, but holding of an inquiry behind the back. Hence, it was punitive in nature.

We have already pointed out that we have gone through the files and found that no such inquiry was at any time conducted or that the order of termination was based upon any such inquiry, though there were serious doubts about his functioning. Further, we have already pointed out what the Apex Court has held that there should be a regular inquiry conducted in respect of the allegations involved about the misconduct and it should culminate into a finding of guilt. We find nothing of this kind in the present case. Hence, we reject this contention.