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**AFR**

**Reserved On: 30.08.2024**

**Chief Justice's Court**

**Case :-** WRIT - A No. - 16078 of 2018

**Petitioner :-** Commissioner, Kendriya Vidyalaya Sangathan And 3 Others
**Respondent :-** Central Administrative Tribunal, Allahabad Bench And Another
**Counsel for Petitioner :-** Devendra Pratap Singh
**Counsel for Respondent :-** Arvind Srivastava III

**Hon'ble Arun Bhansali,Chief Justice**
**Hon'ble Vikas Budhwar,J.**

**(Per: Vikas Budhwar, J.)**

1. Impugned in the present proceedings at the instance of Commissioner, Kendriya Vidyalaya Sangathan, New Delhi (in short 'K.V.S.') is the order dated 24.04.2018 of Central Administrative Tribunal, Allahabad, bench Allahabad (in short 'Tribunal') in O.A. No.330/01233 of 2010 whereby the original application preferred by Sanjay Singh (in short 'original applicant') challenging the orders dated 19.08.2009 of the K.V.S. terminating the services of the original applicant as well as the order dated 10.11.2009 holding that the appeal preferred by the original applicant on 08.08.2009 in terms of Article 81-B read with sub-para 7 of the Education Code against the show cause memorandum dated 28.05.2009 does not lie, order dated 15/18.06.2010 whereby the revision preferred by the original applicant against the termination order dated 19.11.2008 needs no reconsideration and the order dated 02.07.2010 rejecting the representation of the original applicant for reconsideration of the order discharging him from service, has been allowed, all the orders impugned have been set aside and original applicant has been ordered to be reinstated back in service.

2. A joint statement has been made by learned counsel for the rival parties that the pleadings are complete and they do not intend to file any further affidavits and the writ petition be decided on the basis of the documents available on record. With the consent of the parties, the writ petition is being decided at the admission stage.

**Facts**

3. The case of the original applicant projected before the Tribunal was that pursuant to a recruitment exercise undertaken by the K.V.S., the original applicant after facing selection was offered appointment on the post of Work Experience Teacher in the pay scale of Rs. 5500-175-9000/- in Kendriya Vidyalaya, Dinjan, Assam on 19.11.2008. As per the offer of the appointment to the post of Work Experience Teacher, the original applicant was to report on duty by 05.12.2008. The original applicant claims to have reported for duty on 02.12.2008 and performed his duties with utmost sincerity till 12.12.2008. Since Dinjan happened to be a very cold station and the original applicant was short of warm clothes so he took permission from the Principal of the K.V.S., Assam and got his leave sanctioned w.e.f. 13.12.2008 onwards.

4. According to the original applicant, the Vidyalaya in question was going to close for winter vacation from 21.12.2008 so there was no question of any loss to the students. It is also the case of the original applicant that on the reopening of the Vidyalaya on 01.01.2009, the original applicant got his reservations done by train, however, as the ill luck it may be, there happened to be a major train accident between Allahabad and Kanpur Station resulting to cancellation of several trains which constrained the original applicant to extend his leave. Somehow, the original applicant managed to reach Dinjan on 07.01.2009 and he reported for duty on 08.01.2009. The original applicant claims to have met the Principal of the Vidyalaya requesting him to accord permission to join the duties from 01.01.2009 but for the reasons best known to him, permission was not accorded to the original applicant to enter the Vidalaya campus itself. Repeated request was extended by original applicant but the same was in vain. The original applicant again on 09.01.2009 and 10.01.2009 requested for joining the duties on 10.01.2009, the original applicant claims to have made telephonic conversation with the Assistant Commissioner of the K.V.S. and apprised

him of the entire situation which was followed by a detailed representation dated 10.01.2009. Being frustrated with the odd situation and harassment meted to him, the original applicant claims to have lodged a first information report at Police Station- Dinjan. As joining was not accorded and things had become bad to worse so the original applicant having no alternative left, returned back to Kanpur on 11.01.2009 and thereafter fell ill due to high fever, he could not join the Vidalaya.

5. On 30.04.2009, a communication is stated to have been issued under the signatures of the Assistant Commissioner KVS, Regional Office, Silchar, Assam whereby it was recited that the original applicant is absent from duties w.e.f. 08.01.2009 and he was advised to report for duties immediately failing which disciplinary action would be taken against him as per K.V.S. Rules. The original applicant on the receipt of the said communication reported for duty on 19.05.2009 wherein the Principal of the K.V.S. apprised him that since the Vidyalaya is closed, thus, the original applicant cannot be accorded joining and he was instructed to join on 22.06.2009, the opening day of the Vidyalaya after summer vacation. On 28.05.2009, the Assistant Commissioner, K.V.S., Regional Office, Silchar, Assam proceeded to issue a notice purported to be under Article 81-D of the Education Code of the Kendriya Vidyalaya show causing as to why on account of unauthorized absence, he may not be deemed to have been removed from the service and for that purpose 10 days time for show causing was accorded to the original applicant. The original applicant on the receipt of the notice tendered his reply on 06.05.2009. A representation/ request letter for according joining was also made by the original applicant on 15.06.2009 before the Assistant Commissioner, K.V.S., Silchar, Assam. It is alleged that the applicant consequent to the opening of the Vidalaya post vacations appeared for joining on 22.06.2009 and thereafter the Principal of the Vidyalaya permitted the original applicant to join duties on 22.06.2009 and he worked up till 25.06.2009. On 25.06.2009, the Principal of the Vidyalaya

directed the original applicant to sign some blank papers and also obtained his receipt on certain orders and proceeded to cancel the entire joining of the original applicant from 22.06.2009 to 25.06.2009 (four days) on the premise that the original applicant was erroneously permitted to join, the original applicant on 25.06.2009 claims to have preferred an objection against the notice dated 28.05.2009 of the Assistant Commissioner, K.V.S., Silchar, Assam.

6. Thereafter, the Senior Administrative Officer of the K.V.S. (H.Q.), New Delhi proceeded to issue a communication dated 14.07.2009 requiring the original applicant to prefer appeal before the appellate authority against loss of the lien vide order dated 28.05.2009 of the Assistant Commissioner, K.V.S. Regional Office, Silchar. On 08.08.2009, the original applicant preferred an appeal before the appellate authority. On 19.08.2009, an order came to be passed by the Assistant Commissioner, K.V.S. Regional Office, Silchar, Assam whereby the services of the original applicant came to be terminated on completion of one month notice.

7. Being aggrieved against the termination order dated 19.08.2009 of the Assistant Commissioner, K.V.S., Regional Office, Silchar, Assam, the original applicant preferred an appeal on 09.09.2009 before the appellate authority. On 10.11.2009, the Joint Commissioner (Acad. and Admin.)/ appellate authority proceeded to pass an order holding that appeal preferred by the original applicant before the appellate authority was not maintainable against the show cause memorandum dated 28.05.2009. The applicant thereafter preferred a detailed representation on 06.03.2010 in the form of Revision under Schedule-II read with Appendix-III of K.V.S. Code.

8. The original applicant being further aggrieved against the acts and omissions of the writ petitioners/ K.V.S. preferred O.A. No.683 of 2010 before the Tribunal, (Sanjay Singh v. State of U.P. and others) which came to be disposed of on 10.05.2010 with a direction to the original applicant

to file reply to the show cause notice dated 28.05.2009 within a period of two weeks from the date of the receipt of the certified copy of the order and the competent authority was directed to pass a reasoned and speaking order within a period of two months. The original applicant submitted his response/ objection to the show cause notice on 12.05.2010. On 15/18.06.2010, the Education Officer of K.V.S., New Delhi proceeded to pass an order holding that there is no provision of reconsideration of the termination during probation in terms of the offer of the appointment. On 02.07.2010, another communication came to be issued negating the claim of the original applicant while holding that since the original applicant was not confirmed teacher, thus, the provisions of the Article 81-D of the Education Code will not apply and due to inadvertence, a show cause notice came to be issued on 28.05.2009 which stands withdrawn.

9. Questioning the orders dated 19.08.2009, 10.11.2009 15/18.06.2010 and 02.07.2010, the original applicant preferred O.A. No. 330/01233 of 2010 before the Tribunal seeking following reliefs:

> *" A. To issue a writ order or direction in the nature of certiorari, quashing the order dt. 19.8.09, 10.11.09, 15/18.6.2010 & 2.7.2010 (Annexure no. 1, 2, 3 & 4 respectively) passed by the respondents.*
>
> *B. To issue a further writ order or direction in the nature of mandamus commanding the respondents to reinstate the applicant as work experience teacher and permit him to work as such and grant him seniority, arrears of salary and other consequential benefits for which he is entitled for.*
>
> *C. To pass any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*
>
> *D. To award the cost of the present O.A. in favour of the applicant."*

10. On being noticed, the writ petitioners who were respondents before the Tribunal filed their response, to which a rejoinder affidavit was filed.

11. The original applicant came up for consideration before the Tribunal on 24.04.2018 wherein the same stood allowed, the orders impugned was set aside and the writ petitioners were directed to reinstate the original applicant in service as per his appointment order with all

consequential benefits within a period of three months from the date of the production of the certified copy of the order.

12. Questioning the order of the Tribunal, the present writ petition has been preferred seeking following reliefs:

> *"1. issue a writ, order or direction in the nature of certiorari to call for record of the case and quash the judgment and order dated 24.4.2018 passed by the Hon'ble Central Administrative Tribunal, respondent no.1 in O.A. No. 1233 of 2010 (Annexure No. 1 to the writ petition).*
>
> *2. issue any other suitable writ petition, order or direction, and/or to pass such other and further order which this Hon'ble Court may deem fit and proper under the circumstances of the case.*
>
> *3. award the cost to the petition in favour of the petitioner."*

13. On 27.07.2018, the following orders were passed:

> *"Heard Sri D.P. Singh, learned counsel for the petitioner and Sri Islam Ahmad for the respondent no.2.*
>
> *The petitioners in the writ petition are seeking quashing of the order dated 24.4.2018, passed by the Central Administrative Tribunal, Allahabad in O.A. No.330/01233/2010, whereby, the Tribunal has set aside the order of termination of respondent no.2 and directed his reinstatement in service with all consequential benefits.*
>
> *The matter requires consideration.*
>
> *Respondent may file counter affidavit within four weeks.*
>
> *List thereafter.*
>
> *Till the next date of listing, operation of order of the Tribunal dated 24.4.2018, shall remain stayed."*

14. A response has been filed by the original applicant to which a rejoinder affidavit has been filed.

**<u>Arguments of Counsel for K.V.S.</u>**

15. Shri D.P. Singh, learned counsel for the writ petitioners/ K.V.S. has sought to argue that the judgment and order of the Tribunal, impugned in the present proceedings cannot be sustained for a single moment inasmuch as the Tribunal while endorsing the claim of the original applicant has misconstrued the entire controversy and adopted an incorrect approach. Elaborating the said submission, it is being submitted

that the reasoning assigned by the Tribunal while coming to the conclusion that it was a case of punitive discharge of services suffers from inherent fallacy, particularly, when neither any preliminary inquiry nor any departmental enquiry was initiated pursuant to issuance of any charge-sheet. However, only on the basis of overall assessment of the work of the original applicant, he was discharged from services. According to the writ petitioners, the original applicant was a probationer who was offered appointment on the post of Work Experience Teachers on a probation period with a clear stipulation during the probation period and thereafter, before he is confirmed, the services of the original applicant are terminable by one month notice or either side without any reasons being assigned.

16. Submissions is that the probationer does not possess any legal right to resist the discretion exercised by the appointing authority in discharging his services, as the original applicant is only a probationer subject to overall assessment by the employer. He further submits that though the writ petitioner pursuant to the offer of the appointment reported on duty on 02.12.2008 but without there being any sanctioned leave, he unauthorizedly remained absent from 13.12.2008 that too without due intimation and merely because, a notice purported to be under sub-clause (3) of Article 81-D of the Education Code was issued proposing to discharge his services on account of the voluntary abandonment of services, the same would not give any legal right to the original applicant, particularly, when no further action whatsoever was taken on the said notice and the same stood withdrawn.

17. Argument is that the position might have been different in case for any misconduct (unauthorized absence) any departmental enquiry was proceeded with thus the entire approach of the Tribunal itself, proceeds on misconception of facts and law and the order impugned in question is liable to be set aside.

18. Attention has also been invited towards the order dated 19.08.2009 dispensing with the services of the original applicant so as to contend that the order does not indicate in any manner whatsoever that the same is punitive as the position is otherwise as it is a simpliciter order of discharge. Reliance has been placed upon the decision in the cases of ***Municipal Committee, Sirsa v. Munshi Ram,*** **(2005) 2 SCC 382,** ***Punjab and Others v. Sukhwinder Singh,*** **(2005) 5 SCC 569,** ***Chaitanya Prakash and Another v. H. Omkarappa,*** **(2010) 2 SCC 623** and ***Rajesh Kumar Srivastava v. State of Jharkhand and Others*****, (2011) 4 SCC 447** so as to content that the probationer has no legal right and it is always open for the employer to adjudge the suitability and once a simpliciter discharge order is passed then there is no requirement of adherence of the principle of natural justice. It is, thus, prayed that the order of the Tribunal be set aside and the writ petition be allowed *in toto*.

**Arguments of Learned Counsel for Original Applicant**

19. Countering the submission of the learned counsel for the K.V.S., Shri Arvind Srivastava-III who appears for the original applicant submits that the order of the Tribunal needs no interference in the present proceedings. It is submitted that the services of the original applicant has been dispensed with by resorting to punitive measure as the basic reason attributable to terminate the services of the original applicant was the allegation with respect to unauthorized absence.

20. Submission is that once the show cause notice dated 28.05.2009 came to be issued containing an allegation to the effect that the original applicant was unauthorizedly absent from duty then it is a open and shut case that the writ petitioners had resorted to punitive measures.

21. According to the original applicant, there were intervening circumstance beyond the control of the original applicant which created a situation whereby after taking permission, the original applicant proceeded on leave and left the station on 13.12.008 and thereafter when

he reported for joining on 08.01.2009 but he was not allowed joining but subsequently, he was accorded joining on 22.06.2009 and he worked till 25.06.2009 and thereafter unilaterally the joining of the original applicant was cancelled. It is the submission of the original applicant that the entire action taken by the writ petitioners is just in order to get rid off the original applicant as though at one stage notice dated 28.05.2009 was sought to be issued but in order to hush up the entire episode, the notice stood withdrawn which itself shows that the entire action is nothing but a camouflage. While driving force from the judgment in ***Anoop Jaiswal v. Government of India and Another 1984*** **(2) SCC 369**. It is contended that the order dispensing with the services with the original applicant is punitive and on account of misconduct that too in violation of principles of natural justice. Reliance has also been placed upon the judgment in ***Jarnail Singh and Others v. State of Punjab and Others*****, 1986 (3) SCC 277** so as to further contend that once the services are to be terminated on the basis of the allegations of misconduct then, the same partakes the character of a punitive order. Therefore, it is prayed that the writ petition be dismissed and the judgment and the order of the tribunal be affirmed.

**Analysis**

22. We have given the thoughtful submission of the rival parties and perused the record.

23. Undisputedly, an offer of appointment came to be issued in favour of the original applicant on 19.11.2008 appointing the original applicant as a Work Experience Teacher in Kendriya Vidyalaya, Dinjan Assam in the pay scale of Rs.5500-175-9000/- whereby the original applicant was to report on duty by 05.12.2008.

24. The relevant terms and conditions of the offer of the appointment is quoted hereinunder:

> *"4. He/She will be on probation for a period of 02 years which may be extended. Upon successful completion of probation, he/she will be confirmed in his/her turn as per Kendriya Vidyalaya Sangathan rules.*

*5. During the probation and thereafter, until he/she is confirmed, the services of the appointee are terminable by one month notice on either side without any reason being assigned, thereof. The appointing authority, however, reserves the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of such equivalent to the pay & allowances for the period of notice of the unexpired portion thereof."*

25. It is also not in dispute that the original applicant reported for joining on 02.12.2008 and thereafter proceeded to leave the appointed place on 13.12.2008. Pleadings reveal that on one hand the original applicant claims that he was accorded permission and his leave was sanctioned w.e.f. 13.12.2008 but on the other hand the same is disputed by the K.V.S. as according to them, there is nothing on record to suggest that the leave was sanctioned. As per the original applicant, the Vidyalay went off for winter vacation from 21.12.2008 and was to reopen on 01.01.2009 but due to a major train accident between Allahabad-Kanpur station, the train was cancelled so he reached Dinjan on 07.01.2009 and reported for duty on 08.01.2009 but he was not accorded joining and he made request on 09.01.2009 and 10.01.2009 but the same was in vain so he made correspondences before the Assistant Commissioner, K.V.S. as well as the Principal. The original applicant returned back to Kanpur on 11.01.2009 wherein he claims to have received a letter dated 30.04.2009 of the Assistant Commissioner, K.V.S. requiring him to join the duties as he was unauthorizedly absent, so he again approached the Vidyalay and he was accorded joining on 22.06.2009 and he discharged the duties till 25.06.2009 (four days), whereafter a notice came to be issued on 28.05.2009 of the Assistant Commissioner, Kendriya Vidyalaya Sangathan Regional Office, Silchar, Assam show causing the original applicant that as to why he shall not be deemed to have been abandoned the service owing to loss of lein for not joining the duties. On 19.08.2009, an order came to be passed by the Assistant Commissioner, Kendriya Vidyalaya Sangathan Regional Office, Silchar, Assam whereby the original applicant services stood terminated on completion of one month.

26. The bone of contention between the parties is whether the order of terminating the services of the original applicant on the face of allegation of unauthorized absence can be said to be an exercise of termination simpliciter or punitive. To answer the said question, it would be apposite to retrace the law on the said subject.

27. The Hon'ble Supreme Court in ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre For Basic Sciences, Calcutta and Others*****, (1999) 3 SCC 60**, in para 21 had observed as under:

> *"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."*

28. In ***Pavendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Another*****, (2002) 1 SCC 520**, in para 29, the following was held:

> *"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."*

29. In ***Chandra Prakash Shahi v. State of U.P. and Others*****, (2000) 5 SCC 152**, following was observed:

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

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

30. In **State of *Punjab and Others v. Sukhwinder Singh*, (2005) 5 SCC 569**, the Hon'ble Supreme Court was confronted with the situation wherein a probationer remained continuously absent for 22 days and he was discharged without holding a formal or a departmental enquiry or a preliminary or fact finding inquiry, it was held as under:

*"20. In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of the Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon*

*misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh v. State of Punjab the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules."*

31. In ***Municipal Committee, Sirsa v. Munshi Ram*****, (2005) 2 SCC 382**, the issue involved and which engaged attention was with respect to termination of a probationer and in para 10, it was observed as under:

*"It is clear from the above that if the order of termination indicates that it is a termination simpliciter and does not cast any stigma on the employee by the said order of termination the mere fact that there was an inquiry into his conduct earlier would not by itself render the termination invalid. Applying the said principle, we see that the order of termination in the present case is an order of discharge simpliciter. But in the course of the inquiry, the Labour Court noticed that on an earlier day there was some incident where the administrative officer found some lacunae in the working of the respondent but based on that no charge-sheet was served nor inquiry was conducted. However, the appellant came to the conclusion that it is not in its interest to continue the respondent's services, hence, discharged him. In the background, the mere fact that there was a misconduct on the part of the respondent which was not enquired into ipso facto does not lead to the conclusion that the order of termination is colourable and in fact is a punitive order."*

32. The Hon'ble Supreme Court in ***State of W.B. and Others v. Tapas Roy,*** **(2006) 6 SCC 453** was dealing with a discharge order mentioning several instances of unauthorized absence of a probationer and while following the judgments on the said subject, it was observed as under:

*"8. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are*

*absent, the order would not be punitive. We have also held that stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. In our view, the language, quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly, of the view that the appeal must be allowed. It is, accordingly, allowed and the impugned order is set aside."*

33. In ***Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivastava and Another*****, (2007) 1 SCC 491**, the Hon'ble Apex Court held as under:

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

*45. This Court's decision in P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences[1] can be referred to in this context, where it was held by this Court that the services of a probationer can be terminated at anytime before confirmation, provided that such termination is not stigmatic. This Court in State of M.P. v. Virendera Kumar Chourasiya also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable."*

34. While dealing with the case of a probationer whose services stood terminated on account of the unsatisfactory service, in the case of ***Chaitanya Prakash and Another v. H. Omkarappa*****, (2010) 2 SCC 623**, the following was observed:

*"18. It is no longer res integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In this connection, we make a reference to the decision of the Supreme Court in Abhijit Gupta v. S.N.B. National Centre, Basic Sciences[1], wherein also a similar letter was issued to the employee concerned intimating him that his performance was unsatisfactory and, therefore, he is not suitable for confirmation. We have considered the ratio in light of the facts of the said case and we are of the considered opinion that the basic facts of the said case are almost similar to the one in hand. There also, letters were issued to the employee concerned to improve his performance in the areas of his duties and that despite such communications the service was found to be unsatisfactory. In the result, a letter was issued to him pointing out that his service was found to be unsatisfactory and that he was not suitable for confirmation, and, therefore, his probation period was not extended and his service was terminated, which was challenged on the ground that the same was stigmatic*

*for alleged misconduct. The Supreme Court negatived the said contention and upheld the order of termination."*

35. With regard to termination of a probationer on the premise of non-suitability for the job, the Hon'ble Supreme Court in ***Rajesh Kumar Srivastava v. State of Jharkhand and Others*****, (2011) 4 SCC 447** observing held as follows:

> *"The order of termination passed in the present case is a fallout of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and, therefore, there is no infirmity in the impugned judgment and order passed by the High Court."*

36. The Hon'ble Supreme Court in ***Dr. Vijayakumaran C.P.V. v. Central University of Kerala and Others*****, (2020) 12 SCC 426** held as under:

> *"It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in "any document referred to in the termination order". Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex facie stigmatic order of termination. A three-Judge Bench of this Court in Indra Pal Gupta v. Model Inter College had occasion to deal with somewhat similar situation. In that case, the order of termination referred to the decision of the Managing Committee and subsequent approval by the competent authority as the basis for termination. The resolution of the Managing Committee in turn referred to a report of the Manager which indicated serious issues and that was made the basis for the decision by the Committee to terminate probation of the employee concerned."*

37. Recently in the case of State of ***Punjab and Others v. Jaswant Singh*****, (2023) 9 SCC 150**, the issue which fell for consideration before the Hon'ble Supreme Court was with regard to unauthorized absence without any intimation by the probationer and the Hon'ble Supreme Court observed as under:

> "23. *Similarly, in Amar Kumar, wherein the Court found that the appellant therein had instigated to do commotion/agitation/protest and also raised slogans by spreading false rumours in connection with the death of one of the trainees, which was the foundation to pass the order for termination. Thus, in the said case, the Court was of the opinion that the order of termination cannot be simpliciter. In both the cases as referred to above, the allegation of serious misconduct is common, unlike in the instant case, wherein, the foundation of*

*discharge is not on any serious allegation or act of misconduct. The discharge order was passed on the recommendation of the supervisory authority concerned of the Training Centre due to prolonged absence from training without any intimation. The authority found that the probationer constable has no interest in training, and no sense of responsibility, hence, he cannot prove himself a good, efficient police officer. In view of above discussion, both the referred cases are distinguishable on facts."*

38. An irresistible conclusions stand drawn from the proposition of law culled out from the above noted decision is that with respect to termination of services of a probationer if it is by an order simpliciter and on the ground of unsuitability of the employee from the post and/ or unsatisfactory performance, the action would be tenable in law since the stimulus or motive is the unsatisfactory service, however, if findings were arrived in an inquiry, as to the misconduct behind the back of an officer or without a regular departmental inquiry, the simple order of termination is to be treated to be founded on the allegations and would be bad in law. Therefore, there is no strict jacket formula and each case, 'motive' or 'foundation' behind the termination order will have to be ascertained to decide whether the termination order is bad in law.

39. Reverting to the facts of the case, pleadings reveal that there is an allegation against the original applicant that he remained unauthorizedly absent without there being any sanctioned leave from the competent authority of the K.V.S. from 13.12.2008. However, we find that the termination order dated 19.08.2009 does not contain any recital that the same is on the basis of any misconduct as rather to the contrary, the same is a simpliciter discharge order.

40. Interestingly, the termination/discharge order also does not contain any reference to any correspondence either by way of any advisory or reference to the show cause notice but only refers to the terms and conditions of the offer of the appointment.

41. The termination order dated 19.08.2009, for the ready reference is reproduced hereinunder:

*"No.f.29064/2009/KVS(SR)* *Dated 19.8.2009*

*Speed Post*

***OFFICE ORDER***

*Shri Sanjay Singh, WET is hereby informed that his services stand terminated on completion of one month hereof in terms of offer of appointment vide Memorandum No.F.29053(Misc)/2008/KVS(SR)/ 18872-74 dated 19.11.2008.*

*To*

*Shri Sanjay Singh*

*C/O. Shri Lal Bahadur Singh,*

*H.No. 151 ME Single Story,* *Illegible*

*Hemant Vihar, Barra-2* *(K.J.Subba)*

*Kanpur, (U.P) Pin-208027* *Assistant Commissioner*

*Distribution:*

*1 The Principal, KV, Dinjan- for information.*
*2. The Deputy Commissioner(Admn), KVS(HQ), New Delhi*
*3. The AAO, KVS, RO, Silchar."*

42. Bearing in mind, the aforesaid factual situation, mere issuance of the show cause notice dated 29.05.2009 and subsequent withdrawal would not be of any relevance, particularly, when though at one stage, the K.V.S. intended to proceed with some sort of inquiry by way of a show cause notice but once the same stood withdrawn and no action whatsoever was taken then by no stretch of imagination it can be said that the order of discharge was punitive in nature. Thus, it can be safely said that the action taken by the K.V.S. was actuated with motive and not foundation.

43. Nonetheless, once the status of the original applicant was of a probationer and probation did not transform into a regular/ confirmed employee then, in law, the original applicant does not have any legal right to resist the action of the K.V.S. in proceedings to issue a simpliciter order of discharge.

44. As regards, the reliance placed upon the decision in the case of **Anoop Jaiswal (supra)** is concerned, the same is not applicable in the facts of the case, particularly, when in the said case though the simple order of discharge of a probationer was passed but the same was on the

ground of unsuitability that too based upon a report/ recommendation of the concerned authority indicating of commission of misconduct by the probationer and while applying of Article 311(2) of the Constitution of India, it was treated to be punitive in nature. So far as the judgment in the case of **Jarnail Singh (supra)** is concerned, in the said case, the allegations were of misconduct and adverse entries, which became the basis for the departmental selection committee for considering the employee as unfit for regularization resulting in termination. Both the judgments relied upon by the Tribunal are distinguishable as here in the present case, there is neither an enquiry with relation to any misconduct nor there is any legal protection is available under the statutory rules. Pertinently, the Kendriya Vidyalaya Sangathan (Appointment, Permissions, Seniority Etc.) Rules, 1971 also does not confer any legal protection to a probationer so as to make him akin to avail the benefits of a regular officer/ employee.

45. Viewing the case from all the angles, we are of the firm opinion that the Tribunal has committed a serious error in allowing the original application preferred by the original applicant while making him admissible to the benefits akin to a regular employee despite the fact that the original applicant was only a probationer and no inquiry whatsoever was initiated against him with respect to any misconduct.

46. Accordingly, the writ petition is **allowed.** The judgment and order dated 24.04.2018 of the Tribunal in Original Application No.330/01233 of 2010 is hereby set aside.

47. Original application No.330/01233 of 2010 stands dismissed.

**Order Date :-** 25.09.2024

A. Prajapati

(Vikas Budhwar, J.) (Arun Bhansali, CJ.)