IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-25150-2021 (O&M)
Reserved on: 11.09.2024
Date of Pronouncement: 27.09.2024

NAZMEEN SINGH -PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Puneet Bali, Sr. Advocate assisted by
Mr. Balwinder Singh, Advocate and
Ms. Bhavyashri, Advocate
for the petitioner.

Mr. Sartaj Singh Gill, Sr. D.A.G., Punjab.

Mr. Gaurav Chopra, Senior Advocate assisted by
Mr. Ranjit Singh Kalra, Advocate
for the respondents No.2 and 3.

***

SURESHWAR THAKUR, J.

1. The prayer, as becomes embodied in the instant petition cast under Article 226/227 of the Constitution of India, appertains to the setting aside the impugned order dated 09.04.2021 (Annexure P-66), whereby, in exercise of the powers conferred by Sub-rule (2) of Rule 7 of Part-D, Punjab Civil Services (Judicial Branch) Rules, 1951, the probationary services of the petitioner, thus have been dispensed with, on the ground that the same being unsatisfactory.

2. The facts relevant for the adjudication of the instant *lis*, are that, in the year 2015, the petitioner qualified the Punjab Civil Services Judicial

Examination, and consequently, she became appointed as Civil Judge (Jr. Division)/Judicial Magistrate in the year 2016. Post her appointment, the petitioner served at Ludhiana, and, at Chandigarh. While the petitioner was posted at Chandigarh, the Superintendent, Central Jail, Ludhiana, addressed a letter dated 28.07.2018 to the Chief Judicial Magistrate, Chandigarh, thereby making intimation about the death of a prisoner, namely, Mohit Sharma @ Monu, at P.G.I.M.E.R. Chandigarh, on account of his suffering from Asthma and AIDS. Moreover, thereins a request was also made to get the inquest proceedings conducted from a Judicial Magistrate, in terms of the guidelines issued by the National Human Rights Commission, and, in terms of Section 176 of the Cr.P.C. Moreover, in respect of the demise of the prisoner (supra), a DDR No.10 dated 28.07.2018 was also recorded at P.S. Division No.7, Ludhiana. Consequently, on 30.07.2018, the Chief Judicial Magistrate, Chandigarh, directed the petitioner to get conducted the inquest proceedings regarding death of the prisoner (supra). Accordingly, vide office order issued by the petitioner, a medical board consisting of doctors of P.G.I.M.E.R., Chandigarh became constituted on 31.07.2018, for thus conducting an autopsy, rather for ascertaining the cause of death of the prisoner (supra). However, on 31.07.2018 itself, a complaint was made by members of the said medical board to the Director of P.G.I.M.E.R. Chandigarh, thus levelling allegations of misconduct against the petitioner. The said complaint, which becomes enclosed as Annexure P-18 with the instant petition, constituted the bedrock for the impugned order becoming drawn against the petitioner, wherebys, her services as a probationer became dispensed with.

3. Consequent upon receipt of the complaint (supra), the Hon'ble the Chief Justice of this Court, vide order dated 01.08.2018, forwarded it to the Registrar (Vigilance) of this Court to inquire into the allegations, who then directed the OSD (Vigilance) of this Court to submit his report after inquiring into the allegations. During the course of inquiry, the OSD (Vigilance) concerned issued summons dated 02.08.2018 only to Prof. Uma Nahar Saikia (Member of Medical Board), whereas, the other doctors of the medical board concerned, who were also signatories to the complaint (supra), rather remained unsummoned, though theirs becoming summoned was also imperative. Accordingly, the summoned doctor appeared before the inquiry officer concerned on 14.08.2018, and, she produced one audio and two video clippings of the incident dated 31.07.2018, as became enclosed in her mobile.

4. Ultimately, the inquiry officer concerned submitted his report dated 23.08.2018, by recording a *prima facie* opinion therein that, the petitioner misbehaved with the doctors on duty at P.G.I.M.E.R., Chandigarh, and that, the allegations levelled against her appears to be correct. Therefore, the petitioner's act and conduct was stated to be unbecoming of a judicial officer. The report (supra), as is evident from Annexure P-28, became concurred with by the Registrar (Vigilance), besides the said report became placed before the Hon'ble the Chief Justice. Resultantly, vide order/file noting dated 27.08.2018 (Annexure P-29), the Hon'ble the Chief Justice, after observing the matter to be serious, directed it to be placed for consideration before the V.D.C.

5. In the meanwhile, matters relating to some general conduct issues

against the petitioner, which were pending with the Training Programme Committee, were also placed before the Vigilance/Disciplinary Committee. Subsequently, vide letter dated 09.10.2018, the petitioner was called by the Registrar (Vigilance) to furnish her response to the complaint (supra) within two weeks therefrom, which became accordingly furnished by her on 11.10.2018, wherebys, she made denials to the allegations levelled in the complaint (supra).

6. Thereafter, finally on 10.12.2019, the vigilance/disciplinary meeting was convened regarding the petitioner's case, wherein, it was concluded that the comments of the petitioner were unsatisfactory and a recommendation was made for the institution of disciplinary proceedings for imposition of a major penalty under the Punishment Rules, 1970. Accordingly, on 14.12.2020, an Administrative Full Court meeting was convened, wherein, the case of petitioner also became considered. Since the petitioner was a probationer, therebys, the Government of Punjab was directed to dispense with the services of the petitioner, and, as an interim measure, the judicial work assigned to her became withdrawn from her.

7. In this way, vide the impugned order, the services of the petitioner became dispensed with and triggered the institution thereagainst of the instant writ petition.

ARGUMENTS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

8. (I) The principal argument of the learned senior counsel representing the petitioner stems from the fact that, despite the complaint (supra) becoming signed by all the medical board members concerned, yet only one Prof. Uma

Nahar Saikia was summoned to join the inquiry against the petitioner.

8. (II) Moreover, despite there being absolute dearth of compliance being meted to the mandate enclosed in Section 65-B of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), inasmuch as, the audio and video clippings concerned, as became produced by the doctor concerned before the inquiry officer concerned, to substantiate the allegations levelled in the complaint (supra), despite thus not becoming accompanied by the apposite statutory certification, yet the said electronic evidence becoming ill considered, besides becoming alluded to, for thus arriving at observations adversarial to the petitioner.

8. (III) The learned senior counsel for the petitioner further argues that, since as envisaged in the hereinafter extracted Rule 7(3) of the Punjab Civil Services Rules (Vol-I, Part I) (General and Common Condition of Services) Rules, 1994, the maximum term of the probation period is to last upto three years, resultantly, when the maximum spell (supra) appertaining to the duration of the probationary services rendered by the petitioner became completed well before the making of the impugned order. Moreover, when in terms of the verdict rendered by the Hon'ble Apex Court in case titled as ***"The State of Punjab V/s. Dharam Singh",*** to which becomes assigned Civil Appeals No.787 and 1017 of 1966, and, wherein becomes carried the exposition of law that, where an employee appointed to a post on probation is allowed to continue in that post after completion of the maximum period of probation, thus even without an express order of confirmation being made. Resultantly, the inference to be drawn therefrom, is that, thereby there is but

ipso facto confirmation of the services of the probationer against the post against which he/she was appointed. In sequel, he argues that, since in the instant case also, the petitioner was permitted to continue against the substantive post, even after the completion of the maximum duration of probationary period of service, besides even if no express order of confirmation was passed, yet the petitioner is deemed to have been confirmed against the substantive post against which she was appointed.

> ***"7. Probation:-***
>
> *(1)* *XX* *XX* *XX*
>
> *(2)* *XX* *XX* *XX*
>
> *(3) On the completion of the period of probation of a person, the appointing authority may -*
>
> *(a) if his work and conduct has in its opinion been satisfactory -*
>
> *(i) confirm such person, from the date of his appointment or from the date he completes his period of probation satisfactorily, if he is not already confirmed; or*
>
> *(ii) discreet that he has completed his probation satisfactorily, if he is already confirmed; or*
>
> *(b) if his work or conduct has not been in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules -*
>
> *(i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit;*
>
> *ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub-rule (1):*
>
> ***Provided that the total period of probation including extension, if any, shall not exceed three years."***

9. To support the above made argument, the learned senior counsel for the petitioner relies upon the hereinafter extracted paragraphs borne in the

verdict rendered in ***Dharam Singh's case (supra)***.

> *"5. In the present case, Rule 6 (3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.*
>
> *XX XX XX*
>
> *8. The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation up to October 1, 1960 by implication. But under the proviso to Rule 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to Rule 6(3), it is not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers.*
>
> *9. Immediately upon completion of the extended period of probation on October 1, 1960, the appointing authority could dispense with the services of the respondents if their work or conduct during the period of probation was in the opinion of the authority unsatisfactory. Instead of dispensing with their services on completion of the extended period of probation, the authority continued them in their posts until sometime in 1963, and allowed them to draw annual increments of salary including the increment which fell due on October 1, 1962. The rules did not require them to pass any test or to fulfil any other condition before confirmation. There was no compelling reason for dispensing with their services and re-employing them as temporary employees on October 1, 1960 and the High Court rightly refused to draw the inference that they*

> *were so discharged from services and re-employed. In these circumstances, the High Court rightly held that the respondents must be deemed to have been confirmed in their posts. Though the appointing authority did not pass formal orders of confirmation in writing, it should be presumed to have passed orders of confirmation by so allowing them to continue in their posts after October 1, 1960. After such confirmation, the authority had no power to dispense with their services under Rule 6 (3) on the ground that their work or conduct during the period of probation was unsatisfactory. It follows that on the dates of the impugned orders, the respondents had the right to hold their posts. The impugned orders deprived them of this right and amounted to removal from service by way of punishment. The removal from service could not the made without following the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and without conforming to the constitutional requirements of Article 311 of the Constitution. As the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 was not followed and as the constitutional protection of Article 311 was violated, the impugned orders were rightly set aside by the High Court."*

10. He further supports the said argument on the anchor of a judgment rendered by the Hon'ble Apex Court, in case titled as ***"Karnataka State Road Transport Corporation and another V/s. S. Manjunath",*** to which becomes assigned Civil Appeal No.113 of 1998, and wherein, the hereinafter underlined exposition of law becomes carried.

> *"...However, on expiry of maximum period prescribed for probation, if the employee is allowed the continue it carries presumption of automatic confirmation and after that the employee cannot be discharged as probationer for his unsatisfactory work and conduct - For that purpose, he will have to be given a proper charge-sheet and opportunity to rebut the same..."*

REASON(S) FOR ALLOWING THE INSTANT WRIT PETITION BECOMES COMPRISED IN THE FACTUM THAT, SINCE AFTER COMPLETION OF THE MAXIMUM TENURE OF PROBATIONARY

SERVICES BY THE PETITIONER, SHE IS DEEMED TO BE CONFIRMED AGAINST HER SUBSTANTIVE POST, THEREBY THERE WILL BE AN IMPERATIVE NECESSITY FOR A FULL FLEDGED INQUIRY BECOMING LAUNCHED AGAINST HER, FOR PROVING THE ALLEGED MISCONDUCT. SINCE THE SAID FULL FLEDGED INQUIRY HAS NOT BEEN LAUNCHED, THEREBY THE OMISSION (SUPRA) BRINGS TO THE FORE THAT, THE PETITIONER HAS BEEN CONDEMNED UNHEARD.

11. Be that as it may, there appears to be a line of decisions, which expostulate the view that, where the rules provide for the tenure/lasting(s) of a maximum period of probation, beyond which probation cannot be extended. Resultantly, in the said evident factual scenario, the Courts have taken a view that, unless the rules make a contemplation to the contrary, therebys the fixation of a maximum period of probation, as is the fixed period of probation, even qua the present petitioner, and, which evidently she did also complete, therebys there would be, even without the passing of an order of confirmation, thus a deemed confirmation of the employee on the substantive post.

12. Since reiteratedly, in the instant case, a reading of the above extracted provision reveals that, therebys a fixed tenure of probation becomes made, therebys vis-a-vis the instant case, and, more particularly to the petitioner, especially when there are no rules to the contrary, thus with any effective adversarial impact that, despite completion of the maximum prescribed period of probation, yet a specific order of confirmation is required to be passed by the competent authority. Resultantly, thus a firm conclusion is to be made by this Court that, since in terms of the relevant provisions (supra), a fixed period of probation became prescribed, and, which became also

evidently completed, besides when there are no rules with the contemplation therein that, yet a specific order of confirmation was required to be made by the appointing authority. As a sequitur, the deduction therefrom is that, thus with the petitioner evidently completing the maximum tenure of the probation period, therebys it resulted in hers being deemed to be confirmed in service, even when no specific order of confirmation was made by the appointing authority.

13. Now, there may be a situation, where despite the rules fixing a maximum period of probation, yet the further continuation of the probationary period beyond the said fixed maximum period, being also contemplated in the relevant rules. Therefore, therebys since even after completion of the maximum period of probation, there is but permissibility under the relevant rules to make the probation period to yet continue. Consequently, irrespective of the fixed tenure of probation being prescribed in the relevant rules, besides the same becoming completed. However, when the said rules further stipulate that, even on completion thereof, the probation period rather continuing. Resultantly, when therebys there is but no deemed completion of the maximum period of probation, nor if post the completion of the said maximum period of probation, which otherwise for reasons (supra) is extendable for a further period, thus some misconduct is attributed to the probationer. In scenario (supra), may be subject to the facts and circumstances, the order of dispensing with, or, discharging the services of the probationer, as made within the extended period of probation, thus may require validation theretos being made.

14. As stated (supra), the instant case falls in the former, and, not in the latter category. As but a natural consequence thereof, it has to be determined, whether the dispensing with, or, the discharging of the services of the present petitioner, who otherwise, for reasons (supra), is deemed to be confirmed in service, whether the effect thereofs is that, thus therebys the petitioner becoming entitled to seek for a full fledged inquiry becoming made vis-a-vis the alleged misconduct (supra), whereins, her guilty was required to be cogently established after adherence being made to the principles of natural justice.

15. At the outset, a full fledged inquiry became never embarked upon for proving/determining, in accordance with the procedure established by law, the alleged misconduct, as became attributed to the petitioner.

16. Before proceeding to delve into, and, also to make an adjudication with respect to the validity of the passing of the impugned order, wherebys, the services of the petitioner, as a purported probationer, became dispensed with, it is deemed imperative to initially allude to the hereinafter extracted minutes, as became drawn by the Vigilance/Disciplinary Committee on 10.12.2019, in respect of the petitioner.

> *"ITEM NO.3*
>
> *Ms. Nazmeen Singh, Civil Judge (Jr.Divn.), Chandigarh.*
>
> *Consideration of comments dated 11.10.2018 of the officer in the matter of complaint dated 31.07.2018 made by Prof. S.P.Mandal alongwith other Doctors of PGIMER, Chandigarh.*
>
> *The Officer has appeared in person and has been heard at length. The report dated 23.08.2018 submitted by OSD (Vigilance) Haryana and comments dated 11.10.2018 submitted by the Officer have also been carefully perused and considered and the comments*

submitted by the Officer have been found to be unsatisfactory. After considering the nature of allegations and material on record, the Committee recommends that disciplinary proceedings for imposing major penalty under Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 be initiated against the Officer.

XX XX XX"

17. Though the above extracted minutes became concurred with by the Hon'ble Full Court, through a decision made on 14.12.2020, relevant portion whereof becomes extracted hereinafter, wherebys, the services of the petitioner, as a probationer, became dispensed with. However, the importance of making the above extractions, is but naturally for making a determination, whether when apparently a full fledged departmental inquiry was therebys contemplated to be initiated against the petitioner. However, when despite evident absence of making of a full fledged inquiry, yet the services of the petitioner becoming dispensed with, on the purported premise that she was a probationer, whether therebys when the principles of natural justice become blatantly flouted, and, further whether, for omission (supra), the impugned order is ridden with the vice of gross arbitrariness.

"Extract from the proceedings of the 13th meeting of Hon'ble Court of the year 2020, held on Monday, the 14th day of December, 2020 at 04:15 PM.

XX XX XX XX

22. Ms. Nazmeen Singh, Civil Judge, (Jr. Divn.) Chandigarh.

Consideration of report dated 10.12.2019 of Hon'ble Vigilance/ Disciplinary Committee recommending initiation of disciplinary proceedings for imposing major penalty under Rule 5 of the Punjab Civil Services (Punishment and Appeal) rules, 1970 against the officer.

The matter has been considered along with the note of Registrar General. After due deliberations, it is resolved that the services of the Officer be dispensed with during the probation being not satisfactory. Consequently, a recommendation be made to the Government of Punjab

to dispense with the services of the Officer with immediate effect and in the meanwhile, the judicial work from the Officer be withdrawn forthwith.

XX XX XX XX

Might send a copy of the above extract to 6-Conf. Gaz-I &Gaz-II branches for information and necessary action."

18. Secondarily, it has also to be determined, whether the makings of a simpliciter order of discharge of the services of the petitioner, purportedly as a probationer, but, without the proposed full fledged inquiry becoming launched against her, whether yet the said simpliciter discharge of the services of the petitioner, as a probationer, can be termed to be motivated, and/or, therebys the said discharge is to be construed to be stigmatic.

19. Thirdly, the regulating principles for construing any order to be stigmatic or being motivated, and, resultantly the applyings of the said principles to the factual scenario present before this Court, thus do also require theirs being respectively culled out, and, theirs also accordingly being required to be applied to the instant case.

20. Fourthly, irrespective of this Court construing that the petitioner became confirmed in service, and, also therebys a full fledged inquiry was required to be launched against her, yet whether, if assumingly the petitioner is a probationer, wherebys, her services, on account of purported unsatisfactory performance of work, were liable to be dispensed with, but yet whether in the face of the principles of law declared in the hereinafter extracted judgments, the purported simpliciter discharge of services of the petitioner, is but motivated or stigmatic, and/or, is thereby required to be upheld, or, is to be declared to be vitiated.

(a) "Dipti Prakash Banerjee V/s Satyendra Nath Bose National

Centre for Basic Sciences, Calcutta", reported in 1999 AIR (Supreme Court) 983;

(b) Samsher Singh V. State of Punjab, 1974(2) SCC 831;

(c) Bishan Lal Gupta v. State of Haryana, 1978(1) SCC 202;

(d) V.P. Ahuja V/s State of Punjab, Civil Appeal No.1965 of 2000 (Arising out of SLP(C) No.11701 of 1999).

21. This Court has hereinabove extracted the minutes of the meeting drawn by the Vigilance/Disciplinary Committee, and, also has referred to the fact that, only one of the complainants/doctors concerned was summoned to appear before the inquiry officer concerned, whereas, the other complainants/doctors, who were also required to be imperatively participating in the relevant process, thus were not summoned.

22. Since this Court has hereinabove also concluded that, *ex facie* in the wake of the hereinabove extracted minutes of the Vigilance/Disciplinary Committee, whereins, there is an evident profound contemplation, thus for a full fledged inquiry becoming launched vis-a-vis the purported misconduct attributed to the petitioner. Resultantly, therefroms reiteratedly, thus fortifying weight is marshaled vis-a-vis the inference that, the Vigilance/Disciplinary Committee comprising of Hon'ble Judges of this Court, did construe that, after completion of the enjoined maximum period of probationary services by the petitioner, thus the petitioner became also construed to be deemed to be confirmed in service. Importantly, when there are no rules to the effect that, either the passing of an express order of confirmation is required, nor also when there are any rules with any explicit underlinings thereins that, irrespective of the said fixation of a maximum term of probation, yet a further period of probation is yet required to be undergone by the petitioner.

23. Consequently, the said recommendations of the Vigilance/ Disciplinary Committee, did fall in complete alignment with the exposition of law made in ***Dharam Singh's case (supra),*** and, in ***Karnataka State Road Transport Corporation's case (supra)***, wherein, it become propounded that, in respect of the scenario (supra), therebys there is but an imperative requirement for a full fledged inquiry becoming embarked upon by the appointing authority, thus for ensuring that thereins, but after adherence being made to the principles of natural justice, thus the guilt of the petitioner becomes established, in accordance with law. However, enigmatically, the minutes of the meeting became twisted, and, rather in complete derogation from the principles evidently applicable to the present petitioner, and, which become stated in the verdicts (supra), rather a conclusion appears to have been drawn in the meeting held on 14.12.2020, that there was no requirement of strict adherence thereto being made. Contrarily, thus the services of the petitioner, merely for untenable reasons, after the petitioner becoming declared to belong to the genre of a probationary officer, therebys it but further appears that, her services became thus dispensed with, rather on account of unsatisfactory performance of work.

24. Therefore, the hereinabove extracted minutes of meeting, which led to the making of the impugned order of discharge, thus suffer from the grossest non application of mind, besides suffer from blatant breach being made to the exposition(s) of law as carried in verdict(s) (supra). Importantly also, when the said expostulation of law, rather with aplomb, apply to the facts at hand.

25. Be that as it may, though in the light of this Court holding that, there was but an imperative requirement for a full fledged inquiry becoming held against the petitioner, which however was not held, but also it appears that, in terms of Annexure P-28, whereins, certain references were made by the Registrar (Vigilance), to the views expressed by the peers of the petitioner during hers undertaking induction training programme, whereins, the petitioner is alleged to be short tempered, suffering from some psychological disorder, having superiority complex and also having no regards for anyone, rather also became taken into consideration for hers being declared to be unbecoming of a judicial officer. Now, in case, the said was a fact germane to the discharge of the services of the petitioner, purportedly as a probationer, which she was not, therebys the said purported misconduct was required to be taken into account at the time of the present petitioner, thus post her completing her induction training programme, becoming assigned the apposite posting. However, since post the completion of the induction training programme, the petitioner became assigned a posting, thereby the takings into account of the above views, as contained in Annexure P-28, is again an open speaking of brash arbitrariness becoming perpetrated upon the petitioner. To the contrary, there is material on record, as displayed in Annexures P-3 and P-3/A, that even during the period of her performing judicial duties, the petitioner was found to be disciplined, punctual, well behaved with superiors, cooperative with colleagues, polite and firm with subordinates. Moreover, she was also found to be well mannered in court proceedings and in her making interactions with advocates and litigants.

26. The effect of the above, is that, though the above do speak volumes about the fitness, in all respect, of the petitioner, yet the purported shortcomings in the temperament of the petitioner, during the period of hers undertaking induction training programme, rather untenably became assigned overwhelming effect, wherebys, the above referred to positive traits inhering in the petitioner, during the tenure of her discharging judicial functions, naturally became untenably underwhelmed. The said is also a candid speaking of gross arbitrariness and injustice becoming perpetrated upon the petitioner.

27. Be that as it may, now this Court engages itself into the aspect of, whether a full fledged inquiry was in fact launched, wherebys, after adherence to the principles of natural justice becoming made, thus the guilt of the petitioner became established, in accordance with law.

28. The gravamen or the pivot in respect thereof, but again is the hereinabove extracted minutes of meeting. However, it appears that, in a purported discreet inquiry, as became carried behind the back of the petitioner, rather during course thereof, only one doctor became summoned, and who appeared and produced electronic evidence, as enclosed in her mobile, whereas, the other complainants/doctors did not become summoned, whereas, their appearance was also at the relevant stage, but was imperative, especially when they were also co-complainants. Now, assuming that, the said behind the back conducted discreet inquiry against the petitioner, may have some soundness, but the assigning of any prima facie credence thereto, would ensue only in case, the hereinafter required but *sine qua non* became *prima facie*, even at that stage, thus established.

(i) The apposite statutory certification, in terms of Section 65-B of the Evidence Act, became purveyed vis-a-vis the audio/video data enclosed in the mobile concerned;

(ii) The voice samples of the petitioner becoming collected, and, the said collected voice samples of the petitioner, rather along with the purported voices inside the audio/video clippings, becoming sent for apposite comparisons to the CFSL/RFSL concerned;

(iii) A Report establishing the guilt of the petitioner becoming made by the CFSL/RFSL concerned;

(iv) The petitioner becoming assigned an opportunity to contest the said report, and, to erode the presumption of truth, as assignable to the report, if any, as became drawn by the CFSL/RFSL concerned.

29. However, evidently none of the above *sine qua non* became established. Therefore, no credence was required to be, at the threshold, assigned to the adduced *ex parte* electronic evidence against the petitioner.

30. Again enigmatically, there is but evident bypassing vis-a-vis the statutory procedure (supra), appertaining to the assigning of credence to the supra electronic evidence. Furthermore, on playing of the said audio/video clippings, that too behind the back of the petitioner, a conclusion became drawn that the voice enclosed therein, belongs to the petitioner and since she purportedly made disparaging remarks against the doctors, thereby it became further concluded that she committed the alleged misconduct. The said drawn conclusion is, reiteratedly, thus completely against the principles of natural justice. Therefore, any reliance, as became placed by the Vigilance/Disciplinary Committee, upon the preliminary discreet inquiry report, but without the above *sine qua non* becoming adhered to, thus therebys

also makes the said recommendations of the Vigilance/Disciplinary Committee, which however also became not adhered to, though required complete adherence theretos becoming made, especially in view of the above conclusions, to but also *prima facie* become ridden with some aura of some legal fallibility. Thereupons too, rather complete failure of justice or miscarriage of justice has taken place.

31. Now, even if assuming that, the petitioner was still to be construed to be a probationer, which otherwise she, in view of the above drawn inferences, was not to be so construed. However, for deciding whether the discharge of the services of the petitioner, purportedly as a probationer, did have a stigmatic effect. Therefore, reference is to following verdicts is of utmost importance.

32. In case titled as ***"Dipti Prakash Banerjee V/s Satyendra Nath Bose National Centre for Basic Sciences, Calcutta", reported in 1999 AIR (Supreme Court) 983,*** the Hon'ble Apex Court formulated the hereinafter extracted points for a decision being made thereovers.

> *"(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?*
> *(2) When can an order of termination of a probationer be said to contain an express stigma?*
> *(3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?*
> *(4) To what relief?"*

33. Be that as it may, the answers to the supra formulated questions No.2 and 3 are relevant for deciding the issue, whether the discharge of the

services of the petitioner, as a probationer, did have an effective stigmatic effect upon the petitioner, and/or, whether therebys the said simplistically passed order of dispensing with the services of the petitioner, without adherence being made to the principles of natural justice, is required to be declared to be vitiated. The answer to the supra is provided in the hereinafter extracted paragraphs borne in the verdict (supra) rendered by the Hon'ble Apex Court.

> *"22. In the present case before us, the order of termination dated 30.4.1997 is not a simple order termination but is a lengthy order which we have extracted above. It not only says that performance during probation is not satisfactory but also refers to a letter dated 30.4.1996 by which the period of probation was extended by six months from 2.5.1996, and to letters dated 17.10.1996 and 31.10.1996. It concludes by saying that the appellant's conduct, performance, ability and capacity during the whole period of probation was not satisfactory and that he was considered 'unsuitable' for the post for which he was appointed.*
>
> *23. The contention for the appellant is that if the appellant is to seek employment elsewhere, any new employer will ask the appellant to provide the copies of the letters dated 30.4.1996, 17.10.1996 and 31.10.1996 referred to in the impugned order and that if the said letters contain findings which were arrived at without a full fledged departmental inquiry, those findings will amount to stigma and will come in the way of his career.*
>
> *In the matter of 'stigma', this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven Judge case in* ***Samsher Singh V. State of Punjab, 1974(2) SCC 831****, Ray, CJ observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in* ***Bishan Lal Gupta v. State of Haryana, 1978(1) SCC 202*** *that if the order contained a stigma, the termination*

would be bad for "the individual concerned must suffer a substantial loss of reputation which may affect his future prospects."

24. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a 'stigma'. The other issue in the case before us is whether - even if the words used in the order of termination are innocuous, - the court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination ?

25. As to what amounts to stigma has been considered in ***Kamal Kishore Lakshman v. Pan American World Airways, 1987(1) SCC 146.*** *This Court explained the meaning of 'stigma' as follows (p. 150) :*

> *"According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc., indicating that something is not considered normal or standard. The Legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary 'stigma' is a matter for moral reproach."*
>
> *Similar observations were made in* ***Allahabad Bank Officers' Association v. Allahabad Bank, 1996(4) SCC 504 : 1.996(3) SCT 263 (SC).***
>
> *At the outset, we may state that in several cases and in particular in* ***State of Orissa v. Ram Narayan Das, AIR 1961 Supreme Court 177****, it has been held that use of the words 'unsatisfactory work and conduct', in the termination order, will not amount to stigma.*
>
> *XX XX XX*
>
> *28. Thus, it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to judge whether the words employed amount to stigma or not."*

34. A reading of the above extracted paragraphs displays that, the Hon'ble Apex Court, after making an in-depth analyses of the circumstances attending the passing of the order of discharge qua the probationer there, and, also after referring to the decisions passed in ***Samsher Singh's case (supra)*** and in ***Bishan Lal Gupta's case (supra),*** thus concluded that there is yet considerable difficulty in finding out, whether in any given case, the order of termination is not a simple order of termination, especially when the words used in the order dispensing with the services of a probationer are innocuous. However, subsequently, the Apex Court proceeded to refer to the *factum probandum,* as to whether any order discharging with the services of a probationer, thus would have a stigmatic effect. Therefore, a reference was made to the judgment rendered in ***Kamal Kishore Lakshman's case (supra)***, whereins, vis-a-vis the signification to be imparted to the coinage "stigma", it became stated as under:-

> *"According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc., indicating that something is not considered normal or standard. The Legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary 'stigma' is a matter for moral reproach."*

35. Though subsequently, by referring to ***Ram Narayan Das's case (supra)***, it also became stated in the verdict (supra) that the user of the words 'unsatisfactory work and conduct' does not amount to stigma.

36. Nonetheless, it is explicitly stated in paragraphs 31 and 34 borne in the verdict rendered in ***Dipti Prakash Banerjee's case (supra),*** that *dehors* there being no statement in the order of discharge of service, as made vis-a-vis a probationer, about the said being made in pursuance to a stigmatic misconduct becoming allegedly committed by the probationer, rather when the said passed order is purely innocuous, whereupon, it has no stigmatic consequence, and, as such there is no necessity of any interference being made with the purported simpliciter order of discharge. However, it has further been stated therein that, it would be insagacious to merely have a quick glance at the order dispensing with or discharging the services of the probationer, thus for determining whether it creates stigmatic consequences. Emphatically, for determining whether an order discharging the services of a probationer is stigmatic or not stigmatic, therebys an elaborate exercise is required to be made vis-a-vis the attendant thereto circumstances, and, if the apposite attendant circumstances disclose that certain serious allegations became the foundation for dispensing with the services of a probationer. Resultantly, the makings of the said ill construction, thus for creating an order of discharge of the probationer's services, especially when no full fledged inquiry in respect thereof, became initiated, nor became concluded. In sequel, it was concluded that, when the structural foundation of the apposite order, irrespective of the words employed thereins being innocuous, thus did hold a stigmatic effect, and ultimately, when the apposite un-inquired into allegations, did rather also lead to the making of an order of discharge, therebys the makings of the said order of discharge was declared to be interferable on the ground that it is

vitiated, on the premise that, it was stigmatic.

37. Now, applying the said parameters to the instant case, it is but evident that the above extracted minutes, do forthrightly display that, there was a recommendation for a full fledged inquiry being made vis-a-vis the alleged misconduct, as arose from allegations becoming made by members of the medical board concerned. Significantly, the said allegations resulted in a discreet probe becoming carried, and subsequently, on the basis of the said discreet probe, the Vigilance/Disciplinary Committee, thus through drawing the supra extracted minutes, concluded that there was a requirement of full fledged inquiry becoming made into the purported misconduct by the petitioner.

38. Reiteratedly, it is but *ex facie,* besides categorically apparent that, the allegations vis-a-vis the petitioner qua hers allegedly misbehaving with the doctors concerned, who were on duty, resulted in one of those doctors appearing before the inquiry officer on 14.08.2018. On the said date, the doctor concerned produced the audio/video clippings of the incident dated 31.07.2018. The said audio/video clippings were enclosed in a mobile. Though, at the stage (supra), preceding the date of the makings of the minutes (supra), though *prima facie* may not have required the participation thereins of the petitioner. Moreover, when yet there was then no opportunity to the petitioner to make any cross-examination upon the doctor concerned, who appeared on 14.08.2018 before the officer concerned.

39. However, yet since *prima facie* credence became assigned to the electronic evidence (supra), whereupons, it became stated in the minutes

(supra) that, there was a requirement of imposition of a major penalty upon the petitioner, than hers becoming simpliciter discharged from service. Consequently, reiteratedly, unless a full fledged inquiry became launched in respect of the alleged misconduct attributed to the petitioner, and, as became enclosed in the audio/video clippings, as became produced by the doctor concerned on 14.08.2018. Moreover, when thereins alone, thus upon the said electronic evidence becoming efficaciously proven, through adoptions of the statutory ordained procedure, besides also through an opportunity becoming provided to the petitioner to cross-examine the doctor concerned, wherebys may be the imputation of misconduct, may have been taken to be established thus on preponderance of probabilities. Contrarily, the mere *ex parte* production of said electronic evidence and any assignment of credence thereto, and that too, without holding a full fledged inquiry, but begets an ill consequence that the principles of natural justice become completely breached. Moreover, without the apposite service provider purveying, thus the apposite certification to the inquiry officer concerned, thus as ordained under Section 65-B of the Evidence Act, provisions whereof become extracted hereinafter, wherebys when but became rendered inadmissible the said adduced *ex parte* electronic evidence. Consequently, the placing of any implicit reliance, upon, the said adduced *ex parte* electronic evidence, through the drawing of subsequent minutes dated 14.12.2020, and, which became also accepted, thus is completely contrary to the rules of natural justice.

> ***"65B. Admissibility of electronic records.***
>
> *(1) Notwithstanding anything contained in this Act, any records. information contained in an electronic record which is printed on a*

paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that

period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer

> *operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;*
> *(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment."*

40. In sequel, since the foundation of the impugned order, thus dispensing with the services of the petitioner, purportedly as a probationer, is but punitive as well as stigmatic, and that too, without adherence being made to the mandate enclosed in Section 65-B of the Evidence Act. Therefore, irrespective of the order of discharge becoming innocuously worded, yet when it is evidently permeated with the vice of stigma. As such, the said order of discharge, when thus remained un-preceded by a full fledged inquiry, besides become founded upon unproven allegations reared against the petitioner, therefore, it is required to be quashed.

41. The above view finds support from the judgment rendered by the Hon'ble Apex Court, in case titled as ***"V.P. Ahuja V/s State of Punjab",*** to which becomes assigned Civil Appeal No.1965 of 2000 (Arising out of SLP(C) No.11701 of 1999), and whereins, in the hereinafter extracted paragraph 6, it has been stated that the principles of natural justice are yet to be complied with, even when the employer chooses to dispense with the services of a probationer.

> *"6. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated in a punitive manner without complying with the principles of natural justice."*

42. Since for the reasons stated (supra), the principles of natural

justice remain uncomplied with, therefore, the instant petition is **allowed** and the impugned order is set aside. The petitioner is ordered to be forthwith reinstated into service with continuity of service and along with all consequential benefits, except monetary benefits.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

27.09.2024
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No