A DIPTI PRAKASH BANERJEE

v.

SATVENDRA NATH BOSE NATIONAL CENTRE FOR BASIC SCIENCES, CALCUTTA AND OTHERS.

B FEBRUARY 10, 1999

[M. JAGANNADHA RAO AND D.P. MOHAPATRA, JJ.]

Service Law—Termination of services of probationer without departmental enquiry—Order of termination referring to conduct of the
C *probationer during the entire period of probation—Probationer initially served a letter making serious allegations of misconduct—Later another letter extracting findings of an informal Inquiry Committee about probationer's involvement in a scuffle and his "misdeeds" like obtaining false signatures—Whether such findings of misconduct constituted 'motive' or 'foundation' of the order*
D *of termination—Held, they constituted the 'foundation' and hence the order of termination required to be set aside.*

Service Law—Termination of services of probationer without departmental enquiry—Order of termination referring to an earlier letter extracting findings of an earlier informal Inquiry Committee about probationer's
E *involvement in a scuffle and his 'misdeeds' like obtaining false signatures—Held, words used in proceedings referred to in termination order were in the nature of a stigma; order liable to be set aside on that ground as well.*

Service Law—Termination of probationer's services without departmental inquiry—Termination held to be illegal—Probationer not gainfully
F *employed—Held, probationer entitled to reinstatement and backwages till date of reinstatement from date of termination and to continuity of service.*

Service Law—Termination of services without departmental enquiry—When could it be said that misconduct was the 'foundation' of order
G *or termination and when only the 'motive' for such termination—Held, where findings of misconduct arrived at in an inquiry behind the back of the employee, the order of termination to be treated as 'founded' on such allegation and would be bad; where no inquiry held, the allegations would be a motive and the order of termination would be valid.*

H *Service Law—Termination of services without inquiry—Whether words*

casting stigma could be gathered from proceedings leading up to order of termination even if the order itself contained no such words—Held, yes. A

The appellant was appointed on January 11, 1995 as Office Superintendent in the respondent organisation, on probation for one year on condition that he might be confirmed after one year provided the administration was satisfied with quality of the appellant's service. In a letter B to the appellant dated December 11, 1995 the respondent stated that appellant had prepared false bills and that he had misbehaved with women academic staff members. The appellant sent a reply denying the allegations. Thereafter the appellant's probation was extended by six months from May 2, 1996. C

On October 17, 1996 the Director of the Respondent wrote to the Appellant pointing out 'serious deficiencies' in the latter's performance. Reference in this letter was made to the findings of an informal inquiry committee which had looked into the appellant's complaint against a Helper. The letter extracted the findings of the committee to the effect that D the appellant's behaviour before it was reprehensible; that he had been involved in a scuffle; that he had committed other 'misdeeds like obtaining false signatures' and that he was a person of 'dubious character'. This was followed by a report of an Administrative Officeer on October 17, 1996 which was totally in the appellant's favour. On October 31, 1996 the E appellant's probation was extended for a further period of six months.

By an order dated April 30, 1997, the Appellant's services were terminated. Reference was made in the order to the appellant's unsatisfactory performance during initial period of probation and to the letter dated October 17, 1996. The order stated that the respondent had 'closely F watched and examined your *conduct*, performance, ability and capacity during the *whole period* of probation but your performance is found to be unsatisfactory and you are considered unsuitable for the post against which you have been appointed".

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The appellant's writ petition challenging the order of termination was dismissed by Single Judge of the Calcutta High Court. A Division Bench of that Court dismissed his further appeal.

In this Court it was contended for the appellant that the order of termination was illegal since the findings arrived at behind his back in an H

A informal inquiry constituted the foundation of the termination order. Secondly, the material on which the order of termination was based contained words amounting to a 'stigma'. For the respondent it was maintained that it had terminated the appellant's services after giving him opportunities to improve and it had thus acted fairly. There was no question of any stigma in the termination order nor was it a case where certain findings were arrived at which could be the foundation of the order.

Allowing the appeal, this Court

HELD : 1.1. The definite conclusions of misconduct evident on the face of the letter dated 11.12.1995 were part of the foundation of the impugned order and it was not a case of mere motive. On this ground, the order requires to be set aside. [552-G-H]

1.2. The findings of the informal inquiry committee were the foundation for the impugned order and could, in law, be arrived at only in a regular departmental inquiry. [553-F]

Bishan Lal Gupta v. *State of Haryana,* [1978] 1 SCC 202, referred to.

Hindustan Paper Corporation v. *Purnendu Chakraborty,* [1996] 11 SCC 404, distinguished.

1.3. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination was to be treated as 'founded' on the allegations and would be bad. But if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar was the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. [545-E-F]

Madan Gopal v. *State of Punjab,* AIR (1963) SC 531; *R.S. Gupta* v. *U.P. State Agro Industries Corporation Ltd.,* J.T. (1998) 8 S.C. 585; *Purshottam Lal Dhingra* v. *Union of India,* [1958] SCR 828; *State of Orissa* v. *Ram Narayan Das,* [1961] 1 SCR 606; *Samsher Singh* v. *State of Punjab,* [1974]

2 SCC 831; *Gujarat Steel Tube* v. *Gujarat Steel Tubes Mazdoor Sangh,* [1980] 2 SCC 593; *State of Punjab* v. *Sukh Raj Bahadur,* [1968] 3 SCR 234 and *A.S. Benjamin* v. *Union of India,* Civil Appeal No. 1341 of (1996) dt. 13.12.96 SC, referred to. A

2.1. The words used in connection with the findings of the Inquiry Committee about the scuffle and about the appellant obtaining false signatures were in the nature of a stigma. Thus on the ground of 'stigma' also the impugned order was liable to be set aside. [553-D] B

2.2. It depended 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 amounted to stigma or not. [549-D-E] C

Samsher Singh v. *State of Punjab,* [1974] 2 SCC 831; *Bishan Lal Gupta* v. *State of Haryana (supra),* [1978] 1 SCC 202; *Kamal Kishore Lakshman* v. *Pan American world Airways,* [1987] 1 SCC 146; *Allahabad Bank Officer's Association* v. *Allahabad Bank,* [1996] 4 SCC 504; *Hari Singh Mann* v. *State of Punjab,* [1975] 1 SCC 774; *State of Orissa* v. *Ram Narayan Das,* AIR (1961) SC 177; *Ravindra Chandra* v. *Union of India,* AIR (1963) SC 1552; *State of Gujarat* v. *Akhilesh C. Bhargav,* [1987] 4 SCC 482; *State of Bihar* v. *Gopi Kishore Prasad,* AIR (1960) SC 689; *Jagdish Mitter* v. *Union of India,* AIR (1964) SC 449; *State of U.P.* v. *Madan Mohan Nagur,* AIR (1967) SC 1260; *Kunwar Arun Kumar* v. *U.P. Hill Electronics Corporation,* [1997] 2 SCC 191; *Chandu Lal* v. *Pan American World Airways,* [1985] 2 SCC 727; *Jagdish Prasad* v. *Sachiv Zila Gaon Committee,* [1986] 2 SCC 338; *Union of India* v. *R.S. Dhabe,* [1969] 3 SCC 603 and *High Court of Judicature at Patna* v. *Pandey Madan Mohan Prasad Sinha,* [1997] 10 SCC 409, referred to. D E F

2.3. 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. [551-H; 552-A] G

Indrapal Gupta v. *Managing Committee,* [1984] 3 SCC 384; *Hindustan Paper Corporation* v. *Purendu Chakraborty,* [1996] 11 SCC 404; *Oil & Natural Gas Commission* v. *Md. S. Iskendu,* [1980] 3 SCC 428; *Unit Trust of India* v. *T. Bijaya Kumar,* (1992) 5 Serv. L.R. 855 SC; *Principal, Institute of P.G. Medical Education & Research, Pondicherry* v. *S. Andel,* [1995] H

A **Suppl. 4 SCC 609;** *Oswal Pressure Die Carting Industry* **v.** *Presiding Officer,* **[1998] 3 SCC 225, referred to.**

3. The appellant was entitled to reinstatement and backwages till date of reinstatement from the date of termination and to continuity of service. [554-F]

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State of Haryana **v.** *Jagdish Chander,* **[1995] 2 SCC 567 and** *Managing Director, ECIL* **v.** *B. Karunakar,* **[1993] 4 SCC 727, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 750 of 1999.

C

From the Judgment and Order dated 23.4.98 of the Calcutta High Court in M.A.T. No. 1690 of 1997.

J. Gupta, Ms. Rana Mukherjee and Ms. Sumita Mukherjee for the Appellant.

D

S.K. Jain and A.P. Dhamija for the Respondents.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Leave granted.

E

This Civil Appeal has been filed by the appellant questioning the correctness of the judgment of the Calcutta High Court in M.A.T. No.1690 of 1997 dated 23.4.1998. By that judgment, the Division Bench affirmed the judgment of the learned Single Judge dated 15.5.1997 in W.P. No. 8484(W) of 1997 dismissing the writ petition filed by the appellant, a probationer and refusing to quash the order dated 30.4.1997, terminating his probation.

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The facts of the case in brief are as follows:

The appellant was appointed on 11.1.1995 as Office Superintendent in the respondent organisation, namely, Sri Satyendra Nath Bose National Centre for Basic Sciences, Calcutta. The order of appointment dated 11.1.1995 stated that the appellant would be on probation for *one year* and that he might be confirmed after *one year* provided the administration was satisfied with the quality of the appellant's service. His pay scale was to be in the scale of Rs.1400-1600-2300-2600 with allowances. The appellant joined on 2.5.1995. As we are concerned with the question of validity of

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the appellant's termination of probation, it is necessary to refer to the events that took place during the period of probation. A

On 11.12.1995, the Director of the respondent organisation informed the appellant that the appellant's work was not satisfactory on several counts. The points mentioned in this letter are as follows:- B

> "(i) Your handling of the movement to the new campus was good till the good impression was spoiled by your refusal to handle the furniture in the Director's room and your statements about other administrative staff members, which were not corroborated by academic members present. Later movement to the JD Block by Prof. A.Mookerjee and the Director's office found you non-cooperative. C
>
> (ii) You have been *preparing false bills;* the fact that they were passed by your immediate superior does not mitigate your guilt. D
>
> (iii) Your handling of quotations about cleaning agencies, xerox machines, purchases of stationery etc. were faulty and several times you were told to redo the whole job. Unfortunately your performance has not improved even after repeated advice.
>
> (iv) You *have misbehaved* with women academic staff members; one of them has even submitted a written complaint. E
>
> (v) You are rather frequently absent from office premises and the faculty members complained about your absence. Your handling of the room allocations in the guest house, confirmatory reply to people asking for accomodation, and general supervision have been unsatisfactory, In general your attitude to office work leaves much to be desired. F
>
> It is expected that you would rectify the faults noted above and improve your performance in the coming months, so that your confirmation could be favourably considered." G

On 30.4.1996, the appellant was informed that he was on probation and his confirmation would be considered soon. On 15.4.1996, the Director wrote another letter stating as follows: H

A "1. It appears that your attitude concerning the guests for the guest house has not shown any improvement. When Dr.R.Bhat fell sick with chicken pox and was in quarantine for three weeks, you were nowhere to be seen, and the A.O. was also not seen to take any interest. similarly when a Canadian professor (Professor Dragland) fell sick, you were not to be found.

B

Most of the time, you left the work to be done by others, who had to do extra work for your inefficiency.

2. You have not done a proper job of releasing the houses at DB 17 and CD 85. It is known that the date 31.1.1996 is not the actual C date of release of DB 17 and the landlord showed us proof that this was so.

3. You have not explained how the revenue stock verification was done by you and the A.O.

D

Please refer to SNB/DIR/ADM/95- 96/84 dated 20.2.1996 about stock verification (especially numbering and locating new furniture). Has any progress been made? No activity on this important job has been noticed by me.

E Please report to me on point 3 by April 16, 1996.

Your performance leaves a lot to be desired and you must show evidence of good work to the academic staff members to merit confirmation."

F The appellant submitted an elaborate reply of five pages denying all the allegations and giving his version of the incidents mentioned against him, and also sought for a copy of the Written Complaint given by the woman 'academic' staff member. He pointed out that though as per the order of the Director, he was to report to the Administrative Officer, the G Director was perhaps sending the above letters without consulting the said Administrative Officer.

The report dated 25.4.1996 of the Administrative Officer to the Director gives a contrary version. It states that the appellant was found to be an "excellent working hand, conscientious and willing" to take respon- H sibility, that he had always been discharging his assigned works even

despite constraints, that he was regular and punctual, and was conducting himself very well in the discharge of his duties even when there was no helping hand and that "his service during the period of probation has been extremely satisfactory". A

But the Director issued a further letter dated 30.4.1996 stating that the appellant's performance during the period of probation had been reviewed and stating that "regrettably your performance has been far from satisfactory", that by letters dated 11.12.1995 and 15.4.1996 his attention had been drawn to various areas of unsatisfactory performance, but no improvement was discernible. It was stated that in order to afford the appellant an opportunity to improve performance and in order to enable the organisation to consider the appellant's case favourably for confirmation, his *probationary period* was being *extended* by *six months* from 2.5.1996. The letter stated that it was hoped that the appellant would improve his performance generally and also in the areas pointed out to him. B C D

On 17.10.1996, the Director wrote to the appellant that the appellant's performance in the previous six months was again assessed and that there were 'serious deficiencies' as follows:

> "(i) Your attendance to office work has been irregular and perfunctory. It was found that you had often left the office earlier than the time you signed in the attendance register. E
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> (ii) You could not complete the job of stock taking of the fixed stock, marking of furniture, etc. for the whole financial year 1995-96. You were told again (letter SNB/DIR/ADM/96-97/52 dated 11.9.1996) but you tried to avoid work by writing irrelevant notes. There has been no evidence that the work was started for the FY 1996-97. F
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> (iii) Your complaint of 28.5.1996 against Sri P.Chakraborty, Helper, was duly investigated. Your behaviour before the inquiry committee *was reprehensible*. It was *confirmed* by the committee that you were involved in the *scuffle* and did other misdeeds like obtaining *false signature*, so that you were characterized as a person of 'dubious character'. G H

A You *are guilty of* inefficient performance of duty, irregular attendance without permission, *rude and disorderly behaviour,* and *wilful insubordination.*

Unless your performance improves considerably it would be difficult to recommend your confirmation. It is expected that you B would pay attention to the faults pointed out to you."

The above letter, it will be seen, refers to an inquiry. The Counter affidavit filed by the respondent explains that the said report was given by a High Level Enquiry Committee on 15.7.1996. The Committee was to deal C with the complaint by the appellant against one Sri P.Chakraborty, a partially handicapped person. We get some details of the Enquiry report from the counter affidavit as follows:

"(a) In pursuance of a complaint made by the petitioner against Shri P.Chakraborty a specific enquiry was made on the following D questions by a High Level Enquiry Committee consisting of three high officials, namely (1) Professor (Smt.) Monisha Bose, (2) Dr.N.Nayak and (3) Dr. D.Gangopadhyay, headed by Prof. (Smt.) Monisha Bose -

(i) Why Sri P.Chakraborty went downstairs, whether he used E unacceptable language and whether he was involved in *physical assault,* and

(ii) Whether Sri D.P.Banerjee used provocative language and whether he was involved in *physical assault?*

F The petitioner was not very cooperative in the enquiry. The said enquiry committee *inter alia* made the following recommendation:

Sri D.P.Banerjee was *involved in the scuffle* and also used Mr. G Pradip Bose to obtain the *false signatures.* As such, he should surely be *punished.* We recommend that a person of such dubious character should *not be confirmed.*"

On 30.10.1996, we have a report of a different kind from the Administrative Officer. That report is totally in favour of the appellant. It H states that, with reference to the letter dated 17.10.1996, the Administrative

Officer had to state that his earlier note dated 25.4.1996 regarding the appellant's performance was obviously not taken into account by the Director, that reports were being called on 'selective basis' rather than by standard format applicable to all employees. He stated that the appellant's performance was "exemplary, well mannered and disciplined, he had been discharging his duties conscientiously and diligently". He referred to some of the specific items of complaint and stated that there was no truth in them.

Then comes the second order of extension of probation dated 31.10.1996 from the Director extending the probation by another six months, from 2.11.1996. Appellant was asked to submit an account of his monthly work to Dr. Samir K. Pal, who would judge his performance. The appellant was asked to improve his performance.

On 29.3.1997, the Director wrote to the appellant that on the basis of Dr. S.K.Pal's reports, the appellant's performance in regard to stock-taking or handling quotations was not good and that the appellant must change his attitude to work, avoid neglect of work allotted, avoid carelessness or inefficiency & change his behaviour which often bordered on insubordination.

It was in this background that on 30.4.1997, the impugned order of termination was passed. As the case turns also upon the question whether this order is vitiated by 'stigma', it is necessary to extract the body of this letter. It reads:

> "4. Since the performance during the initial period of probation was not satisfactory, by letter no.SNB/PER 4 1201/DO-5 dated *30 April 1996* your period of probation was extended by six months from 2 May 1996.
>
> 5. By letter dated *17 October 1996* your attention was drawn to unsatisfactory performance and the areas of unsatisfactory performance were brought to your notice. You were advised to improve your performance considerably.
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> 6. Since during the extended period also your performance was not satisfactory, the Management was constrained to further extend your period of probation and accordingly by letter

A no.SNB/PER 4 1201/DO-100 dated *31 October 1996* your period of probation was extended further six months.

7. During the period of further extension of probation you could not improve your performance.

B 8. We have closely watched and examined your *conduct,* performance, ability and capacity during the *whole period* of probation but your performance is found to be unsatisfactory and you are considered unsuitable for the post against which you have been appointed. The period of probation was extended with the expec-
C tation that you would improve your performance but there was no improvement in your performance.

9. Under the circumstances, the Management is unable to confirm your service in the Centre and as such the Management is unable to continue your service on the expiry of the stipulated period or
D probation on the Ist May 1997 and your service shall stand terminated after the close of working hours of 1 May 1997. In case you want to appeal against the decision, you may appeal to the Governing Body of the Centre.

E 10. You will be paid one month's pay although the contract of employment does not stipulate any such payment."

It is this order of the respondent that was unsuccessfully challenged before the single Judge and the Division Bench of the High Court.

F In this appeal, it is contended by Sri Jaideep Gupta, learned counsel for the appellant that the order terminating the appellant's probation is liable to be set aside on two grounds. Firstly, that the findings in the letter of the Director dated 11.12.95 shows that certain findings arrived at behind the back of the appellant were the foundation of the impugned order; secondly, on the ground that it refers to certain communications by the
G Director to the appellant which contain material amounting to *'stigma'* and also because these documents and the record of the case clearly establish that it is a case where certain findings arrived at in a non-departmental inquiry were the *'foundation'* for the termination and it is not a case where certain allegations against the appellant could be treated as the *'motive'*
H behind the order. He contended that the Administrative Officer's reports

in his favour were not considered by the Director. The communications to the appellant contained not only certain allegation but clear adverse findings by the Director as well as by a Committee and they were the foundation. The differences between the Director and the Administrative Officer, led to the appellant being made the scape-goat.

On the other hand, learned senior counsel for the respondent Sri P.P.Rao contended that this was a case where the appellant's performance during probation was not satisfactory, the organisation so informed the appellant during the first one year period on 11.12.1995 and 15.4.1996 and he was asked to improve. Thereafter on 30.4.1996, his probation was extended giving him an opportunity to improve. During this six month period, again the Director wrote on 17.10.1996 pointing out his deficiencies and asking him to improve by giving a further extension of probation on 31.10.1996 by another six months. A note was sent on 29.3.1997 to him regarding his deficiencies and finally the termination order was passed on 30.4.1997. Therefore the employer acted fairly and there was no question of any stigma in the order nor was it a case where certain findings were arrived at which could be the foundation of the order. If on account of unsatisfactory performance a probation could not be terminated then it would lead to serious problems for any employer.

On the basis of the above contentions, the following points arise for consideration:

(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?

Point 1 :

As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations

A which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in *Madan Gopal* v. *State of Punjab*, AIR (1963) S.C. 531 there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in
B *R.S.Gupta* v. *U.P.State Agro Industries Corporation Ltd. & Anr.*, J.T. (1998) 8 S.C. 585 and reference was made to the development of the law from time to time starting from *Purshottam Lal Dhingra* v. *Union of India*, [1958] SCR 828, to the concept of 'purpose of inquiry' introduced by Shah, J. (as he then was) in *State of Orissa* v. *Ram Narayan Das*, [1961] (1) SCR 606 and to the seven Bench decision in *Samsher Singh* v. *State of Punjab*, [1974]
C 2 SCC 831 and to post *Samsher Singh* case-law. This Court had occasion to make a detailed examination of what is the 'motive' and what is the 'foundation' on which innocuous order is based.

This Court in that connection referred to the principles laid down by Krishna Iyer, J. in *Gujarat Steel Tube* v. *Gujarat Steel Tubes Mazdoor Sangh*,
D [1980] 2 SCC 593. As to 'foundation', it was said by Krishna Iyer, J. as follows:

> ".....a termination effected because the master is *satisfied* of the misconduct and of the desirability of terminating the service of the
E delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being *satisfied* of the guilt, the master abandons the inquiry and proceeds to terminate. Given an
F alleged misconduct and a live *nexus* between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."

G and as to motive:

> "On the contrary, even if there is suspicion of misconduct, the master may say that he *does not wish to bother about it* and *may not go into his guilt* but may feel like *not keeping* a man he is not happy with. He *may not like to investigate* nor take the risk of
H continuing a dubious servant. Then it is not dismissal but termina-

tion simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge."

As to motive one other example is the case of *State of Punjab* v. *Sukh Raj Bahadur* [1968] 3 SCR 234 where a charge memo for a regular inquiry was served, reply given and at that stage itself the proceedings were dropped and a simple termination order was issued. It was held, the order of simple termination was not founded on any findings as to misconduct. In that case, this Court referred to *A.S. Benjamin* v. *Union of India*, Civil Appeal No.1341 of (1966) dt. 13.12.1966 (SC) where a charge memo was issued, explanation was received, an inquiry officer was also appointed but before the inquiry could be completed, the proceedings were dropped and a simple order of termination was passed, the reason for dropping the proceedings was that "departmental proceedings will take a much longer time and *we are not sure* whether after going through all the foundation, we will be able to deal with the accused in the way he deserves'.

The termination was upheld.

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

In the light of the above principles, laid down in *R.S.Gupta's* case we do not think anything more is to be added. Point 1 is decided accordingly.

Points 2:

In the present case before us, the order of termination dated 30.4.97 is not a simple order of termination but is a lengthy order which we have

A 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 17.10.96 and 31.10.96. It concludes by saying that the appellant's 'conduct, performance, ability and capacity during the *whole period* of probation was B not satisfactory and that he was considered 'unsuitable' for the post for which he was appointed.

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 30.4.96, 17.10.96 and 31.10.96 referred to in C 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 employ- D ment 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 E 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".

There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termina- F tion, 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?

G 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 (p150):

> "According to Webster's New World Dictionary, it (stigma) is H 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 Officer's Association* v. *Allahabad Bank*, [1996] 4 SCC 504.

At the outset, we may state that in several cases and in particular in *State of Orissa* v. *Ram Narayan Das,* AIR (1961) S.C. 177, it has been held that use of the word 'unsatisfactory work and conduct', in the termination order, will not amount to stigma.

We may advert to a few cases on the question of stigma. We shall refer initially to cases where a special Rule relating to termination of probationer required a particular condition to be satisfied and where the said condition was referred to in the order of termination. In *Hari Singh Mann* v. *State of Punjab*, [1975] 1 SCC 774, the probationer was governed by Rule 8(b) of the Punjab Service Rules, 1959 and the fact that the word 'unfit' as required by the Rules was used, was held not to be a ground for quashing the order on the ground of 'stigma', for to hold that it amounted to 'stigma' would amount to robbing the authority of the right under the rule. Similarly where a Rule required a show cause notice issued and an inquiry to be conducted before terminating probation, such as Rule 55-B of the Central Civil Services (CCA) Rules, there would be no question of characterising the simple order of termination as one founded on the allegations which were the subject of the inquiry. That was because, in such a case, the purpose of the inquiry was to find out if the officer was to be continued in service and not to find out if he was guilty *State of Orissa* v. *Ram Narayan Das*, AIR (1961) SC 177; *Ravindra Chandra* v. *Union of India*, AIR (1963) S.C.1552. In *State of Gujarat* v. *Akhilesh C. Bhargav*, [1987] 4 SCC 482, the termination order merely referred to Rule 12(bb) of the Indian Police Service (Probationer -) Rules 1959. It was contended that the reference to the said Rule 12(bb) itself amounted to a stigma but this was rejected following *Ram Narayan Das* case.

A We shall next advert to some more cases and to particular words employed while passing orders of termination of probationers. In *State of Bihar* v. *Gopi Kishore Prasad*, AIR (1960) S.C. 689, a show cause notice was given seeking a reply to the allegation regarding the officers' bad reputation and in regard to certain perverse decisions given by him in his B Judicial functions during the period of probation. The termination order stated that certain facts were brought to the notice of the Government about his unsatisfactory work and conduct and that grave doubts had arisen about his integrity which indicated that he was a corrupt and an unreliable officer. It was also said that confidential inquiries revealed that he was a corrupt officer and that annual confidential reports of his superior officer C referred to his bad reputation and *therefore* his work during the period of probation was not satisfactory. The Constitution Bench of this Court held that it was a clear case of stigma and the matter indeed required a full fledged departmental inquiry under Rule 55 of the CCS (CCA) Rules. In *Jagdish Mitter* v. *Union of India*, AIR (1964) S.C. 449 the use of the words D "undesirable to be continued" in service was held by the Constitution Bench to amount to stigma. This case was followed in *State of U.P.* v. *Madan Mohan Nagur*, AIR (1967) S.C. 1260 where the order said that the officer had 'outlived his utility' and such an order was held to amount to a stigma. *Jagdish Mitter* was approved by the Seven Judge Bench in *Samsher Singh's* E case on this point. But in *Kunwar Arun Kumar* v. *U.P. Hill Electronics Corporation*, [1997] 2 SCC 191, the termination order used the word 'unsatisfactory' and the same was upheld as it did not amount to stigma. In two cases arising under industrial law, one in *Chandu Lal* v. *Pan American World Airways*, [1985] 2 SCC 727 and *Kamal Kishore Lakshman* F v. *Pan American Land Ways Inc.*, [1987] 1 SCC 146 where the termination order used the word 'loss of confidence', the said orders were held to contain stigma and therefore punitive. In *Jagdish Prasad* v. *Sachiv Zila Gaon Committee*, [1986] 2 SCC 338, the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on charge of corruption and therefore not suitable for appointment. G This was held to amount to stigma. But in *Union of India* v. *R.S.Dhabe*, [1969] 3 SCC 603 where the order merely said 'found unsuitable', it was held not to amount to stigma. In *Allahabad Bank Officers Association* v. *Allahabad Bank*, [1996] (4) SCC 504, the order was one of compulsory retirement and said that a Special Committee had unanimously recom- H mended for the officers' compulsory retirement, that the Chairman and

Managing Director agreed with the Committee's views regarding 'want of application to Bank's work and lack of potential and that the officer was also found to be *not 'dependable'*. This Court after referring to a number of cases explained that the words 'not dependable' were used, in the context of the facts of the case and not as an aspersion on his reputation but in relation to his work and were to be understood in that sense in the setting of the words 'want of application' and or 'lack of potential'. It was observed:

> "Any person reading the letter on the order of compulsory retirement would not be led to believe that there was something wrong with Appellant 2 as regards his conduct or character. They would only indicate that he had ceased to be useful to the Bank in his capacity as a Manager".

Again in *High Court of Judicature at Patna* v. *Pandey Madan Mohan Prasad Sinha & Others*, [1997] 10 SCC 409, it was held that termination of probationer on basis of uncommunicated adverse remarks, was valid.

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. Point 2 is decided accordingly.

Point 3 :

The next question is whether the reference in the impugned order to the three earlier letters amounts to stigma if those three letters contained anything in the nature of a stigma even though the order of termination itself did not contain anything offensive.

Learned counsel for the appellant relies upon *Indrapal Gupta* v. *Managing Committee*, [1984] 3 SCC 384 decided by a three Judge Bench of this Court. In that case the order of termination of probation, which is extracted in the judgment, reads as follows :

> "With reference to the above (viz. termination of service as Principal), I have to mention that in view of the resolution No.2 of the Managing Committee dated April 27, 1969 (copy enclosed) and subsequent approval by the D.I.O.S., Bulandshahar, you are hereby informed that your service as Principal of this Institution is ter-

A minated ....."

Now the copy of Resolution of the Managing Committee appended to the order of termination stated that the Report of the Manager was read at the meeting and that the "facts contained in the Report of the Manager being serious and not in the interests of the institute, that therefore the B Committee unanimously resolved to terminate his probation." The Report of the Manager was not extracted in the enclosure to the termination order but was extracted in the Counter filed in the case and read as follows:

> "It will be evident from the above, that the Principal's stay will not C be in the interest of the Institution. It is also evident that the serious view of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For the termination of his period of probation, too, the approval of the DIOS will D be necessary. Accordingly, any delay in the matter may also be harmful to our interests.
>
> Accordingly, I suggest that instead of taking serious action, the period of probation of Sri Inder Pal Gupta be terminated without waiting for the period to end." E

It was held by Venkataramiah, J. (as he then was) (p. 392) that the letter of termination referred to the resolution of the Managing Committee, that the said resolution was made part of the order as an enclosure and that the Resolution in its turn referred to the report of the Manager. A copy F of the Manager's report had been filed alongwith the counter and the said report was the 'foundation'. Venkataramiah, J. (as he then was) held that the Manager's report contained words amounting to stigma. The learned Judge said: "This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct", that these findings in the Manager's G report amounted to a 'mark of disgrace or infamy' and that the appellant there was visited with evil consequences. The officer was reinstated with all benefits of backwages and continuity of service.

It will be seen from the above case that the resolution of the committee H was part of the termination order being an enclosure to it. But the offensive

part was not really contained in the order of termination nor in the Resolution which was an enclosure to the order of termination but in the Managers's report which was referred to in the enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager's report were the basis for the termination and the said report contained words amounting to stigma. The termination order was, as stated above, set aside.

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.

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. *Hindustan Paper Corporation* v. *Purendu Chakraborty*, [1996] 11 SCC 404. See in this connection, Oil & *Natural Gas Commission* v. *Md. S.Iskendu*, [1980] 3 SCC 428, *Unit Trust of India* v. *T. Bijaya Kumar*, [1992] 5 Serv. L. R. 855 SC; *Principal, Institute of P.G.Medical Education & Research, Pondichery* v. *S. Andel & Others*, [1995] Suppl. 4 SCC 609 and a labour case *Oswal Pressure Die Carting Industry* v. *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.

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

A 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 :

B 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 C stigma in the order of termination or in the documents referred to in the termination order.

Taking up the first aspect, we have noticed that during the first one year of probation, a letter dated 11.12.95 was served on the appellant. That letter stated, among other things, that the appellant 'prepared false bills' D 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 30.4.97, it was stated in para 8 that the order of termination was being passed because of the E *'conduct'*, performance, ability and capacity of the appellant during the *"whole period"*. This would clearly take in the facts stated in the letter dated 11.12.95. 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 inquiry. It will be noticed that the letter dated 11.12.95 does not merely say that there F are such complaints against the appellant but it says conclusively that the appellant had "prepared false" bills and "misbehaved" with women academic staff members.

The above language in the letter dated 11.12.95 would clearly imply that this was not a case of any preliminary findings. If these were referred G 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 11.12.95 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 H order requires to be set aside.

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 30.4.96, 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 28.5.96. An Inquiry 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 Inquiry 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 Inquiry Committee about the scuffle and about the appellant obtaining false signatures, are, in our opinion, clearly in the nature of a stigma. Further, the Inquiry 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.

It was argued that the appellant was given notice of the above Inquiry 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 agains 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.

As pointed out in *Bishan Lal Gupta* v. *State of Haryana*, [1978] 1 SCC 202, an ordinary inquiry by a show cause might be sufficient for the purpose of deciding whether the probatiioner could be continued. But where the findings regarding misconduct are arrived at without conducting a regular departmental inquiry, then the termination order will be vitiated. The learned senior counsel for the respondent relied upon *Hindustan Paper Corporation* v. *Purnendu Chakraborty*, [1996] 11 404 where it was held that for termination of 'lien', no detailed inquiry was necessary and that if that

A be the position, termination of probation stands on a lesser footing. But the case turned upon a special Rule in that case which specifically provided that for 'termination of lien' a regular inquiry was not necessary. That case cannot therefore be of any assistance to the respondents.

B We do not find anything objectionable in the third letter dated 31.10.96 but the second letter, as stated above, is clearly objectionable.

For the aforesaid reasons, the imugned order is liable to be set aside.

C Learned senior counsel for the respondent submitted on the basis of *State of Haryana* v. *Jagdish Chander*, [1995] 2 SCC 567, that merely because an order of termination was set aside on grounds of lack of opportunity, it was not necessary to direct reinstatement and back wages. Reliance in *Jagdish Chandra's* case was placed upon *Managing Director, ECIL* v. *B. Karunakar*, [1993] 4 SCC 727. It is true that such an order not granting D reinstatement or back wages was passed in *Jagdish Chander's* case following *Karunakar's* case. But it has to be noticed that in *Karunakar's* case, there was a regular departmental inquiry but the inquiry report was not given to the officer. This Court directed the report to be given and set aside the proceedings from that stage and stated that no order for reinstatement or E backwages need be passed at that stage. But in cases like the present where no departmental inquiry whatsoever was held, *Karunakar's* case, in our view, cannot be an authority. As to backwages, on facts, the position in the present case is that there is no material to say that the appellant has been gainfully employed. The appellant is, therefore, entitled to reinstatement and backwages till the date of reinstatement from the date of termination F and to continuity of service. Point 4 is decided accordingly.

For the aforesaid reasons, the appeal is allowed, the Judgments of the Division Bench & learned Single Judge of the High Court are set aside, the impugned order of termination is quashed, and the appellant is hereby G directed to be reinstated with backwages till the date of reinstatement and continuity of service. It will be open to the respondents to take such action as they may deem fit in accordance with law against the appellant. The appeal is allowed as stated above. There will be no order as to costs.

S.M. Appeal allowed.