Mian Gulam Jelani Vs Aligarh Muslim University and Others

C.M.W.P. No. 43036 of 2001

Court: Allahabad High Court

Date of Decision: Jan. 7, 2002

Acts Referred:
Aligarh Muslim University Regulations â€" Regulation 11, 14

Citation: (2002) 1 AWC 843 : (2002) 1 UPLBEC 409

Hon'ble Judges: Janardan Sahai, J

Bench: Single Bench

Advocate: M.A. Zaidi and P.N. Saxena, for the Appellant; Dilip Gupta and S.C., for the Respondent

Final Decision: Allowed

Judgement

Janardan Sahai, J.
T h e petitioner was appointed on probation as Manager of the University Press, Aligarh Muslim University by order

dated 11.1.2000. The probationary period was extended on 11.1.2001 for a further period of one year. Before the expiry of the period of

probation the services of the petitioner have been terminated by the impugned order dated 4.12.2001 of the Vice Chancellor u/s 19(3) of the

Aligarh Muslim University Amendment Act, 1981, in terms of Regulation 14 (a) of the Regulations governing the terms and condition of services of

non-teaching employees. The order makes reference to two reports given by the Member-in-charge of the Aligarh Muslim University and goes on

to state that ""as the Member-in-charge are not satisfied with the work, conduct and performance"" of the petitioner the Vice Chancellor after

considering all the facts has ordered that the services of the petitioner shall cease with effect from 4.1.2002.

2. Sri P. N. Saxena, learned senior counsel for the petitioner has described the order on the terms in which it is couched as stigmatic, as it

expresses non satisfaction about the conduct, work and performance of the petitioner. It is also submitted that if the order is read along with the

report of the Member-in-charge which should be treated virtually as part thereof the stigma is expressed in no uncertain terms. The Member-in-

charge was satisfied regarding the truth of specific allegations of misconduct and the order being founded thereupon is punitive. It may here be

stated that although the reports were not appended to the order but on the request of the counsel for the petitioner, the copy of the reports were

supplied by the counsel of the University to the learned counsel for the petitioner and have been put on record along with the rejoinder-affidavit.

The first report is dated 16.8.2001. While the second is dated 22.11.2001. It is not in dispute that no regular disciplinary enquiry after giving

opportunity to the petitioner was held and therefore if it is found that the order is punitive it cannot be sustained.

3. Now we shall take up the contentions one by one in the order advanced by the petitioner''s counsel. The expression ""as the Member-in-charge

are not satisfied with the work, conduct and performance"" of the petitioner have been described as stigmatic. Reliance is placed upon V.P. Ahuja

v. State of Punjab and Ors., in which the words ""however he failed in the performance of his duties administratively and technically"" occurring In

the order terminating the services of a probationer have been held by the Apex Court to be stigmatic. It is well-settled that if the services of a

probationer are terminated on the ground of inefficiency or incompetence expressed in the order the expression casts a stigma and, therefore, a

punishment. ''Failure'' means the inability to perform an obligation. Failure in performance of duty means either non performance or performance

below the minimum expected standard and, therefore, this expression does involve when used in the context of performance of duty an attribute of

inefficiency or incompetence or negligence or some such vice resulting in the failure. On the other hand if the expression is "not satisfied with the

work or conduct or performance of the employee'' it does not reflect any opinion of incompetence or inefficiency or negligence. The employer may

not be satisfied for many reasons. Even though the employee may not be incompetent, the employer may expect an unusually high degree of

efficiency and may, therefore, not be satisfied. Non-satisfaction expressed regarding ''conduct'' when used in association with ''work and

performance'' would not mean misconduct or unbecoming conduct or casting an aspersion on character of the person referred to. In The State of

Orissa and Another Vs. Ram Narayan Das, a five Judges Bench of the Apex Court held that the words ''unsatisfactory work and conduct'' in the

order discharging a probationer do not cast stigma. In Dipti Prakash Banerjee v. Satvendra Nath Bose, National Center for Basic Services

Calcutta and Ors. 1999 (2) AWC 1184 (SC) : 1999 JT (1) SC 396, the Apex Court referred to the case of Pan American World Airways JT

1986 SC 946, and quoted the meaning ascribed to ''stigma'' in that case which is as follows :

According to Webster''s New World Dictionary it (stigma) is something that detracts from the character or reputation of a person, a mark, sign

etc., indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word ; to be blemish,

defect, disgrace, disrepute, and 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,

4. It is true that in Dipti Prakash, the remark in the termination order that the employee''s ""conduct, performance, ability and capacity during the

whole period of probation was ''not satisfactory'' and that he was considered unsuitable for the post for which he was appointed"" was considered

stigmatic but that conclusion was arrived at reading the order of termination as a whole and the contents of the three letters referred to therein.

Otherwise it would be difficult to reconcile the five Judges decision in Ram Narayan with the two Judges decision in Dipti Prakash Banerjee. That

apart, the expression ''not satisfied with the work, conduct and performance'' used in this case is of lighter effect than the expression ''conduct,

performance, ability and capacity..... was unsatisfactory'' used in Dipti Prakash. The word ''unsatisfactory'' is an adjective, which qualifies the

work and conduct of the person referred to and gives a stronger objective impression about the poor quality of the work or conduct. When it is

said that the employer is not satisfied with the work or conduct, it of course means that employer is not pleased with the quality of the work or

conduct of the employer but the emphasis is more upon the mental state of satisfaction of the employer concerned than upon the quality of the

work or conduct of the employee. The element of ""beauty (or ugliness) lies in the eyes of the beholder"" is more applicable in this expression.

Different people may have different perception of the same fact and want of satisfaction of one in ""the conduct of the employee"" reflects his

individual impression only and, therefore, does not mar the prospects of the employee in hunting a job in the open market as another employer

would form his own impression. In Kunwar Arun Kumar v. U.P. Hill Electronics Corporation 1997 (2) SCC 199 , the expression ''unsatisfactory''

has been held not to cast a stigma. Similarly In Union of India v. R.S. Dhaba "found unsuitable'' was held not to cast a stigma.

5. A reading of the order of discharge in the present case does not give the impression that the petitioner was ill charactered or incompetent. The

word "conduct'' has been used in it in association with the words ''work'' and ''performance'' which flank it on either side and would partake the

colour and flavour of the associating words. It cannot be held that by themselves the words above referred to in order of termination are stigmatic.

However, Sri Saxena to give thrust to his contention placed emphasis upon the language of Regulation 14 and submitted that in the context of the

words of the Regulation the expression used in the impugned order amounts to stigma. Regulation 14 (a) is extracted below :

14 (a) The services of an employee appointed on probation can be terminated any time during the probationary period by giving one month''s

notice without assigning any cause. The employee is also entitled to relinquish his appointment after giving one month''s notice.

6. The words ""without assigning any cause"" used in Clause (a) in the context of termination of services have been used in the sense of giving liberty

to the employer to get rid of the probationer without the necessity of explaining the cause, rather than in the sense that the employer is prohibited

from giving the reason as Mr. Saxena would suggest. They mean only that It is open to the employer to terminate the services by a simpliciter order

and non-assigning of the cause would not vitiate the order. However, if the cause given is in words which cast stigma the order would be

undoubtedly vitiated.

7. We shall now deal with the second contention on which the case of the petitioner is on surer ground. Mr. Saxena submits that the stigma is

contained in the two reports of the Member-in-charge which must be treated as part of the order of termination as they have been specifically

relied upon in the order and a prospective employer whom the petitioner may approach for a new job may be prompted by the reference to them

in the order, like to see them. A similar situation arose in Dipti Prakash Banerjee where reference in the order of discharge was made to some

previous letters, which contained a stigma. The Apex Court stated the contention there advanced in para 24 of the judgment and summed up the

legal position on the point in paras 34 and 35. The position may best be put forward in the language of the Apex Court, Paras 24, 34 and 35 of

that judgment are therefore, extracted below :

24. The contention for the appellant is that if the appellant is to seek employment elsewhere, any new employer will ask the appellant to provide

the copies of the letters dated 30.4.1996, 17.10.1996 and 31.10.1996 referred to in the impugned order and that if the said letters contain findings

which were arrived at without a full fledged departmental inquiry, those findings will amount to stigma and will come in the way of his career.

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

offensive part was not really contained in order of termination nor in the Resolution, which was an enclosure to the order of termination, but in the

Manager''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.

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.

8. The upshot of the Apex Court''s decision is that the reports of the Member-in-charge can be looked Into as they form the basis of the order.

The legal effect of the findings or opinion expressed in these reports being the central issue in this case, the reports are quoted below :

Report dated 16.8.2001 :

It is with reference to your confidential communication dated July 23, 2001, regarding a full report of work of the Manager A.M.U. Press Mr. M.

G. Jeelani. I have taken over as Member-in-charge A.M.U. Press on 16th April. 2001. During this brief period I have come across some facts,

which throws light on the work of Manager A.M.U. Press. I am stating these facts below along with my opinion about these :

(1) I have received a confidential enquiry report from the internal Audit Officer about alleged embezzlement of Rs. 4,000 by the Manager A.M.U.

Press. The report observes, ""the M.I.C. has levelled the charge of tampering, forgery against the Manager A.M.U. Press in para 4 and also

supplied the copies of the tampered documents. The allegations of the M.I.C. appear to be indisputable.

This is a very serious charge and a person of doubtful integrity should not occupy a senior position.

(2) The aforesaid enquiry report also deals with an infructuous expenditure of Rs. 36.277 because of the Press Manager. Mr. Jeelani, the Manager

A.M.U. Press placed an order to M/s. Shakti Printing Press, New Delhi, on 31,3.1997 without obtaining quotation from the other press because

of which the then M.I.C. refused to make the final payment to M/s. Shakti Printing Press which led to an infructuous expenditure of Rs. 36,277.

Not, obtaining the required quotations is a gross financial irregularity and cannot be ignored. The then M.I.C. has in his remarks on Manager''s

letter to the Vice Chancellor observed the following :

However, I have firm opinion about the Manager that he does not know the A.B.C.D. of the printing technology. He did diploma after high school

from an institution, namely, Pusa Polytechnic which was unrecognised till 1983, the year of his passing. The course offered by him are of old

traditional Letho and Letter printing which are presently considered outdated. Even today the A.I.C.T.E. has not recognized this polytechnic. The

mark- sheet enclosed herewith will explain the poor performance of Mr. Jeelani as a diploma student, getting no division in the final examination.

This is also to be noted that Mr. Jeelani joined this diploma after a gap of four years after passing the high school from the Kashmir Board in third

division.

Mr. Jeelani did B.A. securing 56 marks in 1988 from the University of Kashmir on basis of achieving fake Urdu degree of Dabir Fazil and Dabir

Qabil from a bogus and fake Institution, namely, Urdu Board, Aligarh. The opinion of Registrar, Jamia Urdu regarding these degrees along with

copies of the degrees is being enclosed.

I am surprised to note that a person with a third class career and fake degrees has been placed by the University authorities in 3uch a higher

grade/position, where his counterparts in the university (Readers, Deputy Registrars, Deputy Librarians and Engineers, etc.) reach after a long

struggle even after having rich academic carrier.

More than two month back, I had requested the Registrar to send me the personal file of Mr. Jeelani, Manager A.M.U. Press, to which he did not

agree. However, when enquired telephonically. I was advised to peruse the file in the office of the Registrar. When I reached the Registrar''s office,

the file could not be traced and I was advised to come after a few days. I made telephonic enquiry several times but finally I was told that it is

missing. Hence. I am not in a position to make any comment on Prof. Zaidi''s observations. However, Mr. Jeelani''s letter to the Vice Chancellor

directly is the violation of the official norms of sending the requests through proper channel only.

(3) I have also come across a case where the purchase of paper has been made at an inflated price. The approved rate of paper was Rs. 40.50

per kg. On a letter from two local suppliers that the prices of paper has increased, the Manager marked an urgent note on 22.3.2001 for the

approval of the M.I.C. for the purchase of paper at an enhanced rate of Rs. 47.50 per kg. When I took over on April 16, 2001. I called all the

local suppliers and discussed the purchase of papers from them on cash basis. They agreed to give us a cash discount of 2%/3% over the

approved rates i.e., in this case Rs. 40.50 per kg. Incidentally when this order came to me for payment. I discovered, this involves an excess

payment of around Rs. ten thousand or so. I refused to make the payment and called the supplier who on negotiation agreed to accept the

payment at the approval rate, i.e., Rs. 40.50 per kg. There are two possibilities :

(a) Either he has hand in glove with the suppliers to cause financial loss of about 17% (Rs. 10,000 or so) to the press.

(b) Or he is so naive that he could not have the feel of the market price of the paper.

If it is the first scenario, it is a case of near embezzlement while in the second he is not competent to save the financial interest of the press.

(4) On the first day itself, when I visited the press. I found a new house getting constructed close to the land of the University Press. The windows

and ventilators of the house have been illegally opened in the press land. When the Manager was asked to let me know what he did to stop this, he

talked of a letter to the Member-in-charge. In this letter dated September 23, he requested the M.I.C. Press to check whether it is on the

University Press land or his own. To my mind the two things are altogether different. Even If construction is on a private land they had no right to

open the windows -ventilators towards the press land. I requested the Proctor A.M.U. to get these closed for which a F.I.R. has been lodged by

the Proctor on May 26, 2001. At present, there are only two options left with the press (i) either erect a wall, which will effectively close the

openings in the press land; (ii) or go for civil litigation, which may take decades to decide. Both these options involves financial loss to the

press/university which may have been saved if the Manager Mr. Jeelani had taken appropriate action at the right time, i.e., when the ventilators/

windows were being erected. To my mind this is nothing but dereliction of duty on the part of the Manager A.M.U. Press.

(5) The University Press is also under litigation with a paper supplier namely M/s. Harmukh Ral Narendra Chand Jain. The Manager Mr. Jeelani

has given a certificate to the firm that the amount is due against the Press without obtaining any approval from Member-in-charge. Following is the

part of office note on a file by A.R. Legal, also approved by the P.O. and the Registrar, which is self explanatory.

This office notes on pre-page and the above observations of the Finance Officer who is also member-in-charge of A.M.U. Press may kindly be

seen. The suit filed by M/s. Harmukh Rai Narendra Chand Jain relates to recovery of an amount of Rs. 6.00 lacs from A.M.U. Press against

outstanding bills raised on account of printing papers from the firm. Purchase are said to have been made between June, 1996 to July, 1997, i.e.,

during the tenure of present Manager of the Press. The Finance Officer has confirmed to the undersigned that Mr. Miyan Ghulam Jeelani has made

payment of Rs. 7,040 by cheque on 6.5.1998 to the firm and has given a certificate to the firm that the amount is due against the Press without

obtaining any approval from the Member-in-charge. He has taken all these steps at his own without any permission. The Finance Officer is,

therefore, of the view that Mr. B.S. Kamthania, University counsel at civil courts may be engaged on his behalf and on behalf of the Registrar. It

was submitted before the Court that all the actions have been taken by the Manager, A.M.U. Press without any permission and in case the

University is forced to pay the amount, the same shall be deducted from the salary of the Manager. A.M.U. Press.

I have no reason to disagree with the opinion of my immediate predecessor the F.O. This is again a case of an Irresponsible behaviour on the part

of Manager, Mr. M. G. Jeelani.

(6) I am of the opinion that his attitude towards the employees is partisan and vindictive. He therefore, does not command the respect and

authority over the press employees. This result in his failure to get the maximum from the employee for the press.

In the light of the above facts you may kindly take an appropriate decision to protect the interest of A.M.U. Press. Thanking you, with best

regards.

Report dated 22.11.2001 :

It is in continuation with my earlier confidential report dated August 16, 2001 (copy enclosed) about the work of the Manager, A.M.U. Press. In

that report I had listed six points, which are relevant to his performance. I understand that he is on an extended probation. I have the following

additional remarks to make, which are based on my own observation during this period of three more months.

(1) He is an incompetent person.

(2) He is totally incapable of handling a large labour force.

(3) His behaviour with customers is bureaucratic and rude.

(4) He is a person of doubtful integrity.

(5) He is not a University Employee.

I am of the opinion that his continuation in service is detrimental to the working of the A.M.U. Press. I, therefore, recommend that his extended

probation be truncated at the earliest.

9. Now It can hardly be disputed that at least each of the first four remarks made about the petitioner in the report dated 23.11.2001, cast serious

aspersion on the competence of the petitioner and on his conduct and character and, therefore, do cast stigma in view of the test laid down In Pan

American World Airways (supra).

10. Sri Saxena submits that the report dated 16.8.2001 of the Member-in-charge was in respect of an enquiry to find out the truth of the

allegations of misconduct made against the petitioner and the order of termination is founded upon it.

11. On the other hand, Sri Dilip Gupta refuting the contentions submits that the reports of the Member-in-charge were a result of an enquiry to

assess the suitability of the petitioner for retention and not for the purpose of finding out the truth of the allegations of misconduct. In order to

determine whether the order of termination was founded on misconduct or the alleged acts of misconduct were a mere motive for the order

depends upon the purpose of the enquiry. Apart from relying upon certain decisions of the Apex Court, Sri Gupta banked heavily upon Regulation

11 (2) which is as follows :

11 (2). Where a person appointed to a post under the University on probation is, during his period of probation, found on a subjective

consideration unsuitable for holding that post or has not completed his period of probation satisfactorily, the appointing authority may :

(i) in the case of a person appointed by promotion, revert him to the post held by him Immediately before such appointment, and

(ii) in the case of a person appointed by direct recruitment, terminate his services under the University after giving him one month''s notice or on

payment of one month''s salary in lieu thereof.

12. Advancing his argument on the purpose of enquiry, Sri Gupta submits that the regulation itself In using the word "found" contemplates an

enquiry on the question of suitability of the employee for holding the post, as without an enquiry no finding can be given. In the absence of any

finding of unsuitability, no order discharging the probationer can be passed. And it was with this end in view that the Vice Chancellor had called for

the report of the Member-in-charge. That he says would be evident from the opening sentence of the report of the Member-in-charge dated

16.8.2001, which refers to the Vice Chancellor''s communication dated July 23, 2001, regarding a full report of work of the Manager, A.M.U.

Press. And further, ""I have come across some facts, which throw light on the work of the Manager, A.M.U. Press. I am stating these facts below

along with my opinion about these"". Sri Gupta submits that these words indicate that opinion was expressed by the Member-in-charge about items

No. 1 to 5 mentioned in his report only as an assessment of the work of the Manager and not as a finding about the truth of the allegations. About

the report dated 22.11.2001, it is submitted that the remarks contained therein were made for the purpose of determining the suitability of the

petitioner, which is evident from the conclusion arrived at, expressed by the Member-in-charge in the following words.

I am of the opinion that his continuance in service is detrimental to the working of the A.M.U. Press. I, therefore, recommend that his extended

probation be truncated at the earliest."" The opinion expressed in both the reports he says is with the object of finding out whether the petitioner

was unsuitable, an exercise required by the Statute itself as a precondition for washing off with the hands of the probationer. The action of the

employer cannot be nullified if it is based upon an exercise, which he did, in pursuance of a rule, requiring him to do so before taking the action. On

this basis, it is said that the allegations of misconduct were a mere motive for the order of termination and not its foundation.

13. Whether the misconduct was the ''foundation'' of the order as Mr. Saxena would say or the mere motive'' of it as Mr. Gupta would put it

depends upon the meaning ascribed to these words. With the passage of time judicial interpretation like the rising sun with the advance of the day

has cleared the morning fog shrouding the expressions, ''motive'' and ''foundation'' ever since the Apex Court used them almost half a century ago

in the celebrated decision of Parshotam Lal Dhingra Vs. Union of India (UOI), It is not necessary to deal with all the cases in the journey through

which the case law has travelled since. It is enough to refer to the present state of the law.

14. Learned counsel for both the parties placed reliance upon Dipti Prakash Banerjee. In paragraph 20 of this judgment, the principles laid down

by Krishna Aiyyer, J., in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, as to the test for determining

''foundation'' or ''motive'' have been quoted which are as follows :

20. .....a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the 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 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.

On the contrary, even if there is suspicious 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 continuing a dubious servant. Then it is

not dismissal but termination simpliciter, if not 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.

15. Shri Dilip Gupta placed reliance upon Chandra Prakash Shahi v. State of U.P., and Ors. 2000 (3) AWC 1848 (SC) : (2000) 5 SCC 1661.

Paragraphs 28 and 29 of this judgment lay down the test. It is quoted below :

28. The important principles which are deductible on the concept of ""motive"" and ""foundation"", concerning a probationer are that a probationer

has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general

unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in

service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not

be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order

terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the

general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this

situation, the order would be founded on misconduct and it will not be a mere matter of ""motive"".

29. The ""Motive"" is the moving power which impels action for a definite result, or to put it differently, ""motive"" is that which incites or stimulates a

person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the

employer to take this action. If it was the factor of general unsuitabillty of the employee for the post held by him, the action would be upheld in law.

If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the

truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the

allegations of misconduct which were found to be true In the preliminary enquiry.

16. Sri Gupta also placed reliance upon State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, and State of U.P. and another State of

U.P. and another Vs. Km. Prem Lata Misra and others, , as well as upon Kumari Mamta Jauhari Vs. State of U.P. and another, . In support of his

contention that it was open to the university to terminate the services of the employee in accordance with the service rule and the purpose of the

enquiry was merely to record a satisfaction about the existence of the precondition necessary to discharge a probationer.

17. The opinion of the Member-in-charge in respect of the efficiency, competence, behaviour and integrity of the petitioner in the report dated

22.11.2001, has already been dealt with while discussing the question of stigma on the face of the order. We shall, therefore, deal here with the

first report. In paragraph two of the first report reference has been made to the remarks of the previous Member-in-charge as follows :

I am surprised to note that a person with third class career and fake degrees has been placed by the university authorities in such a higher

grade/position.

18. These remarks indicate that credence has been given by the earlier Member-in-charge to the fact that the petitioner possesses fake degrees.

However, the finding in respect of Item No. 3 regarding purchase of papers at inflated price are more definite. The Member-in-charge in effect

concludes that either it is a case of causing financial loss in collusion with the supplier or of being ""naive that he could not have feel of the market

price"" an inference of incompetence. In respect of Item No. 4 also, a definite inference of dereliction of duty on the part of the petitioner has been

drawn. In respect of Item No. 5 too the Member-in-charge has given finding that the petitioner has given a certificate to a supplier admitting certain

amount to be due against the press without obtaining approval from the Member-in-charge. In paragraph 6 of the report the Member-in-charge

says that he is of the opinion that the attitude of the petitioner is partisan and vindictive. The second report contains the following remarks about the

petitioner.

(1) He is an incompetent person.

(2) He is totally incapable of handling a large labour force.

(3) His behaviour with customers is bureaucratic and rude.

(4) He is a person of doubtful integrity.

(5) He is not a University Employee.

19. Now the second report is a continuation of the first one, a fact stated in the report itself and, therefore, the opinion arrived at is but an opinion

based upon the instances of misconduct set out In the first report. If the Member-in-charge were not satisfied about the truth of those instances of

misconduct he could have left the matter at that. But he drew certain conclusions from those instances contained in his second report set out above.

The opinion expressed about the petitioner could not have arrived as if the Member-in-charge was not satisfied about in truth of the instances of

misconduct mentioned in the first report. These findings do indicate that credence has been given to the allegations of misconduct against the

petitioner by the Member-in-charge upon whose reports the impugned order has been passed. The reports bear a live nexus to the order

impugned. It is not a mere case of the employer not bothering to find out the truth of the allegations made against the employee. In fact without

holding a regular departmental enquiry credence has been given to the allegations against the petitioner. In Anup Jaiswal v. Government of India

and Anr., AIR 1998 SC 636, it was held that the recommendation which is the basis or foundation for the order should be read along with the

order for the purpose of determining Its character. In that case the services of a probationer in the Indian Police Service were terminated by a

simpliciter order of termination. The Apex Court, delved deep into the record and found that the form of the order was merely a cloak for

punishment. Applying the text laid down In the cases referred to above It is clear that the impugned order is founded upon misconduct.

20. The contention of Sri Gupta that such an exercise was required to be performed under the Rule permitting discharge of the probationer holds

little water. ''Regulation 11 (2) refers to a finding arrived at on a subjective consideration of the suitability of the probationer. That would merely

require the employer to assess the work of the probationer and his conduct in connection thereto. For a finding about the suitability of an

employee, it is not necessary to inquire about the truth of the allegations of misconduct or to record finding about the incompetence of the

employee or as to his integrity being doubtful. That can be done in a regular departmental inquiry for which there are other provisions. If the

employer does not want to retain a person against whom there are complaints of specific allegations of misconduct it is sufficient for him to say that

he is not suitable without bothering to find out the truth of those allegations. That is why Regulation 14 permits the employer to do away with the

services of a probationer "without assigning any cause". That is also clear from the use of the words ''subjective consideration'' in Regulation 11 as

the process for a "finding" of suitability. If enquiry into the truths of particular allegations of misconduct is to be conducted that can be done only on

an ''objective consideration'' of the facts and circumstances which is not the terminology of Regulation 11. No finding about the truth of an

allegation of misconduct can be given without opportunity to the employee. If such an interpretation is put upon Regulation 11 that it requires a

''finding'' to be given about the truth of the allegations of misconduct without opportunity the Regulation itself may become vulnerable, as it would

amount to punishing a man without hearing him. The word ''finding'' in Regulation 11 must, therefore, mean ''assessment'' (of the suitability of the

probationer) and not a finding about the truth of the allegations of misconduct or casting a stigma. In the result, the writ petition is allowed. The

impugned order of termination of services of the petitioner is quashed.