(1995) 03 CAL CK 0003

Calcutta High Court

Case No: None

Buddhadev Das		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: March 20, 1995

Acts Referred:

- Constitution of India, 1950 - Article 311, 311(2)

Citation: 99 CWN 797

Hon'ble Judges: Gitesh Ranjan Bhattacharjee, J

Bench: Single Bench

Advocate: Kashi Kanta Moitra, Haradhan Banerjee and Amitava Pain, for the Appellant; Arun Prokash Chatterjee and Dipak Kr. Banerjee for State, for the Respondent

Judgement

Gitesh Ranjan Bhattacharjee, J.

In this writ petition the petitioner prays for quashing the resolution dated the 30th December, 1992 leading to the order of termination of his service as communicated by the letter dated the 1st January, 1993 issued by the Chairman, West Bengal Board of Examination for admission to engineering, medical and technological degree colleges, Howrah, annexure-II to the writ petition. The petitioner was appointed to the post of Registrar in the office of the West Bengal Board of Examination for admission to engineering, medical and technological degree colleges by letter dated the 17th August 1992 issued by officer-in-charge and Member-Secretary of the said Board which is annexure-A to the writ petition. The petitioner accordingly joined the post on 1st September, 1992. Within a span of three to four months the petitioner moved a writ petition before this Court challenging the legality and/or validity of the post of Officer-in-charge and Additional Officer-in-charge of the Board with a prayer to abolish the said posts of officer-in-charge and Additional Officer-in-charge of the Board, as it appears from paragraph 10 of the said application. The said application was moved by the petitioner before Bhagawati Prasad Banerjee, J. sometime in

December 1992 and the same was rejected. It is the claim of the petitioner, that he is to act as the Member-Secretary of the said Board while the stand of the respondents is that the Officer-in-charge and Member-Secretary of the Board is required to be a member of the teaching staff of the B.E. College and the Registrar is not a member of the Board, he being a staff of the Board. However as I have mentioned above the petitioner''s attempt in this regard failed in the earlier writ petition. It may be mentioned here that the duties and the responsibilities of the Registrar were communicated to the petitioner in a separate chart enclosed to his appointment letter, Annexure-A to the writ petition. The said chart does not show that the petitioner as Registrar had to act as the Member-Secretary of the Board. Be that as it may, in a meeting of the Board held on the 30th December, 1992, after considering the report submitted by the Chairman regarding performance, sincerity and reliability of the petitioner as Registrar of the Board and purportingly after carefully scruitinising and judging all facts and circumstances in the matter'' the Members of the Board unanimously came to the conclusion that the performance, sincerity and reliability of the Registrar had not been satisfactory at all and his continuation in the post of the Registrar would be highly detrimental to the interest of the Board and it was accordingly resolved that his service should be terminated giving him one month''s salary. Pursuant to the said resolution the Chairman of the Board by his letter dated the 1st January. 1993 annexure-II to the writ petition ordered that the service of the petitioner as Registrar was terminated with effect from 1st January. 1993 and that he was entitled to have one month''s salary in. terms of clause 12(i) of his appointment letter dated the 17th August, 1992. The petitioner has challenged the said order of termination of his service firstly on the ground that the order communicating the resolution of the Board was on the face of it penal in nature and purportingly casts a stigma on the petitioner and as such summary termination or dismissal was not tenable in law, and secondly the purported termination is bad in law as the relevant terms of appointment provides for termination of service with one month''s notice during the period of probation and not immediate termination without such notice by offering one month''s pay in lieu thereof. The learned Advocate for the petitioner has relied upon the decision of the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), In that decision it has been held inter alia that where a person is appointed to a permanent post of service on probition, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment for the Government servant, as appointed, as he has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. At the same time it has also been hold that even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a

punishment and the requirements of Article 311 must be complied with. It was also been held in the said decision that in spite of the use of innocuous expressions like ''terminate'' or discharge'' the court has to apply the two tests, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind referred to in the decision. In Madan Gopal Vs. State of Punjab, the appointment of the writ petitioner was on temporary basis and terminable with one month''s notice and he was served with a charge-sheet cy the Settlement Officer alleging that he had received and also demanded illegal gratifications from certain persons and he was asked to show cause why disciplinary action should not be taken against him if the allegations in the charge-sheet were proved. The writ petitioner submitted his explanation to the charge-sheet and subsequently the Settlement Officer submitted his report to the Deputy Commissioner that the charge relating to receipt of illegal gratification is one case was proved. Thereafter the Deputy Commissioner terminated the services of the writ petitioner forthwith. The Supreme Court held that in that case the enquiry made by the Settlement Officer was made with the object of ascertaining whether disciplinary action should be taken against the writ petitioner for his alleged misdemeanour and that it was clearly enquiry for the purpose of taking punitive action including dismissal or removal from service if he was found to have committed the misdemeanour charged against him and such an enquiry and order consequent upon the report made in the enquiry will not fall within the principles of The State of Orissa and Another Vs. Ram Narayan Das, In Ramnarayan Das''s case enquiry was made pursuant to Rules governing the conduct of public servants for ascertaining whether the probation of the public servant concerned should be continued and a notice to show cause in that behalf was served upon him and on the report of the enquiry officer that the work and conduct of the public servant was unsatisfactory and order of termination of employment was passed without affording him an opportunity of showing cause against the action proposed to be taken in regard to him. The Supreme Court pointed out in that case that the public servant had no right to the post he occupied and under the terms of his appointment he was liable to Be discharged at any time during the period of probation and that mere termination of employment does not carry with it any evil consequences such as forfeiture of his pay and allowances, loss of seniority, stoppage or postponement of future chances of promotion etc. and therefore there was no stigma affecting the future career of the public servant by the order terminating his employment for unsatisfactory work and conduct. It was further hold in the decision in Ramnarayan Das that the enquiry against the respondent was for ascertaining whether he was fit to be confirmed and that an order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately be regarded as one by punishment, but an order discharging a probationary following upon an enquiry to ascertain whether he should be confirmed is not of that nature. The fact of holding of an enquiry is therefore not decisive of the question and what is

decisive is whether the order is by way of punishment, in the light of the tests laid down in P.L. Dhingra v. Union of India (supra).

2. In the The State of Bihar Vs. Gopi Kishore Prasad, it has been held that if the employer simply terminated the service of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service might have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency or some such cause. But in the case under consideration before the Supreme Court, though the respondent was only probationer, he was discharged from service really because the Government had, on enquiry, came to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation and that was clearly by way of punishment and. therefore, he was found entitled to the protection or Article 311 (2) of the Constitution. There the order of discharge from service itself recited the charge of corruption against the concerned officer and the result of enquiry. In D.P. Chattapadhya v. DIR C & S.C.I. Cal. L.T. 1991 (1) HC 433 the service of the writ petitioner had been terminated as he was considered unsuitable for the employment under the Government. It was held by a learned single Judge of this court that the termination of service on the ground of ''unsuitability'' casts a stigma and as such the impugned order was set aside even though the appointment was as a probationer. It was further observed therein that in view of Supreme Court decisions if the order of termination of service had been passed without quoting the remark "unsuitability" the court could not have interfered with the same. In Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others, the appellant writ petitioner was appointed on adhoc basis initially for six months and was then given successive extensions from time to time. During the period of last extension the petitioner was however informed that her services would stand terminated with effect from the date on which the period of extension would expire. In the confidential file it has been recorded that the authorities were not satisfied with the performance of the petitioner and so her reappointment after the exparte of the term was not recommended. Now, it was observed in that case that if the petitioner were to be discontinued it was proper and necessary that she should have been told in advance that her work and performance were not upto the mark. That was of course a case where the petitioner was appointed on adhoc basis for a particular period or till a regular candidate from the Union Public Service commission became available, whichever was earlier. That was not an appointment on probation. The decision of the said case was rendered, it seems, in the background of the facts and circumstances of the case and therefore the said decision should be taken to be confirmed to the facts of that case. In Bihar State Road Transport Corporation Vs. State of Bihar and Others, it has been held that even though the order of termination may be couched in terms of an order of termination simpliciter a labour

court to which an industrial dispute is referred for adjudication is entitled to go behind the apparent language of the order in question and consider whether the order is termination simpliciter or is imposed by way of punishment In Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, the service of the writ petitioner who was appointed on probation was terminated by an order which was accompanied by the resolution by which his service was decided to be terminated. Since the resolution formed a part of the order of termination and since the resolution carried a stigma of disgrace or infamy for the petitioner but the termination was not preceded by compliance of the due procedural requirements, the same was found to be not sustainable. In Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, it has been observed by the Supreme Court that loss of confidence of the employer in the employee is a feature which certainly affects the character or reputation of the employee and therefore the court correctly held in Chandu Lal Vs. Management of Pan American World Airways Inc., that the allegation of loss of confidence amounted to a stigma.

3. On the other hand the learned Advocate for the respondents have relied upon certain decisions which I discuss now. In Tapan Rakshit v. High Court, Calcutta. CAL. L.T. 1991(1) HC 53 petitioner was appointed as a Court Keeper on temporary basis and his service was terminated during the continuance of such temporary service. It was held in that case by a learned single Judge of this court that a temporary employee has no right to office and his services can be terminated if the terms of employment provide for such termination with one months notice. It was further held that a temporary employee has to work to the satisfaction of his employer and if it is found by the employer that his work was not upto the mark, then there is no illegality in the action of the employer in terminating his services in terms of the letter of appointment. It was also held dial whenever an employer finds the conduct of a temporary employee not satisfactory he can ask for explanation and if the explanation is not satisfactory, the employer can terminate his services in terms of the appointment order. In Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, the Supreme Court found that the short history of the service of the probationer clearly showed that his work had never been satisfactory and he was not found suitable for being retained in service and that was why even though some sort of an enquiry was started it was not proceeded with and no punishment was inflicted on him. It was held by the Supreme Court that in such circumstances if the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when the appointing authority had the right to terminate the services without assigning any reason. It was further held that in such a case even if misconduct, negligence, inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employed, a power which the employer undoubtly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service,

termination of service could not be termed as penalty or punishment. It would however appear that in that case the order itself was ex-facie an order of termination simpliciter without reciting any reason for such termination, not be speak of casting any stigma. It was also observed therein that the writ petitioner respondent had not been able to make out any strong case for the court to delve into the documents, materials in order to determine a case of victimisation or one of punishment. The next decision referred to on behalf of the respondents is State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, . There also, it appears, it was an order of termination simpliciter in terms of the contract of service and it was held that a temporary Government servant has no right to hold the post and that whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his service in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant and that if the services of such Government servant is terminated in accordance with the terms and conditions of the service, it will not visit him with any evil consequences. It was further held that before termination the service of a temporary servant the Government may hold a preliminary enquiry to form the requisite satisfaction for the continuance of the efficiating Government servant but such an enquiry does not change the nature of the order of termination and that if however, it is decided to take punitive action the competent authority may hold a formal enquiry by framing charges and giving opportunity to the Government servant in accordance with Article 311(2). In Ajit Singh and Others Vs. State of Punjab and Another, it was observed thus by the Supreme Court in Paragraph 7 :

7. * * * * With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master - servant relationship put the master on guard. In order that an incompotent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgement in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to take post. Period of probation gave a sort of locus poenitentia to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the

prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be punishment because the servant so appointed has no right to continue to hold such a post any more then a servant employed on probation by a private employer is entitled to. *******

4. In State of Maharastra v. Veerappa R. Saboji AIR 1980 SC 42 it has been observed by the Supreme Court thus :

Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or malafide unless a very strong case is made out and proved by the Government servant who challenges such an order.

5. The latest decision of the Supreme Court in such matter seems to be the one in State of U.P. v. Prem Lata Misra, 1994, AIR SCW 2455. There on a review of a vast range of earlier decisions it has been held that it is settled law that the court can lift the veil of the innocuous order and if misconduct is the foundation to pass the order then an enquiry should be conducted and an action according to law should follow but if it is not the motive it is not incumbent upon competent officer to have the enquiry conducted and the service of a temporary employer could be terminated in terms of the order of appointment or rules giving one month''s notice or pay salary in lieu thereof. It has been further held that even if an enquiry was initiated it could be dropped midway and action could be taken in terms of the rules or order of appointment. In that case the writ petitioner was appointed to a post temporarily on condition that the service of the appointee could be terminated by giving one month''s notice or one month''s pay. The competent authority found that the writ petitioner was not fit to be continued in service as her work and conduct were unsatisfactory. The termination in the circumstances was for her unsuitability or unfitness and it was held that the same was not by way of punishment as a punitive measure and was one in terms of the order of appointment and also the Rules. Consequently, the order termination her service could not be set aside on the ground that departmental enquiry was not held. It would appear that in the said case whatever might have been the reason for terminating the service the order was an order of termination simpliciter or in other words an innocuous order ex-facie without casting any stigma.

6. The law regarding termination of service of employee appointed on probation or temporarily is summarised hereafter, in view of the judicial pronouncements on the subject. A probationer or a temporary employee has no right to hold the post. His appointment can be terminated by issuing order of termination simpliciter in terms of the conditions of service contract or the rules applicable in the matter. Where the order is an order of termination simpliciter without assigning any reason or without casting any stigma on him the concerned employee cannot make any grievance that

he was given no opportunity of showing cause and the court in such circumstance will not interfere with the same unless a very strong case is made out and proved by the Government employee because in such a case there is no presumption that the order is arbitrary or malafide. That is the position even if the motive behind the passing of the order of termination was generated by the unsuitability misconduct or inefficiency of the employee. The mere fact that an enquiry might have been made for ascertaining the suitability of the employee for considering the question of continuance or confirmation in service does not make the resultant order of termination bad. Also even if same steps were taken towards conducting a departmental proceeding on ground of misconduct of the employee but the same was dropped midway and the employer instead of proceeding with disciplinary enquiry chose to terminate the service of the employee in terms of the contract of the service or the rules applicable to the matter, ordinarily no exception can be taken to that. If however the enquiry was made on charge of misconduct intending to take disciplinary action against the employee by taking recourse to disciplinary proceeding and the employer terminates the service of the employee by way of dismissal or discharge from service, may be by using such terminology or by using an innocuous expression like ''termination'', the court will certainly be entitled and justified to interfere in the matter if it is satisfied that the action was taken by the employer as a penal measure without following the disciplinary procedure required to be followed in such a case. Again where the order of termination on the face of it casts a stigma on the employee, say by branding him as unsuitable or incompetent, in that case also the court will interfere if the employee was not given the requisite opportunity to meet the charge in accordance with the disciplinary procedure which however will not be the case if the order is an order of termination simpliciter without casting any stigma on the face of it, although the real reason for termination might have been the unsuitability or incompotence of the employee. Unfortunately, in our present case the order of termination on the face of it recites that the performance, sincerely and reliability of the petitioner had not been satisfactory at all and his continuation in the post of the Registrar would be highly detrimental to the interest of the Board. It does not require a ruling of court in support to say that such a conclusion on the question of ability and sincerity of the petitioner when openly projected in the order of termination of service undoubtedly casts a stigma on the petitioner thereby visiting him with evil consequence because in view of such open communication of assessment to him in the order of termination itself it may be difficult for him to find an alternative employment elsewhere for his survival. This is however not to say that in no case service can be terminated by stating the reason like what has been stated above. But that, in such case the employee must be given reasonable and procedural opportunity by the concerned authority to meet the charge before he is openly stigmatised on such charge in the order of termination itself. No such opportunity was however given to the petitioner in the present case. In the circumstances when termination is not an order of termination simpliciter but is rather an order expressly casting a stigma on

the petitioner the same cannot be said to have been issued in terms of the contract and consequently the same cannot be sustained where the petitioner was given no opportunity to meet the allegations.

7. As regards the question whether the termination of service without the requisite notice is valid and tenable, it has been argued by the learned Advocate for the petitioner that under the terms of the appointment it is required that one month''s notice must be given for termination of appointment during the period of probation and that the terms of the appointment do not provide for termination by payment of one month''s salary in lieu of one month''s notice. The period of probation of the petitioner, according to the terms of appointment, was two years and his service was terminated within four months of his appointment.

8. The learned Advocate for the petitioner has attracted my attention to the decision of a single Bench of the Madras High Court in A.A. Nathan v. Union of India, 1978 Lab.I.C. 1062 where it was held by the learned Judge relying on a Division Bench decision of the same High Court that the termination of service by the impugned order by payment of one month''s salary in lieu of one month''s notice was not in accordance with the terms of the order of appointment. The Division Bench decision of the Madras High Court relied upon by the learned single Judge of the said High Court as referred to above is the decision in P.E. Warne v. O.V. Estate. AIR 1956 Mad 505. In that ease the contract of service provided for three months notice by either side for termination of the contract of service. The employee s services were however terminated by the employer not by giving three months'' notice but by giving three months'' salary in lieu of the notice. The question arose whether the termination of service was in accordance with the terms of the service contract. The court held that unless the contract of service itself provided for payment of salary inlieu of notice, payment of salary in lieu of the notice cannot be taken to be strictly inaccordance with the contract of service. It was contended in that case on behalf of the employer that payment of salary for the period of notice can, even in the absence of such a provision in the contract of service, take the place of three months'' notice, that there cannot be any reasonable objection for the employee to receive the salary without doing any work for the period of notice and that such a payment will clearly be an advantage to the employee rather than prejudicial to him. While rejecting the above contention the court pointed out that it is for the employee to choose and not for the employer to dictate and it is settled in law that in the absence of an express term in the contract or usage to that effect an employee cannot be dismissed from service without notice by paying his wages for the notice period in lieu of notice. The said decision of the Division Bench on the point, it seems, was based on high authorities like Halsburys Laws of England and the authorities cited therein. With great respect I accept the said, decision of the Division Bench of the Madras High Court as correctly laying down the law on the subject.

9. Apart from that, even on an independent consideration of the matter unaided by any decision or authorities, I must say, I would have also arrived at the same conclusion. Indeed it is a matter of common experience that generally the terms of appointment contain an express condition that the appointment of the probationer can be termination by giving one month''s notice or one month''s pay in lieu thereof. Certain rules also provided like that. Where the terms of the contract or the rules expressly provide that the service of a probationer can be termination by one month''s or three months'' notice or payment of salary for such period in lieu of such notice, there is no doubt that in such a case the employer has the option to choose whether notice for the requisite period is to be given before termination the service of the employee or the service is to be terminals with immediate effect by payment of salary for the requisite period in lieu of such notice. If the employer chooses in such a case to terminate the appointment of the petitioner immediately by payment of salary for the notice period in lieu of notice the employee can not make a grievance that he was not given notice for the requisite period. But the situation indeed is different where the terms of contract or the rules applicable to the matter provide only one mode of termination of service, namely, termination by giving prior notice of one month or three months or whatever other period may it be. In such a case obviously the termination of appointment with immediate effect on payment of salary for the requisite period in lieu of notice cannot be treated as a compliance of the terms of contract or the rules. This will rather be a unilateral substitution of the terms of contract or unilateral deviation from the rules to the surprise and inconvenience of the concerned employee. Such substitution of terms or deviation from rules cannot be unilaterally imposed upon the employee by the employer at his choice. The contention that the employee by getting salary for the requisite period without being required to do any work for that period, rather gets an advantage and therefore he cannot have any legitimate grievance, is rather an untenable oversimplification of the matter. This cannot be taken as an exiomatic truth in all circumstances. The shock, humiliation and inconvenience of being pushed out of chair instantly which an employee is supposed to suffer by reason of spot termination of his service on payment of salary for the requisite period in lieu of notice without giving him a moment''s opportunity for mental preparation and adjustment where the employee is protected that his service cannot be terminated without notice for the requisite period is itself an important factor which must be considered in its due perpective in going to judge whether spot termination in violation of express terms is beneficial to the employee or is tenable at all in law.

10. Also one must not miss the fact that spot termination of service immediately after the decision of termination is taken by the employer dispensing with the notice of termination for the requisite period deprives the employee of the opportunity to acquire and add to his credit the service experience for the concerned period (be it one month or three months or some other length) which he would have been entitled to if the actual termination had to await the expiry of the requisite notice

period after the service of notice in accordance with the terms of contract or rules. Undue deprivation of the service experience may not in all circumstances, be compensated by payment of salary in lieu of notice for the requisite period. There may be instances where the service experience for the notice period had that been made available to the employee when added to his service experience for the preceding period would have qualified him or would have placed him on a better footing in the matter of seeking any other employment later for livelihood for which a matching period of service experience is a minimum qualification or where length of service experience may be a competitive factor for the rival candidates in the matter of selection for such employment. It is therefore a fallacy to suppose that payment of salary for the notice period in lieu of notice will necessarily be a matter of advantage to employee. Rather it may be just the reverse as indicated above. Therefore the employer cannot be allowed the unilateral liberty to tamper with the terms of the contract of service or the rules relating to the mode of termination of service. Therefore, even apart from the decisions of the Madras High Court as referred to above, on an independent consideration of the matter also I hold that where the terms of contract or the rules require that service can be terminated by giving notice for a specified period the same cannot be terminated with immediate effect by the employer at his option by giving salary for the notice period but without giving notice for such period. At the same time I would like to note that an employee may however choose to waive his right to have notice for the requisite period before his service is terminated and be content with salary in lieu of such notice by way of waiver of his right to get an advance notice for the requisite period regarding termination of his service but where there is no such waiver on the part of the employee his service can not be terminated by payment of salary for the notice period in lieu of notice required to be served under the terms of contract or rules. It is however needless to mention that where the terms of the appointment or the rules applicable to the matter expressly provide that appointment can be terminated either by notice for a specified period or by payment of salary in lieu of such notice, it will indeed be for the employer to choose the mode of termination, namely, whether termination is to be effected by giving notice for the requisite period or it is to be effected by giving salary for the notice period in lieu of notice. Since in the present case the requisite notice for termination of service in terms of the contract of service- had not been given and since there is no waiver in the matter on the part of the employee writ petitioner, the termination of the service of the petitioner with immediate effect in violation of the terms of the contract is liable to be quashed for that reason alone. In the result both on the ground that the order of termination expressly casts a stigma on the petitioner thereby rendering the order to be a penal one but without giving the petitioner due opportunity to meet the allegations, and on the ground that termination of service of the petitioner without the requisite notice in terms of the appointment is not tenable in law, the impugned resolution and order of termination of his service are found liable to be quashed and are hereby quashed accordingly. The respondents are directed to

reinstate the petitioner in service within three weeks from this date. For the period from the date of the impugned termination of service of the petitioner still reinstatement as directed above the petitioner shall be paid his salary as would have been admissible to him as if he had been in active service during that period and the same shall be paid to him within four weeks from the date of his reinstatement. However in computing the period of two years, being the length of the period of probation of the petitioner in accordance with the terms of the appointment, the period from the date of the impugned order of termination of his service till the date of his reinstatement as directed shall be excluded. The writ petition stands disposed of accordingly. There will be no order as to costs.