



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.76 OF 2023

Suruchi Rajendra Gurjar,
Age : 42 years, Occupation : Service,
Residing at Flat No.9, 4th Floor,
Kennery House, Mumbai Port Trust
Colony, Dumayne Road, Azadnagar,
Mumbai-400005.

...PETITIONER

VERSUS

1. Board of Trustees of the Mumbai Port Authority (Mumbai Port Trust), having its office at S.V. Road, Ballard Pier, Mumbai-400001.
2. Mr. Rajiv Jalota, Chairman, Mumbai Port Authority, having his office at S.V. Road, Ballard Pier, Mumbai-400001.

...RESPONDENTS

...
Shri Anil Anturkar, Senior Advocate a/w Ms.Kashish Chelani and Shri Sankalpa Rajpurohit, Advocate for the Petitioner.

Shri R.S. Pai, Senior Advocate a/w Shri Anand Pai, Shri Rahul Jain, Ms.Khushboo Rupani and Shri Sharan Shetty, Advocates i/by HSA Advocate, for the Respondents.

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CORAM : RAVINDRA V. GHUGE

&

M.M. SATHAYE, JJ.

Reserved on :- 16th October, 2024

Pronounced on :- 23rd October, 2024

JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses (26-a) and (26-a-1), as under:-

“(a) *This Hon’ble Court may be pleased to call for the records of the proceedings leading to the impugned order dated 13th December, 2022 (Exhibit ‘H’ hereto) and after going through the same, issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction quashing the impugned order dated 13th December, 2022 (Exhibit ‘H’ hereto) and to reinstate the Petitioner with full back wages and all consequential relief.”*

(a-1) *This Hon’ble Court be pleased to direct the Respondents to refund to the Petitioner the amount of Security Deposit and all amounts paid as monthly rent towards occupation of the service quarters being flat No.9, 4th Floor, Kennery House, MbPT Colony, paid/ deposited/ that will be paid/ deposited by the Petitioner from February, 2023 till final disposal of this Writ Petition.”*

FACTUAL MATRIX

3. The Petitioner was appointed by Respondent no.1, Mumbai Port Trust, as a Senior Legal Manager, on 05.12.2016. On 20.06.2019, she was appointed by Respondent No.1, as the

Chief Law Officer. The probation period was of 2 years. By an office order dated 21.06.2021, the Petitioner's probation period was extended '*until further orders*' under Regulation 19(2) of the Mumbai Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 2010 (for short, 'the 2010 Regulations').

4. Clauses 5, 11 and 12 of the appointment order dated 20.06.2019, read as under:-

“(5) You will be on probation for a period of two years from the date of joining. The period of probation is liable to be extended, if found necessary. In case your work or conduct during the period of probation or the extended period of probation is found to be unsatisfactory and shows that you are not likely to prove suitable for the post, you may be discharged forthwith. On satisfactory completion of the period of probation, you will be informed accordingly in writing. Until, you are so informed, you will be deemed to be on probation.”

“(11) The appointment is made relying upon the information furnished by you. If, at any time, it is found that you have furnished false information or suppressed any material fact for securing this appointment, your services will be liable to be terminated forthwith without notice, during or even after completion of probation period, apart from any other action that you may be liable for.

(12) *Your appointment is subject to verification of antecedents by the Police. If any adverse report is received from the Police your services are liable to be terminated forthwith.”*

5. On 31.07.2020, the Petitioner's work was appreciated and was issued with a letter of 'Appreciation'. On 20.03.2021, the Petitioner was served with a charge sheet. On 19.06.2021, she was served with an order of suspension, which is one day prior to completion of the two years probation period as a Chief Law Officer. It was stated in the order of suspension that her headquarters would be at Mumbai and she would not leave the headquarters without the previous permission of the Chairman of the Mumbai Port Trust. She was informed of her entitlement to subsistence allowance, equal to 50 % leave salary and dearness allowance as per rules, subject to her declaration that she is not engaged in any employment or business or profession or vocation. On 21.06.2021, by an order of extension of Probation, her probation period was extended without mentioning the duration for which it was being extended.

6. The Suspension Review Committee met on 14.09.2021. By an office order dated 15.09.2021, her suspension

was extended by six months. The extension was accompanied with enhancement in subsistence allowance at the rate of 75% after completing a total suspension period of six months. The said committee once again met on 10.03.2022 and recommended the extension of her suspension period for a further period of 180 days. An order extending the suspension was issued on 14.03.2022. Vide the order dated 08.09.2022, her suspension was again extended, for the third time, for a further period of 180 days and the subsistence allowance was maintained at the same rate of 75%.

7. The Petitioner approached this Court in Writ Petition (Lodging) No.2202/2022. An Interim Application (Lodging) No.20973/2022, was heard by this Court and by an order dated 12.08.2022, it was directed that any order inflicting major punishment arising out of the departmental enquiry, would not be passed without granting 14 days notice period to the Petitioner. On 14.10.2022, the interim order was extended by recording the statement of the Employer that no major punishment would be inflicted until the next date.

8. On 01.12.2022, this Court delivered the judgment and disposed off the Writ Petition and the Interim Application, with the following observations below paragraph No.32 :-

“32. We, therefore, proceed to pass the following

ORDER

- (i) *The charge-sheets dated 20th March 2021 (Exhibit 'D') 20th September 2021 (Exhibit 'E'), 6th January 2022 (Exhibit 'F'), 6th January 2022 (Exhibit 'F1') and 31st May 2022 (Exhibit Z1) are not interfered with on the ground as urged by Mr. Naidu and considered by as hereinabove.*
- (ii) *However, no other point in respect of alleged invalidity of such charge-sheets is examined in course of this proceeding. Whether or not the charges are vague and/or the charge-sheets suffer from any other legal infirmity are points which are left open to be raised by the petitioner at an appropriate stage of the disciplinary proceedings or even thereafter, if the occasion therefor arises, in view of the decision in A. Radha Krishna Moorthy (supra).*
- (iii) *The order of penalty dated 8th November 2021 is also not interfered with, but liberty is reserved to the petitioner to question the same in an appeal that could be carried from such order but in accordance with law.”*

9. It is not in dispute that the charge sheet dated 20.09.2021, was enquired into and the Enquiry Officer tendered the final enquiry report on 16.09.2022 (65 pages), thereby, holding the Petitioner guilty with regard to tendering false information regarding her experience. The four articles of charges read as under:-

“ARTICLE I

Smt. Suruchi R. Gurjar, Chief Law Officer (Under Suspension), Legal Division, GAD, Mumbai Port Trust, has fraudulently claimed experience and remuneration in Legal firms with a dishonest intention to secure employment in Mumbai Port Trust under wrongful means as Sr. Manager (Corporate Legal) on contract basis, and thereby committed misconduct and violated Regulation 3(1A)-(i), (iv), (xii) and (xiii) of the Bombay (Mumbai) Port Trust Employees (Conduct) Regulations, 1976.

ARTICLE II

Smt. Suruchi R. Gurjar, Chief Law Officer (Under Suspension), Mumbai Port Trust, has fraudulently claimed experience and remuneration in Legal firms with a dishonest intention to secure employment in Mumbai Port Trust under wrongful means as Chief Law Officer and thereby committed misconduct and violated Regulation 3(1A) - (i), (iv), (xii) and (xiii) of the Bombay (Mumbai) Port Trust Employees' (Conduct) Regulations, 1976.

ARTICLE III

Smt. Suruchi R. Gurjar, Chief Law Officer (Under Suspension), Mumbai Port Trust, has suppressed vital information of her experience and remuneration with a dishonest intention and wrongfully gained employment in MbPT and thereby violated Regulation 16 of Mumbai Port Trust Employees' (RS&P) Regulations, 2010.

ARTICLE IV

By the above acts, Smt. Suruchi R. Gurjar, Chief Law Officer (Under Suspension) failed to maintain absolute integrity and devotion to duty and violated Regulation 3(1) of the Bombay (Mumbai) Port Trust Employees' (Conduct) Regulations, 1976.”

10. On 13.12.2022, the Employer / Port Trust issued the order of terminating the appointment of the Petitioner and her probation was brought to an end, after 3 years and 6 months. It would be apposite to reproduce the impugned order dated 13.12.2022, here under:-

“1. *WHEREAS an advertisement was issued on 22.01.2019 by Mumbai Port Authority for appointment to the post of Chief Law Officer (Class-I) under Direct Recruitment method. As per the said advertisement, the following essential qualifications and experience were stipulated, which reads as under:*

Essential:

i) Degree in Law from a recognized university;

ii) Twelve years Executive experience in the legal establishment of an Industrial/ Commercial/ Government Undertaking;

Or

Twelve years standing practice as an Advocate in any Court of Law including High Court;

Or

6 years experience as a Solicitor;

Or

10 years experience as a Judicial Officer;

Or

Combined experience of 12 years in a Legal establishment of an Industrial/ Commercial/ Government Undertaking and Standing practice as an Advocate in any Court of Law including High Court and as Judicial Officer/Solicitor.

Desirable:

(i) Post Graduate Degree in Law from a recognized university;

Note: "Preference will be given to persons having experience in Laws applicable to Marine/Estate/Property/Contracts."

2. *AND WHEREAS Smt. Suruchi Rajendra Gurjar has made an Application dated 07.02.2019 for employment as Chief Law Officer in response to the said advertisement. In the Application, she made a declaration that in the event of any information being found to be false or incorrect, her candidature/ appointment may be cancelled/terminated without any notice.*

3. *AND WHEREAS based on her Application and prima facie accepting her declaration, offer of appointment dated 20.06.2019 was issued to her and she was appointed on 21.06.2019 as Chief Law Officer on probation for a period of two years as per the terms and conditions specified in her offer of appointment subject to further extension. The same was duly accepted by her.*

Further as per the terms and conditions specified at para 1(5) in her offer of appointment, her probation was extended vide order dated 21.6.2021 until further orders.

4. *AND WHEREAS as per the terms and conditions envisaged in her offer of appointment dated 20.06.2019 to the post of Chief Law officer at para 1(11) it is specified that, "The appointment is made relying upon the information furnished by you. If, at any time, it is found that you have furnished false information or suppressed any material fact for securing this appointment, your services will be liable to be terminated forthwith without notice, during or even after completion of probation period, apart from any other action that you may be liable for."*

5. *AND WHEREAS on consideration of her service records, Smt. Suruchi Rajendra Gurjar is found lacking in essential requisites as to the required experience for the post as elaborated in the advertisement. Thus, it is noticed that from the inception she was lacking in the essential requisites as to the experience as stipulated in the advertisement and thereby she is not found fit for retention and confirmation for appointment as Chief Law Officer in the services of Mumbai Port Authority.*

6. *NOW, THEREFORE, I, the undersigned, being the Appointing Authority for the post of Chief Law Officer, after due consideration of all the service records of Smt. Suruchi Rajendra Gurjar in totality, find that she is not suitable for retention and confirmation in service as Chief Law Officer in Mumbai Port Authority and accordingly her services stand terminated from the services of Mumbai Port Authority effective from the close of working hours of 13th December 2022.”*

SUBMISSIONS OF THE PETITIONER

11. The learned Senior Advocate Shri Anturkar, for the Petitioner, has contended that, **firstly**, the probation of the Petitioner was indefinitely extended on the day (21.06.2021) she had completed 2 years of her probation. **Secondly**, the impugned order concluding that the Petitioner lacked essential requisites *qua* the aspect of experience, for being eligible to be considered for the post of Chief Law Officer as per the advertisement, is

wholly and solely based upon the enquiry report dated 16.09.2022. The Employer instituted an enquiry into the four articles of charges and after the Enquiry Officer concluded that the 4 charges are proved and it is established that the Petitioner did not possess the requisites necessary for the appointment as a Chief Law Officer, the Chairman and Appointing Authority has concluded that the Petitioner was found lacking in essential requisites from the inception and she is not found fit for retention and confirmation as Chief Law Officer. This is evident from the statement made in paragraph Nos.4 and 6 of the impugned order (reproduced above), which indicates that the Appointing Authority was convinced that she had suppressed material facts for gaining employment and, therefore, she was found to be unsuitable for retention and confirmation in service. This conclusion is based on paragraph Nos.4 and 5, which are founded on the findings of the Enquiry Officer. Therefore, **thirdly**, the termination is stigmatic in view of the observations in paragraphs 4 and 5, of the impugned order.

12. The Petitioner relies upon the following judgments:-

(a) ***Brihanmumbai Mahanagarpalika and another vs.***

Secretary, Bar Council of Maharashtra and Goa and another, 2012 (6) Mh.L.J. 407 (Full Bench).

- (b) *A.K. Balaji vs. The Government of India and others, 2012 (2) CTC 1 Vol.78 Part 1, (Madras High Court).*
- (c) *Bar Council of India vs. A.K. Balaji, (2018) 5 SCC 379.*
- (d) *Dr. Vijayakumaran C.P.V. vs. Central University of Kerala and others, AIR Online 2020 SC 89 : (2020) 2 Scale 661.*
- (e) *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, (1999) 3 SCC 60.*

13. Shri Anturkar further contends that the decision of the Employer to conclude that the Petitioner does not have the requisites for being considered to the post of the Chief Law Officer, is inextricably connected with the findings of the Enquiry Officer. After the Enquiry Officer held that the Petitioner is guilty of misrepresentation and suppression, the Employer arrived at its conclusion on the basis of the evidence recorded. This is the foundation of the impugned order.

14. It is further submitted that the Petitioner moved the Employer with an RTI Application and also filed a department appeal. Based on her RTI Application, the Employer furnished information to the Petitioner vide an email communication, dated 15.02.2023 and enclosed an Annexure i.e. the internal notings of the Deputy Secretary, Senior Deputy Secretary, Secretary, Deputy Chairman and the Chairman (all of whom have signed the noting on 09.12.2022), agreeing that the findings of the Enquiry Officer dated 16.09.2022, which hold the Petitioner guilty of the four articles (reproduced above) and based on the said evidence and findings, the violation of Regulations 3(1), 3(1A)(i), (iv), (xii) and (xiii) of the Bombay (Mumbai) Port Trust Employees (Conduct) Regulations, 1976, was established. The notings also recorded that the Chairman and the Disciplinary Authority issued the second show cause notice dated 03.10.2022, along with the copy of the Enquiry Officer's report and directed the Petitioner to submit her explanation on the Enquiry Report, within 15 days, as to why a major punishment should not be inflicted on her.

15. One more annexure was supplied to the Petitioner under RTI with the subject '*Action Against Smt.Suruchi R. Gurjar, Chief Law Officer (under suspension), REG*'. On perusing the same, the Petitioner contends that the entire note suggesting disciplinary action against the Petitioner is based on the charge sheet dated 20.03.2021 and the Enquiry Report dated 16.09.2022. Finally, it was recorded in paragraph Nos.17, 18 and 19 in the notings, as under:-

"17. Pursuant to the Hon'ble High Court's Order dated 1.12.2022, Legal Opinion from Sr. Advocate and Counsel Shri Ratnakar Pai was sought on the following.

A. Whether to take action in the matter against her in terms of appointment order dated 20.06.2019 as well as MbPT (RSP) Regulations, 2010, since she is a probationer and her probation has not been declared so far,

Or

B. Whether to take action based on the inquiry report under the provisions of MbPA (CCA) Regulations, 1976.

18. Legal Opinion from Sr. Advocate and Counsel Shri Ratnakar Pai is enclosed.

19. In view of Hon'ble High Court Orders dated 01.12.2022 and Legal Opinion sought from the Sr. Advocate and Counsel Shri Ratnakar Pai as explained at para 17 and 18 above, Orders of Chairperson and Appointing/Disciplinary Authority in the subject case on the above 2 options, i.e. option A or option B, are requested for further course of action under intimation to Ministry."

In view of the above, the Secretary and the Chairman opted for option A.

16. The Petitioner contends that the impugned order is clearly and solely based on the report of the Enquiry Officer. The whole action is founded on the said report and a second show cause notice dated 03.10.2022 was issued to the Petitioner, calling for an explanation as why she should not be inflicted with a major punishment. Instead of passing the final order based on such material, the Employer opted for terminating the probation period of the Petitioner, only to create a '*make believe*' picture that an innocuous order has been passed. Clauses 2, 3, 4 and 5 of the impugned order, draw an inference that the Petitioner is found lacking in essential requisites and this conclusion is founded on the belief of the Employer in paragraph Nos.2 and 4, which indicate the view of the Employer that the Petitioner is guilty of making a false and incorrect declaration. This conclusion is stigmatic in nature.

17. After issuing a second show cause notice to the Petitioner along with the findings of the Enquiry Officer, the

Employer has based the impugned order on the Enquiry Officer's findings. Though the Employer opted for option 'A' (paragraph 17 of the notings reproduced above), a stigmatic order has been passed.

SUBMISSIONS OF THE RESPONDENTS/MbPT

18. The learned Senior Advocate Shri Pai, has vehemently canvassed that the contention of the Petitioner is misconceived and does not deserve consideration. The 2010 Regulations empower the Employer to extend the probation. He relies upon the affidavit in reply dated 19.12.2022, filed by Mrs.S.G. Patwardhan, Senior Deputy Secretary. He also relies upon the **order dated 11.11.2021 passed by the Hon'ble Supreme Court in Civil Appeal n. 7353-7354 of 2009 (Rajesh Kumar v/s Union of India)**, to support his contention that the Petitioner has suppressed material information and has mislead the Employer for gaining employment.

19. He draws our attention to the various contentions set out in the said affidavit in reply, more specifically paragraph

Nos.3A and 3B, which indicate that the enquiry was conducted and the second show cause notice was issued to the Petitioner, only to arrive at a finding as to whether, it was desirable to continue her in service. A more serious action was not contemplated only to avoid a stigma to her career. He further points out clause 5 of the appointment order to contend that it was within the domain of the Employer to continue the probation of the Petitioner until satisfactory completion and until she was informed of the same in writing, she was deemed to be on probation.

20. It is denied that the Petitioner's service has been wrongfully terminated. It is denied that her probation period was terminated on account of the enquiry and it is reiterated that she was unfit for confirmation and retention. She was terminated strictly in accordance with the terms of her appointment order. It is reiterated in paragraph No.18 that '*Respondent No.2, refrain from merely terminating her service forthwith under clause 11 of the said appointment letter. Instead, Respondent No.2 decided to take steps to initiate a regular Departmental Enquiry, to look into the charges framed vide charge sheet dated 20th September, 2021*

to find out the fulfillment of the eligibility criteria with respect to the experience of the Petitioner. It is prayed that the petition be dismissed with costs.

21. The Employer has relied upon the view taken by the Single Judge Bench in *Shaikh Farheen Sultana Abdul Samad vs. President, Dayanand Shikshan Sanstha, Latur and others, 2016 (4) Mh.L.J. 947*, to buttress his contention that, a probationer does not have a right to continue in employment.

CONCLUSIONS

A] ISSUE OF PROBATION

22. In the order of probation, reproduced in paragraph 4 herein-above, the Petitioner was indicated that her probation would be for a period of two years, subject to an extension. If not found suitable for the post, she would be discharged during the probation period or the extended period. On 31.07.2020, the Petitioner was issued with an appreciation letter which is an indicator that she was working satisfactorily during her probation period. On 20.03.2021, she was served with a charge-sheet. On

19.06.2021, three months after the issuance of the charge-sheet, she was placed under suspension. The Suspension Review Committee extended her suspension for six months by Office Order dated 15.09.2021. Thereafter, again her suspension period was extended for a further period of 180 days, vide Order dated 14.03.2022. Yet again, vide Order dated 08.09.2022, her suspension was further extended for the third time for 180 days.

23. It is obvious from the extension order of probation dated 21.6.2021, that it was issued on the day she completed her probation period. Her probation was extended in perpetuity. There was no mention in the order of extension that her probation period was being extended for a particular period. It was also not mentioned that her performance is found to be unsatisfactory or that, the probation was being extended to grant her an opportunity for improvement. Apparently, her probation was extended since she was suspended.

24. The Petitioner has contended that after one year of her probation period, she was issued with a letter of appreciation dated 31.07.2020 which is a confirmation of her good

performance. Her suspension is clearly on the basis of the allegation that she has suppressed information and has fraudulently gained employment.

25. Shri Pai has relied upon clause 19 of the Mumbai Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 2010, which provides for extension of the Probation period. Clause 19 (2) permits extension for a specific period at a time, but the total should not be more than 1 year, unless the extension is due to a pending departmental enquiry. However, what we find in this case is that the probation of the Petitioner was extended indefinitely without mentioning any period. Moreover, it was extended only because the D E was being conducted and not for unsatisfactory work.

26. In the above circumstances, especially in view of the Clause 19(2) of the Regulations which provides the maximum probation period of 3 years, we have no hesitation to conclude that probation period cannot be extended in perpetuity. It is canvassed in the open Court by the learned Senior Advocate Shri Pai, that the Petitioner is discontinued due to suppression of

facts. In view of the pleadings in the affidavit in reply, it is admitted that the Petitioner was not communicated any adverse remarks, either for deficient working or for exhibiting mediocrity in her performance. No factor was brought to her notice to indicate the area in which she was under performing. On such grounds, the indefinite extension of probation can be interfered with and the principle of deemed confirmation can be invoked, since the Regulations do not permit extension beyond 3 years. We are fortified by *Raymond UCO Denim Pvt Ltd. Yavatmal v/s Praful Warade and others [2010(6) Mh L J 178]*.

B] SUSPENSION PENDING ENQUIRY

27. It is a matter of record that after the Petitioner was issued with an appreciation letter dated 31.07.2020 and she was served with a charge-sheet dated 20.03.2021. Four Articles of charges were formulated, which have been reproduced *verbatim* in paragraph 9, in this judgment. Article I speaks about a fraudulent claim of experience and a dishonest intention to secure employment. Under Article II, again it is alleged that the Petitioner has fraudulently claimed experience and remuneration in legal firms with a dishonest intention to secure employment.

Under Article III, it is alleged that the Petitioner has suppressed vital information of her experience and remuneration with a dishonest intention of wrongfully gaining employment. Under Article IV, it is alleged that she failed to maintain absolute integrity and devotion to duty.

28. The last Article (IV) reflects on the performance of the Petitioner, her integrity and devotion at work, as a probationer. The language used in Article IV runs counter to the appreciation letter dated 31.07.2020 issued to the Petitioner. So also, admittedly, on no occasion was the Petitioner informed in writing about the area in which the employer noticed lack of integrity and lack of devotion to duty. It is openly canvassed before us by the Employer, that her probation was extended as per Regulation 19 because it empowers the Employer to extend the probation if the Employee is facing disciplinary action. This is, therefore, the true cause for the extension of her probation which continued for 3 years and 6 months, which is impermissible even under the Regulations, save and except, for the purpose of conducting the Departmental Enquiry.

29. Based on four charges, the Departmental Enquiry was conducted and the Enquiry Officer tendered the report dated 16.09.2022, in which, he concluded that all the four charges are proved. It was further held that the Petitioner did not possess the requisites necessary for appointment as a Chief Law Officer. The record of the Mumbai Port Trust reveals that the Chairman and Appointing Authority concluded that the Petitioner was lacking in essential requisites and she was not found fit for retention and confirmation as Chief Law Officer, on the basis of such conclusions of the Enquiry Officer. This is evident from the camouflaged statement made in paragraphs 4 and 6 of the impugned order of termination, reproduced in paragraph 10, here in above.

30. The learned Senior Advocate Shri Pai has strenuously attempted to convince us that the Petitioner was not found suitable to be confirmed in employment. However, this is not even whispered in the extension order, which continued her probation for 3 years and 6 months, which is permissible only if the Employee is facing a D E. In our view, a probation period is specifically utilised for testing the suitability of an Employee for

confirmation in employment. In catena of judgments, the law is crystallised that adverse observations or negative impressions during the probation period, have to be brought to the notice of the probationer, at regular intervals, in order to give him an opportunity of improving his performance. This has not been done by the employer. However, adverse conclusions in the termination order, are based on the foundation of the Enquiry Report, which is evident from the notings supplied to the Petitioner under RTI. Therefore, the impugned termination amounts to a stigmatic removal.

31. During the course of submissions, Shri Pai has specifically canvassed in the open Court through video conferencing facility that, the Petitioner was found to have indulged in suppression of her qualifications with regard to which a reference is found in paragraph 4 of the order of termination. Even the four articles of charges indicate the thrust of the employer on the aspect that the Petitioner has indulged in suppression and has fraudulently claimed necessary experience and remuneration earned from legal firms, with the dishonest intention to secure employment.

32. In *Dipti Prakash Banerjee v/s Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors., (1999) 3*

SCC 60, the Hon'ble Supreme Court has held as under :-

- “35. *The above decision is, in our view, clear authority for the proposition 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 or in its Annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.*
36. *It was in this context argued for the Respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of unfairness and this Court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this Court has said that the termination orders cannot be held to be punitive.* [See in this connection [Hindustan Paper Corporation vs. Purendu Chakraborty](#) [1996 (11) SCC 404] See in this connection, [Oil & Natural Gas Commission vs. Md. S. Iskender Ali](#) [1980 (3) SCC 428], [Unit Trust of India vs. T. Bijaya Kumar](#) [1992 (5) S.L.R. 855 (SC)], [Principal, Institute of Postgraduate Medical Education & Research, Pondicherry vs. S. Andel & others](#) [1995 Suppl. (4) SCC 609] and a labour case [Oswal Pressure Die Carting Industry vs. Presiding Officer](#) [1998 (3) SCC 225]. But in all these cases, the orders were simple orders of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the probationer's future whatever be earlier opportunities granted by the respondent-Organisation to the appellant to improve.
37. *On this point, therefore, we hold that the words amounting to “stigma” need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto and*

would vitiate the order of termination. Point 3 is decided accordingly.

Point 4:

38. Under this point, two aspects of the case fall for consideration, firstly whether the impugned order is founded on any conclusions arrived at by the employer as to his misconduct or whether the termination was passed because the employer did not want to continue an employee against whom there were some complaints. The second aspect is whether there is any stigma in the order of termination or in the documents referred to in the termination order.
39. Taking up the first aspect, we have noticed that during the first one year of probation, a letter dated 11.12.1995 was served on the appellant. That letter stated, among other things, that the appellant "prepared false bills" and that he "misbehaved with women academic staff members". The appellant sent a reply denying the allegation and he also sought for a copy of the complaint said to have been given by the lady academic staff member. It is true that subsequently, there were two orders of extension of probation each for six months. But in the impugned order dated 30.04.1997, it was stated in para 8 that the order of termination was being passed because of the "conduct", performance, ability and capacity of the appellant during the "whole period". This would clearly take in the facts stated in the letter dated 11.12.1995. It is obvious that findings of preparation of false bills or of misbehaviour with women which ought to be arrived at only in a regular departmental inquiry, were referred to in this letter without any enquiry. It will be noticed that the letter dated 11.12.1995 does not merely say that there are such complaints against the appellant but it says conclusively that the appellant had "prepared false" bills and "misbehaved" with women academic staff members.
40. The above language in the letter dated 11.12.1995 would clearly imply that this was not a case of any preliminary findings. If these were referred to as mere allegations, it would have been a case of motive. But as these definitive conclusions of misconduct are evident on the face of this letter dated 11.12.1995 and this letter falls within the "whole period", the conclusion is inescapable that these findings were part of the foundation of the impugned order and it is not a case of mere motive. On this ground, the order requires to be set aside.

41. *We shall next take up the second aspect relating to stigma. We shall assume that the words used in the impugned order do not contain any stigma. We shall then refer to the three other letters to which the order makes a reference. In the first letter dated 30.04.1996, we do not find anything objectionable. Coming to the next letter, we however find that para (iii) refers to the scuffle between the appellant and one P. Chakraborty regarding which the appellant made a complaint on 28.05.1996. An Enquiry Committee is said to have been appointed and it gave a Report. The extract from the report of the Committee dated 15.7.1996 is found in the Counter of the respondents. The Enquiry Committee found the appellant's "behaviour reprehensible", and it confirmed that the appellant was "involved in a scuffle and did misdeeds like obtaining false signatures", and said that the appellant was "guilty of inefficient performance or duty, irregular attendance without permission, rude and disorderly behaviour and wilful insubordination". Whatever may be said about the other words, the words used in connection with the finding of the Enquiry Committee about the scuffle and about the appellant obtaining false signatures, are, in our opinion, clearly in the nature of a stigma. Further, the Enquiry Committee said he must be "punished". It did not say that proceedings for disciplinary action were to be initiated. Thus on the ground of "stigma" also, the impugned order is liable to be set aside.*

42. *It was argued that the appellant was given notice of the above enquiry by the Committee but he was "not cooperative". In our view findings arrived at by such an informal Committee against the appellant, which Committee was, in fact, constituted on a complaint by the appellant against Mr. Chakraborty, cannot be used for terminating the appellant's probation, without a proper departmental inquiry. The said findings, in our view, were the foundation for the impugned order among other facts. Such findings must, in law, be arrived at only in a regular departmental inquiry.*

[Emphasis supplied]

33. We are, therefore, required to assess as to whether the impugned order of termination is stigmatic, founded on allegations of suppression and fraudulent behaviour of the

Petitioner, as is contended by the Employer, or whether, the impugned order is an innocuous and non-stigmatic order. In *D. P. Banerjee* (supra), the Hon'ble Supreme Court has concluded that the termination order should not contain any such references which would indicate unacceptable conduct of a candidate and should not be referable to such material or contentions, which would attach a stigma to the employee.

34. Under the RTI act, the Petitioner was served with internal documents. The internal noting makes a mention of 5 senior officers of the Port Trust agreeing to the fact that the charges are proved against the Petitioner, which establish that she is guilty of suppression of material information and having made a fraudulent attempt to gain employment. The noting also makes a mention of initiating action against the Petitioner on the basis of the Enquiry Officer's report. An option is suggested in the noting that the Chairman may opt for issuing an order of termination of the Probation period. A second show cause notice dated 03.10.2022, along with the copy of the Enquiry Officer's report dated 16.09.2022, was served on her, thereby proposing a major punishment. This was the penultimate stage of the

disciplinary action, as is explained in *Hindustan Lever Ltd. v/s Ashok Vishnu Kate & Ors.*, (AIR 1996 SC 285).

35. It is in the backdrop of the Enquiry Officer's Report, that the employer issued a second show cause notice to the Petitioner, on 3rd October, 2022 and called upon her to explain as to why a major punishment should not be inflicted upon her. She was called upon to reply to the second show cause notice after which the Petitioner contemplated issuing an order of major punishment. A copy of the Enquiry Officer's report dated 16th September, 2022 was also served upon the Petitioner.

36. Having perused the extensive material before us, we find as under :-

- a] A charge sheet was served upon the Petitioner, 6 months prior to completion of her Probation period.
- b] All the charges were in relation to specific allegations of suppression of material information and a fraudulent attempt to gain employment.
- c] The Regulations permit the Employer to extend the probation of an Employee, either for unsatisfactory performance

or if disciplinary proceeding is underway.

d] The charges were proved in the enquiry and the Employer was convinced that the Petitioner is guilty of suppression of material information and a fraudulent behaviour for gaining employment.

e] The stage was set for issuing an order for inflicting a major punishment on the Petitioner, after serving the second show cause notice to her and calling for her explanation as to why she should not be awarded a major punishment.

f] After receiving the explanation of the Petitioner, the department suggested to the Chairman to either act on the Enquiry Report and inflict a major punishment to the Petitioner, or issue an order of termination to end the probation of the Petitioner.

g] The Chairman opted to terminate the Petitioner vide the impugned order, apparently on concluding that she had suppressed material information for fraudulently gaining employment.

h] Paragraph 1 of the impugned order indicates that the requisite qualifications were described. In paragraph 4 of the said impugned order, it is specifically averred that the Petitioner

can be terminated if the information tendered by her in the application form are found to be untrue or lacking in requisites.

i] A conjoint reading of paragraph 1, 2, 4 and 5 of the impugned order, clearly indicates that the employer was convinced on the basis of the enquiry report that, the Petitioner deserved to be terminated since she is found to be lacking in requisites.

j] The impugned termination order was founded on the conclusion that the Petitioner was guilty of suppression of facts for gaining employment. References are made to this aspect in the impugned order to demonstrate that her termination was referable to the act of suppression of facts and a fraudulent behaviour.

k] The stand taken by the Employer before the Court is that the Petitioner was guilty of suppression of material information and therefore, she was terminated.

l] The impugned order, with the decisive reference to the above purported acts, is a stigmatic order and has been issued by creating a make believe picture that the Petitioner's performance was unsatisfactory, when her suspension was extended only due to the D E and no adverse remarks were communicated to her.

37. In view of the above and in the light of *Dipti Prakash Banerjee* (supra), we hold that the impugned order of termination is stigmatic and is wholly based upon the conclusions of the Enquiry Officer that the Petitioner is guilty of suppression of material information and for indulging in a fraudulent act of gaining employment.

38. This **Writ Petition is, therefore, allowed** in terms of prayer clause (a). Considering the factual matrix and the contention of the Petitioner of being unemployed since her termination, which is not controverted by the Employer, we are granting full back wages to her, to be paid within 30 days. She shall be reinstated in service within the same timeline of 30 days, failing which, she shall be entitled for 6% p.a. simple interest on the back wages and full wages until her reinstatement.

39. Needless to state, this judgment would not create any embargo on the Employer or curtail its right to further initiate appropriate steps to act on the basis of the second show cause notice, dated 03.10.2022, if so desired.

40. A perusal of prayer clause (a-1), would indicate that the Petitioner desired the refund of deposits. Considering the above directions, the said prayer, in our view, would not survive. If the Petitioner has any reason to be aggrieved in connection with prayer clause (a-1), she may make a representation to her employer or initiate proceedings for recovery.

41. Rule is made absolute in the above terms.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)