

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

WRIT PETITION NO.1373 OF 2000

Dharampal Singh Dahiya
Adult, Indian,
Residing at Flat No.3,Plot No.10-B/12,
Gemini Park Co-op. Hsg. Soc.
Sion, Trombay Road,
Mankhurd, Mumbai - 400 088 .. Petitioner

Vs.

- 1) Dr.B.A.Dasannacharya
Director, IUC - DAEF
University of Campus,
Khandwa Road,
Indore - 452 017 (M.P.)
- 2) Dr.P.S. Goyal, Centre Director,
IUC - DAEF, Mumbai Centre
R-5 Shed, BARC, Trombay,
Mumbai - 400 085.
- 3) M/s.Inter University Centre,
DAEF, Mumbai Centre,
R.S. Shed, B A R C,
Trombay, Mumbai - 400 085 .. Respondents

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Mr.Rohan Cama a/w. Mr. Shanay Shah, Mr.Netaji Gande, Kaushal
Udeshi i/b. M/s.Sanjay Udeshi & Co., Advocate for the Petitioner.

Ms.Neeta Masurkar a/w. Ms.Nieyaati Masurkar, Advocate for the
Respondents.

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**CORAM : A.A. SAYED AND
PRAKASH D. NAIK, JJ.**

**JUDGMENT RESERVED ON : SEPTEMBER 26, 2019 &
NOVEMBER 03, 2020**

JUDGMENT DELIVERED ON : NOVEMBER 06, 2020

JUDGMENT (PER - PRAKASH D. NAIK, J.) :

The petitioner invokes Article 226 of Constitution of India challenging the impugned order of termination communicated vide letter dated 23rd August, 1999, issued by the respondents.

2 Brief facts urged by the petitioner are as follows:

- (a) The petitioner was in defence service (Indian Air-force) for about 18 years till he took voluntary retirement in August, 1998. He had acquired masters degree and since there was no much further scope for promotion in his career in defence service and on the background of educational qualifications, he was interested in utilizing his experience and qualification.
- (b) After reading the advertisement in the newspaper dated 11th March, 1998, inviting application for the post of Administrative Officer by respondent no.3, the petitioner applied for the said post. He was selected. Vide letter dated 13th July, 1998, intimation was given to the petitioner of having been selected for the aforesaid post calling for his acceptance.

- (c) The petitioner, resigned from defence services vide letter dated 20th July, 1998 seeking voluntary retirement. Petitioner then communicated his acceptance of the offer for the aforesaid post vide communication dated 20th July, 1998 to respondent no.3. He joined the services of respondent no.3 from 2nd September, 1998.
- (d) He was discharging his duties diligently to the satisfaction of his superiors including respondent nos. 1 and 2. No adverse remarks were ever made known to him by the respondents. He discharged his duties honestly.
- (e) The petitioner noticed that the respondent no.2 has been using the vehicle of respondent no.3 for his personal use and purposes. The petitioner was maintaining records of use of vehicles, for which there was resentment by respondent no.2. He invited ire of respondent no.2 who cultivated bias against the petitioner.
- (f) The petitioner received envelope from anonymous sender containing correspondence between the respondent no.2 and other employees of respondent no.3 at Indore Centre.

The contents of the correspondence support and corroborate the contention of the petitioner.

- (g) The petitioner applied for leave by applications dated 16th August, 1999, for 31 days i.e. 19 days earned leave from 24th August, 1999 to 11th September, 1999 and 12 days half pay leave from 12th September, 1999 to 23rd September, 1999 in continuation both days inclusive and also for grant of advance pay.
- (h) The petitioner reported for his duty on 23rd August, 1999. He was informed by Mr.S.S. Narayanan, the Administrative officer of Mumbai Centre that his leave has been duly sanctioned and payment up to 23rd September, 1999 has been credited to his bank account. He was asked to submit necessary receipt of amount credited to his account. The petitioner passed on the receipt.
- (i) On 23rd August, 1999, respondent no.2 called the petitioner and informed him that some letter is to be handed over to him which was in a sealed envelope. The contents were not revealed to him. On opening the envelope, the petitioner

came to know that envelope contained letter dated 23rd August, 1999 addressed to the petitioner by respondent no.2. The petitioner was terminated from services arbitrarily in violation of principles of natural justice.

- (j) The petitioner was orally informed that the amount credited to his bank account on 23rd August, 1999, includes one month salary. After reading the contents of letter dated 23rd August, 1999, the petitioner immediately refunded the amount back to the credit of centre in cash. The petitioner relies on receipt issued by Mr.S.S.Narayanan, in respect to amount refunded by him.

- (k) The petitioner vide his advocate's letter dated 30th August, 1999, addressed to respondent no.1 intimated that the termination of petitioner is arbitrary, illegal, unlawful and without complying principles of natural justice. The termination is a part of conspiracy to get rid of the petitioner. He called upon for reinstatement. He also demanded the copy of service regulations. However, there was no response.

- (l) The petitioner filed Appeal before CAT Mumbai challenging termination. The said Appeal was heard on 3rd March, 2000. The same was dismissed by order dated 3rd March, 2020, on the ground that CAT has no jurisdiction to entertain the Appeal.

- (m) Respondent no.1 forwarded evasive reply dated 13th September, 1999 to notice dated 30th August, 1999.

- (n) The petitioner forwarded representation dated 9th September, 1999 to respondent no.1. According to petitioner, the respondent no.1 had orally informed him that his services were illegally terminated and assured him of reinstatement. He was directed to contact respondent no.2. The petitioner met respondent no.2 on 24th September, 1999. He was given assurance of justice by reinstatement, provided he submits representation in the name of respondent no.1 and hands it over to respondent no.2, who shall forward it to respondent no.1 with recommendation. The petitioner forwarded letter dated 26th September, 1999. He sent reminders. There was no response. Reply dated 18th October, 1999, was received by

the petitioner, which was negative. The petitioner, vide letter dated 17th March, 2000, submitted to the Governing Board of respondent no.3 appealing for revocation of the termination order dated 23rd August, 1999. He submitted Appeal before Chairman, University Grant Commission.

3 Respondent no.2 filed affidavit-in-reply to the petition dated 26th July, 2000. Mr.S.Sankarnarayanan working as Administrative Officer, filed the said affidavit dated 26th July, 2000. The petitioner filed additional affidavit dated 4th August, 2000. The petitioner then filed additional affidavit dated 21st December, 2000. Shri Mahesh Chandra Gupta who was working as Administrative Officer, Indore, filed affidavit dated 9th August, 2000. Respondent no.2 filed additional affidavit dated 11th January, 2001. The petitioner than filed additional affidavit dated 20th February, 2001, and compilation of documents before this Court. Subsequently, another additional affidavit dated 8th March, 2011, was filed by the petitioner.

4 Learned counsel Mr.Rohan Cama appearing for the petitioner has made several submissions in support of challenge to the impugned order of termination, which can be summarized as follows:

- (i) The termination of services of the petitioner is arbitrary, highhanded, illegal and unlawful;
- (ii) The impugned termination without complying due process of law amounts to colourful exercise of the powers conferred on respondents;
- (iii) No opportunity of being heard has been offered to the petitioner before the impugned termination was contemplated by the respondents;
- (iv) No reasons were assigned for termination of services of petitioner by respondents;
- (v) The termination is in gross violation of principles of natural justice, principle of equity and fair play;
- (vi) The respondents have indulged in unfair practice;
- (vii) Respondent no.2 was biased against the petitioner;
- (viii) The action of termination is out of *vendetta* by respondent no.2;
- (ix) The services of the petitioner were terminated on the basis of his ACR's, which he came to know after receiving the photocopy of ACR under RTI Act, 2005. Adverse remarks were given in his ACR by reporting office and with recommendation for termination of service. He was never

given show-cause notice/warning/memo during his service.

- (x) The petitioner was not informed of adverse remarks and grade below V by final grading officer before final acceptance. He was not informed of any adverse remarks or grade below V in his ACRs by respondents or final reviewing authority;
- (xi) His ACR for probation period had to be completed by 1st August, 1999 i.e. one month before the expiry of the probation period and the same was completed on 13th August, 1999. The adverse remarks in the ACR were fabricated and devoid of substance.

5 Learned counsel for the petitioner relied on judgments in support of his submission, which are as follows:

- (i) *Dev Dutt Vs. Union of India & Ors.*¹;**
(ii) *State of Gujarat & Anr. Vs. Suryakant Chunilal Shah*²;
(iii) *The Management of Brooke Bond India (Pvt.) Ltd. Vs. Y.K. Gautam*³;
(iv) *Dipti Prakash Banerjee Vs. Satyayendranath Bose National Centre for Basic Science*⁴;
(v) *Union of India & Ors. Vs. Mahaveer C. Singhavi*⁵;

1 (2008) 8 SCC 725

2 (1999) SCC 529

3 AIR (1973) SC 2634

4 (1999) 3 SCC 60

5 (2010) 8 SCC 220

- (vi) Pradip Kumar Vs. Union of India & Ors.⁶;**
(vii) V.P. Ahuja Vs. State of Punjab & Ors.⁷;
(viii) Kesar Enterprises Ltd. Vs. State of Uttar Pradesh & Ors.⁸;
(ix) Maya Devi Vs. Raj Kumari Batra⁹

6 Learned counsel Ms. Neeta Masurkar for the respondents submitted that there is no illegality in the termination order. The petitioner has challenged the letter dated 23rd August, 1999 and not the termination order dated 19th August, 1999. He has relied on fabricated documents. The petitioner has not come with clean hands. The petitioner was appointed on probation of one year. Hearing was not necessary. There were no stigma in the termination order. There were no *malafides*. The contentions with regards to the ACR were not urged in the petition and for the first time in the affidavit dated 8th March, 2011, the petitioner has urged the grounds enumerated therein. The contentions in affidavit dated 8th March, 2011, are devoid of merits. It was not necessary to assign any reason for termination. As per Rule 2.2.8 relating to the period of probation enumerated in the Bye Laws and the service condition of UGC DAE CSR, during the period of probation the services of

6 (2012) 13 SCC 182

7 (2000) 3 SCC 239

8 (2011) 13 SCC 733

9 (2010) SCC 486

an employee may be terminated by appointing authority without assigning any reasons by giving a notice of one month in writing or one month's pay in lieu of. There is no violation of rules. Since the termination order does not refer to any stigma against the petitioner, no hearing is warranted.

7 Learned counsel relied upon the following decisions:

- (i) *Rajendra Chandra Banerjee Vs. the Union of India*¹⁰;**
- (ii) *Oil And Natural Gas Commission and Ors. Vs. Dr.MDS. Iskender Ali*¹¹;**
- (iii) *Unit Trust of India & Ors. Vs. T.Bijay Kumar & Anr.*¹²;**
- (iv) *Krishnadevaraya Education Trust & Anr. Vs. L.A. Balkrishna*¹³;**
- (v) *Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Anr.*¹⁴.**

8 We have heard learned counsel for the parties and perused the documents on record and the affidavits filed by both the parties. Letter dated 13th July, 1998, annexed as Exhibit-B to the petition mentions that on recommendation of selection committee (meeting held on 30th June, 1998), the Director, IUC-

10 AIR 1963 SC 1552

11 (1980) 3 SCC 428

12 1992(5) SLR 855

13 JT 2001 (1) SC 617

14 (1998) 3 SCC 225

DAEF has approved the appointment of petitioner for the post of administrative officer on terms mentioned therein. The letter was in the nature of offer of appointment. The letter states that the appointment is temporary but is likely to continue. He will be on probation for a period of one year from the date of his appointment, which may be extended upto one more year at the discretion of competent authority. During the probationary period his services are liable to be terminated without assigning any reason and without notice and he can also resign without giving any notice. On successful completion of probation his services can be confirmed. However, after the probation, services are liable to be terminated in accordance with the existing Bye-laws and service conditions of IUC-DAEF, which require three months notice in writing. In the event of services being terminated without notice, he will be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice or for the period by which such notice falls short of prescribed period. The petitioner accepted offer and joined services. Apparently, the petitioner was terminated vide letter dated 19th August, 1999, issued by respondent no.3 stating that the petitioner joined as Administrative Officer on 2nd September, 1998 with a probation of one year under stipulation that during the

probation period his services are liable to be terminated. According to terms and conditions, the petitioner's services are terminated with immediate effect. An amount of Rs.14,060/- equivalent to one month salary and allowance is deposited in his account in State Bank of India, Mumbai. He was asked to submit a receipt thereof to the Centre Director, Mumbai Centre. He was intimated that for settlement of other claims, if any, he should contact Sankara Narayanan, Administrative Officer or the Center Director of Mumbai Centre. By letter dated 23rd August, 1999, petitioner was intimated that the Director ICU And DAEF has terminated his services as Administrative Officer in the institution with immediate effect and his one month salary is deposited in his account in State Bank of India.

9 The petitioner has alleged that respondent no.2 was using the vehicle of the respondent no.3 for personal purpose and that the record was maintained by him, which was not liked by respondent no.2. The respondents had conspired to terminate the petitioner. Several other contentions are agitated in this petition. The petitioner has relied upon the documents which are annexed to petition and the affidavits along with compilation of documents.

10 Vide affidavit dated 26th July, 2000, respondent no.2 stated that the petition involves disputed question of facts. The letter of termination dated 19th August, 1999, was delivered to the petitioner under sealed cover. Letter dated 23rd August, 1999, is a consequential letter of termination order dated 19th August, 1999. The petitioner had raised false dispute regarding payment of Rs.24,492/- to him by respondent on 23rd August, 1999. The respondent has credited the said amount in petitioner's S.B. Account towards notice pay salary upto 23rd August, 2000. The receipt Exhibit-H and leave application Exhibit-E annexed at page nos. 46 and 40, are fabricated documents. Receipt dated 23rd August, 1999 Exhibit-"F", is tampered by inserting a line "ON GOING ON 31 DAYS LEAVE" and altering timing shown in the original receipt as 11:20 hrs. to 11:00 hrs. The words 11:20 are changed into 11:00 hours. The letters at pages 38 and 39 are false documents. Letter dated 14th March, 1999, is not written or signed by him. The petitioner makes false claim that he has received copies of letter Exhibit-"D", from anonymous sender. The petitioner suppresses with ulterior motive, letter of termination dated 19th August, 1999, which was given to him in sealed cover. The petitioner accepted termination letter without any objection. He signed in acknowledgment, the receipt of

sealed cover. The termination letter has been annexed to the petition. Consequential letter was issued to petitioner. Before serving termination order, the respondent credited to petitioner's account one month's salary upto 23rd August, 1999. Receipt was given by petitioner. He surrendered his identity card, vehicle permit to respondent and in acknowledgment the receipt was issued which is tampered by petitioner. No hearing was necessary before termination. The other contentions of petitioner were denied. Mr.S. Sankaranarayan in his affidavit dated 26th July, 2000, denied having written letter dated 7th February, 1998. The petitioner in paragraph no.23 of the petition had contended that Mr.Narayanan had informed him that his leave with advance of pay has been duly sanctioned and his pay upto 23rd September, 1999, has been duly credited to his bank account. The said contention is false. There is no record of submission of leave application for the period from 23rd August, 1999 to 23rd September, 1999, by the petitioner. He had no talk with petitioner in that regard. Petitioner has tampered with receipt Exhibit-F, which was issued to him on his surrendering Identity Card, vehicle permit etc., consequent to termination of his services. The receipt is tampered by inserting therein a line "ON GOING ON 31 DAYS LEAVE". The receipt is further tampered by altering

time shown in original receipt as "11:20 hrs" to "11:00 hrs." Respondent no.2 had informed the petitioner on 23rd August, 1999 that the sealed cover contains termination letter dated 19th August, 1999, issued by respondent no.1. The affidavit further mentions that the contentions of the petitioner that he refunded the amount back to the credit of the Center in cash and receipt was issued to him in respect of amount refunded by petitioner is totally false. The receipt shown at Exhibit-H. The petitioner filed affidavit in rejoinder dated 4th August, 2000. Affidavit of Mahesh Chandra Gupta dated 9th August, 2000, filed on 29th December, 2000, stated that, he was working as Administrative officer, at Inter University Consortium at Indore. He further stated that he has not received the alleged letters at Exhibit-"D" of petition, which according to petitioner as contended in paragraph 21 of the petition were received from anonymous source and that the letters were allegedly written by Dr.P.S. Goyal and Mr.S.S. Narayanan and addressed to him. The respondent no.2 filed affidavit dated 11th January, 2001, denied contentions of petitioner. The petitioner then filed additional affidavit dated 21st December, 2000 and another affidavit dated 20th February, 2001. The petitioner also filed compilation of documents on 4th February, 2001. Lastly, the petitioner filed affidavit dated 8th

March, 2011. In the last affidavit, it is contended by petitioner that the action of termination is *malafide*. His services have been terminated on the basis of ACR, which he came to know after receiving photocopy of ACR under RTI Act. Adverse remarks were given in ACR with recommendation of termination. The reporting officer concocted stories. No opportunity was given to explain his position. No show cause notice was given to him. Adverse remarks not informed to him. ACR was completed on 13th August, 1999, which was signed by Reviewing Officer without date. The petitioner tendered explanation towards remarks against him in this affidavit. He also relied on documents annexed to said affidavit.

11 The petitioner was appointed on probation. This fact is not in dispute. Before completing the period of probation, his services were terminated. It would be relevant to refer the rules/ Bye Law and service conditions. Rule 2.2.8, reads as follows:

"2.2.8 Period of Probation.

The employees of Consortium, except those appointed on temporary basis or on contracts, shall be put on probation for a period of one year. At the end of this period, the probation may be extended, provided that

the total period of probation is not more than two years. During the period of probation, the services of an employee may be terminated by the appointing authority without assigning any reason by giving a notice of one month in writing or one month's pay in lieu of. Similarly the employee on probation can resign from his/her post without assigning any reason by giving a notice of one month or depositing one month's salary in lieu thereof."

Thus, the aforesaid rule categorically mentions that during the period of probation the services of an employee may be terminated by the appointing authority without assigning any reasons by giving a notice of one month in writing or one month's pay in lieu of. We do not find that there is breach of the aforesaid rule in any manner. One month's salary was credited in the bank account of the petitioner.

12 In ***Dev Dutt Vs. Union of India & Ors. (Supra)***, the Apex Court was dealing with the issue relating the confidential report, adverse entries/remarks. It was observed that whether an entry is adverse or not, depends upon its actual impact on employee's career and not on its terminology. It was also observed that the entry in ACR has to be communicated to the

employee. The factual aspects of the said decision indicate that the appellant therein was promoted as Executive Engineer and he was eligible to be considered for promotion of Superintending Engineer after completing stipulated period and his name was included in the list of candidates eligible for promotion. The promotion committee held that the appellant was not eligible for promotion. The contention of the respondents therein was that the Bench mark grade should be "Very Good" for the last five years. The appellants grievance was that he was not communicated "Good", entry. The Court observed that the said entry should have been communicated to the appellant to enable him to make representation praying that the entry should be upgraded from "Good" to "Very Good". Opportunity of making such representation should have been given to him. Considering bench mark for promotion "good" entry was adverse entry for promotion. It was further observed that every entry in the ACR, must be communicated to public servant within a reasonable period. Non communication would affect the employee. Non-communication of entry would violative of Article 14 of the Constitution of India. Non communication of an entry may adversely affect the employees chances of promotion. The factual aspects of this decision are distinct. It is relevant to note that in

the termination letter it has not been stated that his services were terminated on account of his ACR. The petitioner was on probation and in accordance with the Service Rules relating to probation, services could be terminated without assigning any reasons. Thus, the ratio laid down in the aforesaid decision is not of assistance to the petitioner.

13 In ***State of Gujarat & Anr. Vs. Suryakant Chunilal Shah (Supra)***, it was observed that the purpose of communication of adverse remark is to offer an opportunity to an employee to improve himself or to explain his conduct so as to show that the adverse entry was wholly uncalled for or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance. The facts of this case would indicate that the employee was compulsorily retired. The authorities themselves were uncertain about the action which was to be taken, ultimately against him. There was hardly any material on the basis of which *bonafide* opinion could have been formed that it would be in public interest to retire employee, compulsorily. There were no adverse remarks and integrity was not doubted and after his promotion character roll entries were not available to doubt his integrity and no

material for compulsory retirement. It is in these circumstances, the observations regarding roll entries were made by the Court. In the case of ***The Management of Brooke Bond India (Pvt.) Ltd. Vs. Y.K. Gautam (Supra)***, the Apex Court had considered the issue whether termination of employee without assigning any reasons, is *mala fide*, capricious and arbitrary. The respondent was on probation and was appointed by the appellant as salesman. The employer relied upon the reports regarding the unsatisfactory work of the employee. It was observed that the reports about the conduct of the employee would at the most shows his lack of enthusiasm. The Court held that the stand of the employer that the employee was not suitable for the job is not made out having regard to its action two days later of entrusting the employee with an independent charge of a potential area with full expectation that the sales of the said area would increase. The facts of the case reflect that, the respondent was terminated. Dispute was referred to Tribunal. The termination was set aside by Tribunal. The Apex Court referred to several decisions relating termination of employee who was on probation. The employer had relied on reports against employee. Officers were examined before Tribunal. The stand of employer was that employer was not suitable for job which was disbelieved on the ground that the

employee was entrusted with independent charge. The said decision in our view is not applicable in the present case.

14 In ***Dipti Prakash Banerjee Vs. Satyayendranath Bose National Centre for Basic Science (Supra)***, the issue before the Supreme Court was whether the termination of employee was stigmatic and whether it was necessary to hold an inquiry before initiating action against employee. It was held that stigma may be inferrable from the references quoted in the termination order though the order itself may not contain anything offensive. Termination would be bad if it contains stigma and no enquiry has been conducted. The employee was appointed on probation. The employee was informed that the work was not satisfactory on several counts. The employee submitted reply denying allegations. The probation was extended for six months to give opportunity to employee to improve performance. Deficiencies were noted again. The Apex Court considered when can an order of termination of a probationer be said to contain an express stigma. The court observed that, if findings were arrived at in an enquiry as to misconduct behind the back of officer, or without regular departmental enquiry, the simple order of termination is to be treated as founded on the

allegations and will be bad. But, if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry, but at the same time, he did not want to continue the employee against whom, there were complaints, it would only be a case of motive and the order would not be bad. In the case before Apex Court, the order of termination was not simple order of termination but it was a lengthy order. It not only says that performance during probation is not satisfactory but also refers to letter by which the period of probation was extended and by referring to other letters, it was concluded that the appellants conduct, performance, ability, capacity during probation was not satisfactory. In the case before us, the termination order was issued without assigning any reasons. There is no adverse observations against the petitioner. Thus, it cannot be said that the order of termination would amount to stigma.

15 In the case of ***Union of India & Ors. Vs. Mahaveer C. Singhavi (Supra)***, it was held that, if inquiry is held behind the back of employee, the termination would be punitive and bad in law. The facts of the case disclose that the proposal to terminate services was approved by superiors. The services were

terminated on the ground of misconduct. The High Court held that order of discharge was without formal enquiry and without giving opportunity to defend. The Apex Court observed that if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving hearing, the same would be valid. However, the case before Apex Court was different, since termination was based on misconduct. It was punitive in character and motivated by considerations, which are not reflected in order.

16 In the case of ***Pradip Kumar Vs. Union of India & Ors. (Supra)***, the Supreme Court has observed that while terminating arbitrary stigmatic report was considered. In the facts of the case, it was held that the order of discharge was vitiated due to colourable exercise of power, stigmatic and punitive in nature and such order cannot be sustained in law. It is violative of Article 14 of Constitution.

17 In ***Kesar Enterprises Ltd. Vs. State of Uttar Pradesh & Ors. (Supra)***, the Court considered the right of hearing. It was held that the principle of natural justice is to

check arbitrary exercise of power. The principle implies duty to act fairly. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Similarly, in ***Maya Devi Vs. Raj Kumari Batra (Supra)***, the Supreme Court has dealt with arbitrary exercise of power. It was observed that the discretionary powers are to be exercised by application of mind and recording of reasons. In ***V.P. Ahuja Vs. State of Punjab and Others***, it was observed that services of probationer cannot be terminated punitively without complying with principles of natural justice. The affidavit filed by parties before the Court indicated in that case that the order was stigmatic. The facts of that case are distinct. In the present case, no hearing was necessary as the termination was not stigmatic.

18 The ratio laid down in the aforesaid decisions is not applicable to the facts of the case before us. We have noted above that services of probationary could be terminated without assigning reasons in accordance with rules of service applicable to the petitioner. The termination order is not stigmatic.

19 Learned counsel for respondent placed reliance on

several decisions. In the case of ***Rajendra Chandra Banerjee Vs. the Union of India (supra)***, the Constitution bench has observed that a Government servant who is on probation can be discharged during the period of probation and such discharge would not amount to dismissal or removal within the meaning of Article 311 (2) and would not attract the protection of that Article where the services of a probationary are terminated in accordance with rules and not by way of punishment. The probationary has no right to the post held by him and under the terms of his appointment, he is liable to be discharged at any time during the period of his probation subject to the rules governing such cases.

20 We have noted that the petitioner in the case before us was terminated in accordance with rules. The petitioner has belatedly contended by filing the additional affidavit dated 8th March, 2011 that he has collected ACR during RTI and that the respondent had relied upon the ACR without furnishing copy of the ACR to him and without giving him hearing, the petitioner has been terminated. We find that the termination order does not refer to any adverse remark against petitioner. The petitioner could be terminated before the probation period gets over. There are no

observations in termination order, which are stigmatic. The issuance of show-cause notice or giving hearing to the petitioner was not warranted.

21 In the case of ***Oil And Natural Gas Commission and Ors. Vs. Dr.MDS. Iskender Ali (Supra)***, it was held that the termination of temporary services of probation by innocuous order in accordance with the terms of employment was valid and Article 311(2), is not attracted. Motive of termination is immaterial. Ordinarily, the Court does not go into the office files to find out any possible stigma. The facts of this case indicate that, confidential roll reflecting assessment of work of employee during the relevant period showed that he was careless and lacking in sense of responsibility. The period of probation was extended. The Court observed that, the remarks in the assessment roll, merely indicates the nature of the performance put in by officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast stigma. The respondent was probationer, the appointing authority did not consider it to continue enquiry and decided to terminate the services of respondent as he was not suitable for job. In case of probationer or a temporary employee,

who has no right to the post, such termination is valid and does not attract Article 311 of the Constitution of India. The petitioner in this case had insisted that the files of the office be called for perusal of ACR. It is pertinent to note that the appointment letter issued to the petitioner itself categorically mentions that the appointment of the petitioner is temporary, but, likely to continue. He will be on probation for a period of one year from the date of appointment, which may be extended for one more year at the discretion of the competent authority. It, however, mentions that during the probationary period, the services of the petitioner are liable to be terminated without assigning any reasons and without notice and even he can resign without giving notice. On successful completion of probation, the services will be confirmed. It also mentions that in the event of services being terminated without notice, he will be entitled to claim sum equivalent to the amount of pay and allowances for the period of notice or for period by which such notice sought for the prescribed period.

22 Applying the principle enunciated by Supreme Court in various cases, to the facts of the present case, it is apparent that the impugned order is an order of termination simplicitor

without casting any stigma. The order does not in any way involve any civil consequences and is an order of discharge simplicitor of petitioner who was a probationer. The petitioner has not been able to make out any case of victimisation or one of punishment.

23 In ***Unit Trust of India & Ors. Vs. T.Bijay Kumar & Anr. (Supra)***, It was held that in simplicitor discharge, question of giving a hearing before the termination of service, does not arise.

24 In ***Krishnadevaraya Education Trust & Anr. Vs. L.A. Balkrishna (Supra)***, it was observed that termination of service during probation period wherein the order merely states that the employee will be relieved from specific day and he be paid dues, if any, cannot be said to be by way of punishment. The services were terminated during probation. The Court further observed that during the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory, which means that he is not suitable for the job , then, the employer has a right to terminate the services as a reason thereof.

25 In ***Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Anr. (Supra)***, it was held that it is not open to sit in Appeal over the assessment made by the employer about the performance of employee. Once it is found that the assessment made by the employer was supported by material and termination was not *malafide*, it is not proper for the High Court to interfere.

26 Considering the conditions stipulated in the appointment letter, the contents of termination order, it cannot be said that there was breach of settled principles of law. The petitioner was terminated before completing the period of one year. The Service Rules permits termination without assigning reasons. The contents of termination letter are not stigmatic. Not furnishing ACR in the facts of this case would not affect order of termination. There is no violation of principles of natural justice. The claim of petitioner about *malafides*, vendetta, conspiracy, fabrication is based on disputed questions of facts and cannot be accepted. Hence, the petition is devoid of merits and deserves to be dismissed.

27 Hence, we pass the following order:

:: ORDER ::

- (i) Writ Petition No.1373 of 2000, stands dismissed;
- (ii) No order as to costs.

(PRAKASH D. NAIK, J.)

(A.A. SAYED, J.)