Neutral Citation No. - 2024:AHC:157381-DB

A.F.R.

Judgement reserved on 28.08.2024

Judgement delivered on 26.09.2024

Case :- SPECIAL APPEAL No. - 596 of 2024

Appellant :- University of Allahabad and 2 others
Respondent :- Dr. Raghvendra Mishra and another
Counsel for Appellant :- Kunal Shah, Sr. Advocate
Counsel for Respondent :- A.S.G.I., Sankalp Narain,Shashi Shankar Tripathi

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard Shri Amit Saxena, learned Senior Counsel assisted by Shri Kunal Shah, learned counsel for the appellants-respondents and Shri G.K. Singh, learned Senior Counsel assisted by Shri Sankalp Narain & Sri Srivats Narain, learned counsel for the respondent-petitioner.

2. Present Special Appeal has arisen from a judgment and order of the learned Single Judge dated 23.05.2024 passed in Writ A No.17284 of 2023 (Dr. Raghvendra Mishra vs. Union of India and 3 others) by which the writ petition filed by the petitioner has been allowed.

FACTS

3. The respondent-petitioner belongs to the category of 'Economically Weaker Section' and he has 50% permanent visual impairment. He is an academic scholar having Bachelor's and Master's degrees and completed M.Phil. and Ph.D. from Jawahar Lal Nehru University, New Delhi. In pursuance of the advertisement No.UoA/Asst. Prof/01/2021 dated 28.09.2021 published by the University of Allahabad[1], he applied for post of 'Assistant Professor' in the Department of Sanskrit, Pali, Prakrit and Oriental Languages of the University on 16.10.2021. At the time of filling up the application form in column under the head of '**Disclosure**'

1 University.

containing the query ‘Do you have any criminal case pending against you in a Court of Law?’, the petitioner-respondent had mentioned **‘Yes’** and under column of details, he had mentioned ‘**FOR STUDENTS POLITICAL ISSUES**’. Thereafter, the petitioner appeared in different stages of selection and on the basis of the recommendation of the Selection Committee dated 18.05.2022 and approval by the Executive Committee in its meeting dated 21.05.2022, he was selected on the post of Assistant Professor (PWBD-A (EWS) in the Department of Sanskrit, Pali, Prakrit and Oriental Languages of the University.

4. Consequently, the University had issued an appointment letter dated 21.05.2022 in favour of the petitioner on the terms and conditions mentioned therein. In pursuance thereof, the petitioner joined the said post and started working on probation of one year. Subsequently, vide notification dated 08.8.2023, the probation period of all newly appointed teachers was extended by one year in terms of Resolution of the Executive Council dated 20.06.2023. Thereafter, the meeting of the Executive Council of the University was held on 15.09.2023, wherein the Executive Council vide resolution No.06/78 dated 15.09.2023 had unanimously resolved to not extend the services of Dr.Vidhu Khare Das, Associate Professor, Centre of Theatre and Films and Dr. Raghvendra Mishra, Assistant Professor, Department of Sanskrit of the University (petitioner) and to terminate their contract of service under Clause 5 (a) of the Ordinance XLI, Conditions of Service of teachers of the University. For ready reference, Resolution No.06/78 of the Executive Council is reproduced hereinafter:-

> “After due deliberation on the service rendered by Dr. Vidhu Khare Das, Associate Professor, Centre of Theatre and Films, University of Allahabad and Dr. Raghvendra Mishra, Associate Professor, Department of Sanskrit, University of Allahabad, it was unanimously resolved by the Executive Council to not extend their services (currently under probation) and to terminate their contract of service under clause 5 (a) of the Ordinance XLI: Conditions of Service of Teachers of the University. It has been decided to make a payment of a sum equivalent to one month’s salary in lieu of a notice of termination. The services of Dr. Vidhu Khare Das and Dr. Raghvendra Mishra shall be considered to be dispensed with, with effect from the date of the meeting. Hon’ble Members of the Executive Council unanimously approved the same.
>
> Dr. Deepali Pant Joshi, nominee of the Hon’ble Chancellor in the Executive Council said that a teacher is a role model and it is good to nip any problem in the bud, for smooth functioning and future of the institution.”

5. Consequently, the Registrar of University vide order dated 15.09.2023 had dispensed with the services of the petitioner-respondent with effect from 15.09.2023. For ready reference, the same is reproduced herein under:-

> "To,
>
> Raghavendra Mishra
>
> Vill. Jhadapi – Jhadapa (Gotibandh)
>
> Post – Nandana, Dist. Sonbhadra
>
> Robertsganj, Uttar Pradesh – 231213
>
> Subject: Termination of services with effect from 15.09.2023
>
> Sir,
>
> By the appointment letter no.05/R/1499/2022 dated 21.05.2022, you were appointed to the post of Assistant Professor (PWDB-A, EWS Category) in the Department of Sanskrit, University of Allahabad. Your probation period was 1+1 years as per the aforementioned appointment letter.
>
> Vide Resolution No.06/78 of Executive Council dated 15.09.2023, it has been resolved not to extend your service (currently under probation) and to terminate your contract of service under clause 5 (a) of the Ordinance XLI: conditions of service of teachers of the University.
>
> It has been decided to make a payment of a sum equivalent to one month's salary in lieu of a notice of termination. Therefore, your services are being dispensed with, with effect from 15.09.2023.
>
> Thanking you,
>
> (Prof. N.K. Shukla)
>
> Registrar"

6. Aggrieved by the termination order, the respondent-petitioner preferred Writ A No.17284 of 2023 interalia seeking the following reliefs:-

> "i. to issue a writ, order or direction in the nature of certiarari quashing the impugned resolution no.6/78 passed by the Executive Council of the Univrsity of Allahabad, Prayagraj in its 78th meeting dated 15th September, 2023 in so far as it resolved to terminate the services of the petitioner as an Assistant Professor in terms of Clause-5 (a) of Ordinance XLI (Annexure-7 to the writ petition).
>
> ii. to issue a writ, order or direction in the nature of certiorari quashing the first consequential letter dated 15.9.2023 terminating the services of the petitioner as Assistant Professor in the Department of Sanskrit, University of Allahabad issued by the Registrar of the University (Annexure-8 to the writ petition).
>
> iii. to issue a writ, order or direction in the nature of certiorari quashing the second consequent relieving order dated 15.9.2023 issued by the Registrar relieving the petitioner from his service (Annexure-9 to the writ petition).
>
> iv. to issue a writ, order or direction in the nature of mandamus commanding the respondent-authorities not to interfere with the peaceful functioning of the petitioner as an Assistant Professor in the University and ensure payment of

month to month salary to him.

v. to issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

vi. to award cost of the writ petition to the petitioner."

7. After considering the pleadings and submissions of the parties, learned Single Judge has accepted the submissions of the respondent-petitioner and accordingly, allowed the writ petition vide impugned judgement and order dated 23.05.2024, which is under challenge in the instant Special Appeal. Relevant portion of the judgment is reproduced herein below:-

"17. The outcome of above factual and legal analysis is that the petitioner was appointed under a due process. He has completed satisfactory service on probation of one year and on basis of his satisfactory service, his probation was extended for a period of one year. On basis of material available which also includes the material provided by University in a sealed envelope that within a few months of passing an order of extension of probation period of one year, the Executive Council considered the case of petitioner even without being part of agenda with permission of Chair and terminated his services under clause 5(a) of the Ordinance XLI.

18. It is a definite stand of the University that there were some material before the Executive Council which were considered and as referred above, the material was a complaint of Co-ordinator, wherein there are allegations against petitioner as well as a news cutting that petitioner was involved in a criminal case. It is also stand of University that material was not considered to be such which requires an inquiry to consider its truthness but it was not conducted, therefore, from last paragraph of resolution which has already been reproduced earlier, it could be held that definitely the said materials were considered and found adverse to petitioner and for that the Court is of the considered opinion that order becomes stigmatic since all the resolutions are on the website of University and open for view of general public also and in case, petitioner applies in any other University, the said material will definitely become adverse to his future prospects.

19. The Court takes note that it is stand of University that truthfulness of allegations were not verified, therefore, petitioner was penalized only on basis of complaints whose contents were not verified and even before completing the extended period of probation of one year. Accordingly, the case of petitioner would fall under clause 2(e) and (f) as contended by the petitioner and not under clause 5(a) of Ordinance XLI as contended by the respondent-University and admittedly procedure prescribed under clause 5(a) was not followed, therefore, impugned Resolution and impugned termination order become illegal. The procedure adopted by University thus has legal flaws and was also against the legal principle discussed in Ved Priya (supra). The Court is of the considered opinion that Resolution dated 20.06.2023 qua to petitioner and order of termination dated 15.09.2023 are illegal, therefore, liable to be set aside and ordered accordingly.

20. It would also be relevant to observe that the effect of judgment of this Court would be only that petitioner will be remained in probation till one year from the date of his extension of probation and thereafter respondent University would be at liberty to take a decision in terms of relevant clauses of Ordinance XLI.

21. The petitioner was out of service from 15.9.2023 to till date of this

> judgment and same will be considered on principle of 'No Work No Pay' and his satisfactory service at the end of extended period of probation will be considered on basis of period he worked. The University is directed to allow petitioner to work on post concerned forthwith.
>
> 22. The petitioner is also put on caution that he will diligently discharge his duties of a teacher and he will not indulge in any activity which is adverse to his profession and will also remain polite with his co-employees and shall disclose complete details of criminal case and it would also be a factor for consideration for his confirmation.
>
> 23. Accordingly, writ petition is allowed with aforesaid observations and directions."

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Sri Amit Saxena, learned Senior Advocate appearing for the appellant University vehemently submitted that respondent-petitioner was selected and offered appointment on the post of Assistant Professor on 21.05.2022. The service conditions of the teaching staff of the University are regulated by Ordinance No.XLI. In view of Clause 2 (a), the respondent-petitioner was to remain on probation for a period of one year, which could be extended by one year. In the instant matter, the Executive Council vide resolution dated 20.06.2023 had extended the probation period of all the newly appointed teaching staffs including the petitioner and accordingly, a notification in this regard was issued by the Registrar of the University on 08.08.2023. As the respondent-petitioner was on his extended period of probation, certain materials against him were brought into the notice and upon consideration thereof, the University had decided not to go into the merits of the allegations and in the meeting of the Executive Council dated 15.09.2023, it was unanimously resolved to dispense with the services of the respondent-petitioner by passing a simplicitor order of termination, as envisaged under Clause 5 (a) of Ordinance XLI. A consequential order of termination and relieving was passed by the University on 15.09.2023.

9. Sri Amit Saxena further submitted that the grounds taken for challenging the action of the University before the Writ Court were mainly:-

> 1. Termination from service was bad in law as the same was in derogation to the procedure for termination of probationers enshrined in Clause 2 (f) of the Ordinance XLI. Only after service of notice to the respondent and after eliciting his explanation in respect of the grounds on which his services were proposed to be terminated, could the order of termination have been passed by

the University.

2. The order dismissing the Respondent is stigmatic in as much as it casts aspersions on the working of the Respondent, upon the statement made by Dr. Deepali Pant Joshi, the nominee of the Hon'ble Chancellor, who in the meeting of the Executive Council while considering the issue of further continuity of the services of the Respondent and another probationer said "that a teacher is a role model and it is good to nip any problem in the bud for smooth functioning and future of the institution".

3. If the statement of Dr. Deepali Pant Joshi is taken on its face value it suggests that there was some problem vis-a-vis the respondent and since the problem is relatable to the respondent which has resulted in discontinuation of his services, the University ought to have followed the procedure prescribed in Clause 2 (e) read with Clause 2 (f) of the Ordinance.

10. Learned Senior Counsel for the appellant University submitted that while filing the detailed counter affidavit, the appellant University had taken categorical stand that there were materials before the Competent Authority and after consideration of the same, it chose not to go into the truthfulness and on merits of the same and unanimously resolved not to continue the services of the respondent-petitioner. Thus, the same classified as a simplicitor order of termination, which is envisaged under Clause 5 (a) of the Ordinance. The statement of Dr. Deepali Pant Joshi was made in reference to the exalted stature of a teacher as visualized in Indian society and such general observations could not be taken as stigmatic. It was further endeavour of the appellant University to ensure that no stigma is casted upon the respondent-petitioner, and in this backdrop the appellant University sought leave of the learned Single Judge to exempt it from bringing on record the materials, which were there before the University on the basis of which the order of termination simplicitor was passed and to produce the same by way of a sealed cover.

11. It was urged by the learned Senior Counsel that in the midst of the proceeding before the learned Single Judge and as per direction of learned Single Judge, two set of materials were placed before the Court i.e. (i) a confidential letter dated 13.09.2023 by the Coordinator, Department of Sanskrit, Pali, Prakrit & Oriental Languages addressed to the Vice Chancellor of the University, wherein certain complaints were made against the respondent and (ii) materials demonstrating the act of concealment of material particulars by the respondent-petitioner as regards the disclosure in the form, which he was required to make about

the details of the criminal case pending against him as well as the nature of the offence for which the respondent-petitioner is facing criminal trial.

12. Learned Senior Counsel submitted that the learned Single Judge committed an egregious error in passing the impugned judgement dated 23.05.2024 and recorded perverse finding in para-19 of the impugned judgment to the effect that *"truthfulness of allegations were not verified, therefore, petitioner was penalized only on basis of complaints whose contents were not verified and even before completing the extended period of probation of one year."* He submitted that said finding militates against the fundamental principles governing service jurisprudence, which envisaged dispensation of services of the probationer by way of a simplicitor termination order without assigning any reason.

13. He assertively submitted that in the instant matter, it is admitted case that the appellant-University neither held any enquiry nor called for any report vis-a-vis material before it and chose to simply discharge the respondent-petitioner under Clause 5 (a) of the Ordinance with a view to give him a chance to make good in other walks of life without a stigma. In support of his submission, he has placed reliance on the judgements in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha**[2]**; Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others**[3], **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences & Anr.**[4] and **Daya Shankar Yadav vs. Union of India and others**[5].

14. Sri Saxena further argued that the learned Single Judge has also erred in law while placing too much emphasis upon the statement of Dr. Deepali Pant Joshi, and having regards to the fact, that there were adverse materials before the University, the order of termination becomes stigmatic. It was submitted that stigma is something that detracts the character or reputation of a person. He submitted that an order can be said to be stigmatic only if it is couched in a language, which imputes

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2. 1980 (2) SCC 593

3. (1999) 3 SCC 60

4. (2002) 1 SCC 520

5. (2010) 14 SCC 103

something over and above mere unsuitability for the job. In the instant matter, Dr. Deepali Pant Joshi had only made a statement that a teacher is a role model and it is good to nip any problem in the bud for smooth functioning and future of the institution. The general role of the teacher as being a role model has been stated and as such, nothing more can be attributed to such statement of Dr. Deepali Pant Joshi. There is no material contained either in the impugned order of termination or in the resolution to which the impugned order makes a reference that imputes anything over and above the unsuitability for the job. Learned Single Judge has failed to appreciate the fact that the statement of Dr. Deepali Pant Joshi was also not individually directed towards the respondent-petitioner inasmuch as the Executive Council was considering the issue of further continuity of the services of not only the respondent-petitioner but also of another probationer. More so, the statement of Dr. Joshi is to be taken in individual capacity and the same cannot be taken as the statement made by the Executive Council.

15. Sri Amit Saxena, learned Senior Advocate submitted that even though there is admitted case of concealment of criminal case by the respondent-petitioner, but the learned Single Judge has utterly failed to ascribe due weightage to the factum of concealment of material particulars in the application form by the respondent-petitioner as well as nature of offence qua which the respondent-petitioner was facing criminal prosecution. He vehemently argued that assuming the respondent-petitioner was not guilty of suppression of material particulars, still the appellant University is fully justified and competent to discharge the services of the petitioner-respondent during the probation. Even on his own admission before the learned Single Judge that the respondent-petitioner had not made complete disclosures of the material particulars regarding pendency of the criminal case against him. The learned Senior Counsel placed strong reliance on the judgements in **Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav**[6]; **Rajasthan Rajya Vidyut Prasaran Nigam Limited and another v. Anil Kanwariya**[7] and **Satish Kumar**

6. (2003) 3 SCC 437

7. (2021) 10 SCC 136

Yadav v. Union of India[8] to fortify his submission that probationer, who has secured appointment by suppressing material information with respect to prosecution in a criminal case, can be terminated from service.

16. It was next submitted by Sri Saxena that the learned Single Judge during the midst of the argument had also raised certain queries from the respondent-petitioner regarding the criminal case to which he was having no satisfactory answer and contrarily, learned Single Judge has held that pendency of the criminal case was in the knowledge of the University and it chose not to seek details from the candidate. Further the pendency of the criminal case was not considered to be adverse by the appellant University either at the stage of selection process or at the stage of extension of period of probation. The said finding of learned Single Judge is also not sustainable. Neither, it was the case of the respondent-petitioner in the writ petition nor there is anything on record to even remotely suggest that the adverse materials were available before the appellant University at the stage of selection process or at the stage of extension of period of probation. It was argued that even if the University had not rejected the application form of the respondent-petitioner at the stage of selection process on the ground of non-disclosure of complete particulars of pendency of criminal case, even in that situation the appellant University could not be estopped from dispensing with his services on the said ground, in view of the undertaking extended by the respondent-petitioner in his application form as well as Clauses 5 and 6 of the appointment letter.

17. In support of his submission, Sri Amit Saxena, learned Senior Advocate has also placed reliance on paras 14 and 15 of the judgment impugned. For ready reference, paras 14 and 15 of the judgement are reproduced herein under:-

> "14. The other document is the copy of application form submitted by petitioner at the time of applying for the post. The Court perused the same and found that in the column Disclosure, do you have any criminal case pending against you in a court of law. The petitioner has declared, Yes, however, in the column of details, it was only mentioned that 'FOR STUDENTS' POLITICAL ISSUES'. The details of offence were not disclosed. In papers provided by Registrar, Allahabad University, there is a document which is a news published on a website, namely, Khabar, that petitioner was arrested in a case of a

8. (2023) 7 SCC 536

> harassment of a girl in JNU Campus.
>
> 15. During hearing, petitioner was present in person. The Court has asked a query about nature of criminal case against him. He fairly submits that a case of outrage of modesty was lodged against him wherein after investigation charge-sheet has been filed and it is at the stage of trial and presently he is on bail. The Court also asked a query that why he has not disclosed the details of it in the form, however, he had no satisfactory answer to it. At this stage, it would be relevant to mention that the issue of pending criminal case was not considered to be adverse either at the stage of selection process or at the stage of extension of period of probation; though it might be considered against petitioner during the meeting of Executive Council held on 15.09.2023. It would be relevant to note that information in regard to a criminal case was available with the University since it was disclosed in application form though details were neither mentioned nor sought by the University."

18. He further submitted that during the course of hearing of the writ petition the respondent-petitioner was present in person in the Court room and once the Court had asked the query about the nature of criminal case against him then he fairly submitted that a case of outrage of modesty of a woman was lodged against him, wherein, after investigation the chargesheet has been filed and it is at the stage of trial and presently, he is on bail. The learned Single Judge has even observed in the impugned judgement that "***the Court also asked a query that why he has not disclosed the details of it in the form, however, he had no satisfactory answer to it***". In this backdrop, he has placed reliance on the judgement passed by the Apex Court in **Daya Shankar Yadav vs. Union of India and others** (supra) and submitted that even if the respondent-petitioner is not guilty of willful suppression of material facts relating to pendency of criminal case against him, however, if the employer having regard to the nature and gravity of the criminal case, the information of which he may acquire through any means can choose to discharge the probationer from service. He submitted that even the nature of offence for which the respondent-petitioner is facing criminal trial cannot be characterized as trivial. The offence for which the respondent-petitioner has been charged, shocks the moral conscience of the society.

19. He further argued that learned Single Judge has returned the erroneous finding that the proceeding of Executive Council was suspicious and prejudicial inasmuch as there was no agenda. Learned Single Judge has further recorded erroneous finding that the materials, which were there before the University at the time of dispensation of the

service of the petitioner, were not considered adverse at the stage of extension of probation period of the petitioner, which occasioned on 20.06.2023. He submitted that learned Single Judge has proceeded on an erroneous assumption in law that the extension of probation envisages rendition of satisfactory service by the probationer. Even since the confidential letter of the Coordinator, Department of Sanskrit, Pali, Prakrit & Oriental Language is of date 13.09.2023 and the same would have no relevance in the matter, in view of the provision under Clause 2 (c) (ii) (1) of the Ordinance XLI, which provides "*not being a teacher of a University College maintained by the University, except after considering the report of the concerned Head of the Department, Director of the University Institute or Head of the independent Centre or, where the post is not assigned to a specific Department, University Institute of independent Centre, of the officer or functionary under whom the teacher has been placed in accordance with the said arrangements"*. In the instant matter, by no stretch of imagination, the confidential letter dated 13.09.2023 sent by the Coordinator could be taken as a report in view of provision under Clause 2 (c) (ii) (1) of the Ordinance. As a complaint, the Coordinator of the department concerned has only indicated the behaviour of the respondent-petitioner.

20. In the last, the learned counsel submitted that the order impugned in the writ petition was not stigmatic in nature as no allegation has been made against the respondent-petitioner and it was unanimously resolved in the meeting of the Executive Council not to continue his service as per the procedures prescribed in Clause-5 (a) of the Ordinance. Therefore, the judgement and order passed by learned Single Judge is unsustainable under the facts and circumstances and the same is liable to be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENTS

21. Per contra, Sri G.K. Singh, learned Senior Advocate appearing for the respondent-petitioner, vehemently opposed the instant appeal and submitted that in most arbitrary manner, the services of the respondent-petitioner were terminated and the same was stigmatic in nature. Admittedly, the appellant University had not followed the procedure prescribed in Clause 2 (e) and (f) of the Ordinance XLI. Even though

there was no such concealment of fact in the application form in the column under the head of 'disclosure', which required 'Do you have any criminal case pending against you in a Court of Law?, the respondent-petitioner had mentioned 'Yes' and under column of details, he mentioned 'For Students Political Issue'. Therefore, it cannot be said that he had concealed the criminal proceeding. In the facts and circumstances, learned Single Judge was absolutely right in holding that the truthfulness of the allegations were not verified and the petitioner was penalized only on the basis of complaint so made by the Head of the Department. Even in view of Clause 2 (e) and (f) of the Ordinance, there is detailed procedure but the said procedure was not followed. Even the said issue was not in the agenda and therefore, learned Single Judge has rightly held that the proceedings of the Executive Council were certainly suspicious and prejudicial inasmuch as there was no agenda for the same.

22. Sri G.K. Singh, learned Senior Counsel further submitted that learned Single Judge has rightly held that details of so-called material were not disclosed. Even though the appellant University had filed counter affidavit and in the last paragraph of the resolution No.06/78, which was adopted on 15.09.2023, it was stated that Dr. Deepali Pant Joshi, who is nominee of the Hon'ble Chancellor in the Executive Council, said that a teacher is a role model and it is good to nip any problem in the bud, for smooth functioning and future of the institution. The learned counsel for the respondent-petitioner placed strong reliance on the judgement of the Apex Court in **Mathew P. Thomas vs. Kerala State Civil Supply Corpn. Ltd. and others**[9] to fortify his submission that if the services of a probationer were terminated by an order of termination simplicitor but the language of material to support it either show that it was punitive or stigmatic on the fact of it, the Court may leave the way to consider the attending circumstances for such order of termination.

23. Learned Senior Counsel further submitted that during the proceeding before learned Single Judge, a sealed envelop was placed by the Registrar of the University, which contained the documents including

9. (2003) 3 SCC 263

a letter of Prof. Prayag Narayan Mishra dated 13.09.2023, Coordinator Sanskrit, Pali, Prakrit Evam Prachya Bhasha Vibhag, which was addressed to the Vice Chancellor of the University, wherein the Coordinator had mentioned some complaints in regard to behaviour of the respondent-petitioner and even learned Single Judge has also taken note of the said complaint into notice. Once the complaint was entertained then the Executive Council has only to adopt the procedure in terms of Clause 2 (e) and (f) of the Ordinance XLI and not under Clause 5 (a) of the Ordinance. Accordingly, learned Single Judge has rightly observed that truthfulness of allegations were not verified and the petitioner was penalized only on the basis of complaints whose contents were not verified and even before completing the extended period of probation of one year. Learned Single Judge has rightly observed that the case of the petitioner falls under Clause 2 (e) and (f) of the Ordinance XLI and the same would not fall under Clause 5 (a) of the Ordinance. Admittedly, the appellant University had not followed its own mandate, which provides detailed procedure under Clause 2 (e) and (f) of the Ordinance XLI and therefore, the same is unsustainable. The judgement and order passed by learned Single Judge is liable to be approved and the instant appeal is liable to be dismissed.

FINDINGS OF THE LEARNED SINGLE JUDGE

24. The main contention urged before the learned Single Judge was that the order terminating the services of the respondent-petitioner was punitive in nature and it attached stigma to him. The learned Single Judge observed that undisputedly, the petitioner had completed his probation period of one year successfully and satisfactorily and therefore, by a unanimous decision of Executive Council vide a resolution 20.06.2023, the probation period of petitioner and other appointees was extended further for one year from the date of Executive Council dated 20.06.2023 vide notification dated 08.08.2023. The learned Single Judge further observed that in normal circumstances, extension of probation period for one year by a Notification dated 8.8.2023 would mean that the petitioner has a satisfactory service and, therefore, he was found fit to continue on probation for further one year and final decision would be taken on his

confirmation only after one year or any time earlier.

25. Learned Single Judge further considered the question that once after considering service of petitioner, the Executive Council adopted the resolution dated 26.06.2023 and extended the probation period of petitioner for one year, which would come to end in August, 2025, then under what circumstances the matter of petitioner was taken up for consideration within a short period of three months. The learned Single Judge recorded a finding that the Executive Council in its 78th meeting, without being a part of the circulated agenda but with permission of the Chair, considered the agenda on the subject without any apparent reason and therefore, procedure adopted appears to be suspicious and suffered with prejudice also. Learned Single Judge further observed that in this regard, the stand of the University as specifically mentioned in their counter affidavit, was that there were certain materials against the petitioner before the Executive Council, however, a decision was taken not to hold any inquiry and passed the order not to extend the probation and to terminate the petitioner from service. In counter-affidavit, details of so-called materials were not disclosed and in the last paragraph of Resolution No. 06/78 adopted on 15.9.2023 it has been stated that Dr. Deepali Pant Joshi, nominee of the Hon'ble Chancellor in the Executive Council said that a teacher is a role model and it is good to nip any problem in the bud for smooth functioning and future of the institution.

26. Learned Single Judge further observed that at the time of hearing, the petitioner was present in person and the Court had asked a query about nature of criminal case against him. The petitioner fairly submitted that a case of outrage of modesty was lodged against him, wherein after investigation the charge-sheet has been filed and it is at the stage of trial and presently he is on bail. Learned Single Judge also asked a query that why he has not disclosed the details of it in the form, however, he had no satisfactory answer to it. Learned Single Judge further observed that the issue of pending criminal case was not considered to be adverse either at the stage of selection process or at the stage of extension of period of probation. The information with regard to a criminal case was available with the University since it was disclosed in application form, though

details were neither mentioned nor sought by the University.

27. Learned Single Judge had relied upon the judgement of the Apex Court in the case of **Rajasthan High Court vs. Ved Priya and 2 others**[10], in which the Apex Court has dealt with the issue of termination during probation and if it was a stigmatic order then its consequence. Learned Single Judge observed that the petitioner was appointed under a due process. He had completed satisfactory service on probation of one year and on basis of his satisfactory service, his probation was extended for a period of one year. On the basis of material available, which also includes the material provided by University in a sealed envelope, the Executive Council considered the case of petitioner even without being part of agenda with permission of Chair and terminated his services under clause 5(a) of the Ordinance XLI. It was the stand of the University that there were some material before the Executive Council, which were considered and the material was a complaint of Co-ordinator, wherein there are allegations against the petitioner as well as a news cutting that petitioner was involved in a criminal case. It was also stand of University that the material was not considered to be such, which requires an inquiry to consider its truthfulness but it was not conducted. Therefore, from last paragraph of resolution, it could be held that definitely the said materials were considered and found adverse to petitioner. In such circumstances, learned Single Judge was of the considered opinion that order becomes stigmatic since all the resolutions are on the website of University and open for view of general public also and in case, petitioner applies in any other University, the said material will definitely become adverse to his future prospects.

28. Learned Single Judge had recorded a categorical finding that it is stand of University that truthfulness of allegations were not verified, therefore, the petitioner was penalized only on basis of complaints whose contents were not verified and even before completing the extended period of probation of one year. Accordingly, the case of petitioner would fall under clause 2(e) and (f) as contended by the petitioner and not under clause 5(a) of Ordinance XLI as contended by the respondent-University.

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10. (2021) 13 SCC 151

Admittedly, procedure prescribed under the Ordinance was not followed, The procedure adopted by University thus has legal flaws and was also against the legal principle discussed in **Ved Priya** (supra). In the aforesaid circumstances, learned Single Judge has allowed the writ petition and set aside the Resolution dated 20.06.2023 qua the petitioner and order of termination dated 15.09.2023.

ANALYSIS AND FINDINGS BY THE COURT

29. We have carefully considered the submissions made by the learned counsel for the parties and perused the documents annexed along with writ petition and the instant appeal.

30. It is not in dispute that the petitioner-respondent was appointed in the University in pursuance of appointment letter dated 21.05.2022. The appointment letter contains the terms & conditions governing petitioner's services. Clause-1 of the appointment letter contains duration of probation period and its extension as well as confirmation on satisfactory completion of probation period. Clause-5 of the appointment letter states that the offer of appointment was further subject to police verification of his antecedent and character and production of a medical certificate of fitness by the Senior Medical Officer, University Health Centre, University of Allahabad within three months of joining. Clause-6 of the appointment letter further provides that if any declaration or information furnished by him is proved to be false or if he was found to have willfully suppressed any information, he was liable to be dismissed from service and also subject to other legal action as University may deem necessary under rules applicable.

31. It is also not in dispute that by notification dated 08.8.2023, the probation period of the petitioner was extended for further one year from the date of meeting of the Executive Council dated 20.06.2023. During the extended period of probation, it was found that the petitioner had not disclosed crime number and details of offence for which he is facing criminal trial. After due deliberation on the service rendered by the respondent-petitioner, the Executive Council vide resolution No.06/78 dated 15.09.2023 resolved not to extend the services of the petitioner-

respondent and to terminate his contract of service under clause 5 (a) of the Ordinance XLI: Conditions of Service of teachers of the University.

32. The main contention urged before the learned Single Judge was that the order terminating the services of the respondent-petitioner was punitive in nature and it attached stigma to him. The learned Single Judge observed that the petitioner was appointed under a due process. He had completed satisfactory service on probation of one year and on basis of his satisfactory service, his probation was extended for a period of one year. During the extended period of probation, the Executive Council had considered the case of petitioner and terminated his services under Clause 5 (a) of the Ordinance LXI. Learned Single Judge has allowed the writ petition and recorded a finding that truthfulness of allegations were not verified and the petitioner was penalized only on the basis of complaints.

33. As regards the disclosure, the petitioner was required to give details of the criminal case pending against him as well as the nature of offence for which he is facing criminal trial. Admittedly, a criminal case relating to outraging of modesty of woman was registered against him and after investigation, charge-sheet has been filed against him. The petitioner had suppressed the material fact and in column details under the head of 'Disclosure', he mentioned 'For students political issues'. An employee on probation can be discharged from service on the ground of unsatisfactory antecedents and suppression of material information or making false statement in reply to queries relating to pendency of the criminal case as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post. We, therefore, do not agree with the findings of learned Single Judge in this regard.

34. In the case of **Ved Priya & another** (supra), which was relied by learned Single Judge, while allowing the writ petition, the respondents therein were initially appointed as Judicial Officer along with others and at the time of considering the candidature of those Judicial Officers for confirmation, the High Court, after taking into consideration the overall performance and the other requirement of a Judicial Officer under the service rules, have confirmed services of ninety Judicial Officers,

extended probation of one judicial officer, the services of two Judicial Officers, who were before the Court, were not confirmed and they were discharged. It is in those facts of the case, Hon'ble Supreme Court has held that the respondents therein failed to establish that the High Court intended or has actually punished him for any defined misconduct, it stands crystallized that the object of the High Court on the administrative side was to verify the suitability and not to enquire into the allegations against the first respondent. Hon'ble Supreme Court did not find that the foundation was the allegations but it was based upon a holistic assessment of the respondent's service records.

35. In **Ved Priya & Anr.** (supra), Hon'ble Apex Court reiterated that the purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation. This exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job. The true test of suitability is actual performance of duties, which can only be applied after the candidate joins and starts working. Such exercise is subjective and not objective. Probationers have no indefeasible right to continue in employment until confirmed. In case of a confirmed employee the scope of judicial interference would be more expansive given the protection under Article 311 of the Constitution or the Service Rules but such may not be true in the case of probationers, who are denuded of such protection while working on trial basis. Relevant paras from the judgment rendered by Apex Court in **Ved Priya** (supra) are as under:-

> "14. The present case is one where the first respondent was a probationer and not a substantive appointee, hence not strictly covered within the umbrella of Article 311. The purpose of such probation has been noted in Kazia Mohammed Muzzammil v. State of Karnataka (2010) 8 SCC 155:
>
> > "25. The purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation."

15. Similarly, in Rajesh Kumar Srivastava v. State of Jharkhand (2011) 4 SCC 447 it was opined:

> "9. … A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. …"

16. It is thus clear that the entire objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. Such an exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job. The true test of suitability is actual performance of duties which can only be applied after the candidate joins and starts working.

17. Such an exercise undoubtedly is subjective, therefore, Respondent No.1's contention that confirmation of probationers must be based only on objective material is far-fetched. Although quantitative parameters are ostensibly fair, but they by themselves are imperfect indicators of future performance. Qualitative assessment and a holistic analysis of non-quantifiable factors are indeed necessary. Merely because Respondent No. 1's ACRs were consistently marked 'Good', it cannot be a ground to bestow him with a right to continue in service.

18. Furthermore, there is a subtle, yet fundamental, difference between termination of a probationer and that of a confirmed employee. Although it is undisputed that the State cannot act arbitrarily in either case, yet there has to be a difference in judicial approach between the two. Whereas in the case of a confirmed employee the scope of judicial interference would be more expansive given the protection under Article 311 of the Constitution or the Service Rules but such may not be true in the case of probationers who are denuded of such protection (s) while working on trial basis.

19. **Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable. Its only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are 'removed' in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of 'stigmatic' removal only that a reasonable opportunity of hearing is sine-qua-non. Way back in Parshotam Lal Dhingra v. Union of India AIR 1958 SC 36, a Constitution Bench opined that:**

> **"28.... 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.**"
>
> **(Emphasis supplied)**

36. It is gainful to note that the Apex court in para-24 of the decision in the case of **Ved Priya** (supra) observed that the unsatisfactory performance of a probationer and resultant dispensation of service at the end of the probation period, may not necessarily be impacted by the fact that meanwhile, there were some complaints attributing specific misconduct, malfeasance or misbehavior to the probationer. If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of over all performance during the period of probation, the theory of action being punitive in nature, will not be attracted. Onus would thus lie on the probationer to prove that the action taken against him inheres punitive characteristics. In para-24 of the said judgement Hon'ble Supreme Court has also observed that since Respondent No.1 (therein) has failed to establish that the High Court intended or has actually punished him for any defined misconduct, it stands crystallized that the object of the High Court on the administrative side was to verify the suitability and not to enquire into the allegations against the first respondent.

37. Facts of the case in hand are entirely different from the facts of Ved Priya. In the case at hand, the petitioner-respondent was appointed on probation and he was terminated from service under Clause 5 (a) of the Ordinance XLI: Conditions of Service of teachers of the University. The petitioner's services were not confirmed at the time of evaluation of his suitability and after due deliberation on the service rendered by him, it was unanimously resolved by the Executive Council to not extend his services and to terminate his contract of service on making a payment of a sum equivalent to one month's salary in lieu of a notice of termination.

38. For ready reference, Clause 2 (e), 2 (f) and 5 (a) of the Ordinance XLI are quoted below:-

"**Ordinance XLI : Conditions of service of Teachers of the University**

1. xxx

2. (a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) Where the work or conduct, or both, of a teacher appointed on probation is, or are, not considered satisfactory, the Executive Council may, during or on the expiry of the period, including extended period, of probation, after considering a report of the same officer or functionary responsible for making the report under sub-clause (c) in respect of the confirmation of such teacher, or any other report of a competent officer or functionary endorsed by the Vice-Chancellor, in respect of the work or conduct of such teacher, terminate his services.

(f) An order of termination of services, under sub-clause (e), shall not be made by the Executive Council, except after notice to the concerned teacher giving him an opportunity of explanation in respect of the grounds on which his services are proposed to be terminated: Provided that if such notice is given before, or on, the date of the expiry of the period, including extended period, of probation, the period shall stand extended up to the date on which the order of termination is communicated to the teacher concerned.

3. xxxx

4. xxxx

5. (a) Except in the case of a teacher referred to in sub-clause (e) of clause 2, the contract of service, and the engagement thereunder, of a teacher appointed on probation, or in temporary capacity, may be terminated by one month's notice on either side, or by payment, by the party choosing to terminate the said engagement, of a sum equivalent to one month's salary in lieu of such notice:

Provided that where, in the case of a teacher appointed in temporary capacity

(i) such engagement is for a period of less than one month, or

(ii) the duration of such engagement has already been specified or notified to the teacher concerned in advance and the sald engagement is terminated in accordance with the term so specified or notified; or

(iii) such engagement has been determined by the Executive Council under the provisions of sub-clause (a), (d), (e) or (1) of clause 7, neither notice, nor payment of salary in lieu of notice, shall be necessary."

39. In view of Clause 5 (a) of the Ordinance XLI, principles of natural justice need not be followed while terminating the services of a probationer. Neither any notice is required to be given to the probationer nor any opportunity of hearing is to be accorded to him. Merely because the order terminating probationer's service, refers to his unsatisfactory

performance not suitable for confirmation, the order cannot be said to be stigmatic. Such an order would not assume characteristics of a stigmatic order just because a prospective employer might be prejudiced.

40. In **Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivastava and another**[11], **State of W.B. and others v. Tapas Roy**[12] and **Rajesh Kumar Srivastava v. State of Jharkhand and Others**[13], Hon'ble Supreme Court has repeatedly held that an order terminating the services of a probationer on the ground of unsatisfactory performance is not a stigmatic order and there is no requirement of following the principles of natural justice in such a case.

41. In the case of **Dipti Prakash Banerjee** (supra), the Apex Court, while determining as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as motive for passing such a simple order of termination, a distinction is explained in para-21 as under: -

> "21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

42. In **Rajesh Kumar Srivastava** (supra) Hon'ble Supreme Court held that while taking a decision to terminate the services of a probationer, no notice is required to be given where the decision is taken by the employer considering the employee's over all performance, conduct and suitability to the job and strictly speaking, these are not cases of removal but of discharge simplicitor.

43. In **State of Uttar Pradesh and another v. Kaushal Kishore**

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11. (2007) 1 SCC 491

12. (2006) 6 SCC 453

13. (2011) 4 SCC 447

Shukla[14], the Supreme Court held as under:-

> "7. …….Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India [1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544] , a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests namely: (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment….."

44. In **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another** (supra), the Supreme Court once again deliberated on the semantic concepts like 'motive' and 'foundation' and reiterated and re-affirmed the position that termination founded on misconduct is illegal but where misconduct is the motivating factor, termination warrants no interference.

45. The Apex Court in the case of **Daya Shankar Yadav** (supra) was faced with a similar issue, wherein a CRPF officer upon suppression of material facts was terminated from the service. The Apex Court, while referring to its previous decisions, summarised the position as follows:

> "14. … **The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service."**
>
> **15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:**
>
> **(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer**

14. (1991) 1 SCC 691

may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and

(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).

This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."

(**emphasis supplied**)

46. In **Kendriya Vidyalaya**'s case (supra) the Apex Court held that the purpose of requiring an employee to furnish information regarding prosecution/conviction, etc. in the verification form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information and making a false statement in reply to the queries relating to prosecution and conviction had a clear bearing on the character, conduct and

antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to the matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. The Apex Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer, who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer. Relevant portion of the judgement is reproduced as follows :-

> "11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34, IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.
>
> 12. **The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case**

> **ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not**. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was nor automatic, cannot be accepted."
>
> **(emphasis supplied)**

47. In the case of **State of Madhya Pradesh and Others vs. Abhijit Singh Pawar**[15], when the employee participated in the selection process, he tendered an affidavit disclosing the pending criminal case against him and according to the disclosure, a case registered in the year 2006 was pending on the date when the affidavit was tendered. However, within four days of filing such an affidavit, a compromise was entered into between the original complainant and the employee and an application for compounding the offence was filed under Section 320 Cr.P.C. The employee came to be discharged in view of the deed of compromise. Thereafter the employee was selected in the examination and was called for medical examination. However, his character verification was also undertaken and after due consideration of the character verification report, his candidature was rejected. The employee filed a writ petition before the

15. (2018)18 SCC 733

High Court of Madhya Pradesh challenging rejection of his candidature and learned Single Judge of the High Court of Madhya Pradesh allowed the said writ petition on 31.7.2014. The judgment and order passed by the learned single Judge directing the State to appoint the employee came to be confirmed by the Division Bench, which led to appeal before the Apex Court. After considering catena of decisions on the point including the decision of this Court in the case of **Avtar Singh v. Union of India**[16], the Apex Court upheld the order of the State rejecting the candidature of the employee by observing that as held in **Avtar Singh** (supra), even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate. After reproducing and/or re-considering para 38.5 of the decision in the case of **Avtar Singh** (supra), the Apex Court observed and held as under:-

> "14. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.
>
> 15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. **Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.**
>
> 16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the autorickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).
>
> 17. We must observe at this stage that **there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the**

16. (2016) 8 SCC 471

> **candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference.** We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs."
>
> **(emphasis supplied)**

CONCLUSION

48. Hon'ble Apex Court while considering **Pavanendra Narayan Verma**'s case (supra) had considered what should be the test to determine whether a letter of termination of service was termination simplicitor or stigmatic termination. After referring to a number of authorities including the judgment in **Parshotam Lal Dhingra vs. Union of India**[17] the Apex Court has held as under (vide para 19):

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

49. Hon'ble Apex Court has further formulated the judicial test to determine as to on which side of the fence the case lay, in the following words (vide para 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 (c) 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."

50. The real test to be applied in every situation where an employee is removed by an innocuous order of termination is: "Is he discharged as unsuitable or is he punished for his misconduct?". If the order of termination from service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee.

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17. AIR 1958 SC 36

51. In the instant matter, we have carefully examined the resolution of the Executive Council and the termination order. The finding of learned Single Judge qua the fact, that no agenda was there in the meeting of Executive Council, is unsustainable as the matter falling even outside the agenda can always be taken with the leave of the Vice Chancellor of the University and the case of the petitioner was taken into consideration by the Executive Council with the leave of the chair i.e. Vice Chancellor of the University.

52. The instant matter can also be seen from another angle that the petitioner, who was aggrieved with the order of termination being simplicitor by which his services were dispensed with, challenged the same in the writ petition and while responding the writ petition the University had taken a very innocuous and categorical stand that the order was simplicitor and no material was brought by the University with the counter affidavit, which could even reflect a glimpse of impression that the order of simplicitor could be presumed as stigmatic. No doubt, learned Single Judge has a right to lift the veil to find out the actual reason, which prompted the University to pass such an order. Thereafter, on the instance of learned Single Judge the material was placed by the appellant University in a sealed cover. Till the submission of papers in the sealed cover, no document was in public domain except the resolution of the Executive Council. Therefore, we find that there was no reason or occasion to mention the papers, which were supplied by the University, on insistence of the learned Single Judge.

53. Surprisingly, the petitioner was present in the court room and learned Single Judge himself had asked certain queries to the petitioner in the open court. Even the details are averred in the impugned judgment, which also categorically reflect that the petitioner himself has failed to satisfy the Court qua the concealment of criminal proceeding. In such situation the employer i.e. University cannot be blamed and no onus can be shifted upon the University that the order of dispensation of petitioner’s services as probationer is stigmatic. In the absence of any attempt by the University to place the complaint/report and newspaper cutting on affidavit or to bring it in public domain, the order of

termination, as on the face of it, remains simplicitor.

54. As averred in the earlier part of the judgement, we find that a termination order, which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic. Therefore, what emerges from the conspectus of the aforesaid judgements is that if an order is found on allegations, the order is stigmatic and punitive and services of an employee cannot be dispensed without affording him an opportunity of defending the accusations/allegations made against him in a full-fledged inquiry.

55. In the instant matter, the procedure adopted by the appellant University under Clause 5 (a) is just and proper as the said provision leaves it open upon the wisdom of the employer to part with the enquiry, if the employer did not find it proper to institute an enquiry. The term used 'may' in Clause 5 (a) leaves upon the discretion of the University to dispense with service of the probationer by simply payment of one month salary in lieu of notice.

56. The employer/University is well within its domain in not continuing the petitioner, who is facing grave charge of molestation and is bailed out in the criminal case. The factum of not disclosing the details/nature of criminal case against the petitioner may have independently invited the termination even in absence of any complaints. The requirement of integrity and high standard of conduct is of paramount importance in the service of teacher. However, in this case, it was not a case of termination on the ground of complaint, but was a simple discharge of probationer.

57. We are, therefore, of the considered opinion that the mere reiteration of a universal fact of Dr. Deepali Pant Joshi, does not amount to stigma by any stretch of imagination as it can at the best be taken as a general statement. The termination of the petitioner is, therefore, neither punitive nor stigmatic.

58. For the aforesaid reasons, we are of the firm view that the learned Single Judge has recorded contradictory findings of facts in the impugned judgement.

59. In view of the law laid down on the subject by the Apex Court and the material placed on record, the judgement of learned Single Judge dated 23.05.2024 deserves to be set aside and is hereby set aside.

60. Accordingly, the Special Appeal stands allowed.

Order Date :-26.09.2024
RKP