

(2012) 10 CAL CK 0052

Calcutta High Court

Case No: Writ Petition No. 2177 of 2005

Ashok Kumar Singh

APPELLANT

Vs

Vijaya Bank and Others

RESPONDENT

Date of Decision: Oct. 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2013) LabIC 656

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Sakti Nath Mukherjee, Mr. Uddalak Bhattacharya and Mr. Amitabha Pal, for the Appellant; S.P. Mazundar, for the Respondent

Judgement

Hon"ble Justice Debasish Kar Gupta

1. This writ application is directed against an order of termination of the service of the petitioner passed by the respondent no. 2 under his memo No. PER:IRD:4050:2005 dated November 5, 2005. The back drop of this case in a nutshell is as under:-

The petitioner participated in a selection process for appointment of Assistant General, Managers Net Working under the respondent Bank on the basis of his application dated May 3, 2003.

2. By a communication issued under memo No. PER:HRD:RCT:6691:2003 dated December 17, 2003 the petitioner was informed by the respondent no. 3 that he had been selected for appointment to the post of Assistant General Manager, Net working in SMG Scale-V with the conditions that he would be on probation for a period of one year from the date of joining the respondent bank and he would be considered for conformation in service subject to his satisfactory performance, conduct and satisfactory report from the police authorities about his character and

antecedent and the petitioner would be governed by the following regulations:-

- i) Vijaya Bank(Officers) Service Regulations, 1982
- ii) Vijaya Bank Officer Employees"(Conduct) Regulations, 1991.
- iii) Vijaya Bank Officer Employees" (Discipline & Appeal) Regulations, 1981.
- iv) Vijaya Bank (Employees) Pension Regulations, 1995.

3. On June 5, 2004, the petitioner joined the above service at Bangalore. After expiry of the period of one year for probation, letter of confirmation was not sent to the petitioner.

4. By an order passed by the General Manager(Personnel), (Disciplinary Authority), under memo no. PER:IRD:BGL:212:2005 dated January 15, 2005, the petitioner was placed under suspension from the services of the respondent bank with immediate effect on an allegation of making an attempt to take away 4 box files containing highly confidential tender document relating to a "Manageable Switch Tender" from his office cabin at DIT, HO, unauthorisedly through his personal driver. He was advised not to enter into the premises of the respondent bank without written permission from the authority. On January 27, 2005 the petitioner preferred an appeal against the above order of suspension before the Executive Director of the respondent bank under the provisions of Regulation 17(1) of Vijaya Bank Officers Employees" (Discipline & Appeal) Regulations, 1981.

5. By a communication issued under memo No. DIT/GM/1008/2005 dated March 3, 2005 the respondent no. 3 asked the petitioner to submit his version in respect of in the matter of taking away 4 box files containing highly confidential tender documents relating procurement "Manageable Switch" out of the bank"s premises unauthorisedly through his personal driver. In reply dated March 9, 2005 the petitioner categorically denied the above allegation stating therein that due to mistake, communication gap and language barrier those confidential files had been taken by his driver. It was also stated in the above reply that those files were in the custody of the petitioner since he was entrusted to deal with the matter under reference.

6. By a communication issued under memo No. PER:IRD:BGL:1472:2005 dated April 12, 2005 the order of suspension under reference was revoked with the following conditions:-

- 1. Your suspension from the services of the Bank is revoked without prejudice to the Bank"s right to initiate disciplinary proceedings against you as deemed fit, for the acts of misconduct allegedly committed by you.
- 2. As far as the treatment of the period of your suspension is concerned, the same shall be communicated to you while passing the final order of the Disciplinary Authority in the matter.

3. The Bank reserves its right to place you under suspension by means of an order to that effect, if the facts and circumstances so warrant.

7. The tenure of probation of the petitioner was extended for a period of six months by an order passed by the General Manager(Personal) of the respondent bank in terms of the conditions of his service as mentioned in clause 3 read with clause 2 and 8(c) of his letter of appointment dated December 17, 2003 on the ground that the performance of the petitioner had not been found satisfactory.

8. By a further communication issued under memo no. PER/HRD/2345/2005 dated April 13, 2005 the respondent no. 3 transferred the petitioner to the regional office, Kolkata of the respondent bank. By a subsequent communication issued under memo no. ROC/PER/KPH/2005 dated April 18, 2005 by the respondent no. 4 allocated the following jobs:

Jobs connected to Branch Computerization mainly setting right the problems; Implementation of Core Banking Solutions in the branches of Kolkata Region; Arranging computer training to all the employees in Kolkata Region and ensuring smooth conduct of the training programmes; Any other work entrusted by the Regional Manger from time to time.

9. The performance of the petitioner with regard to the implementation of Core Banking Solutions was appreciated by the Deputy Controller of Accounts under memo No. ZAO/CBDT/KOL/RCDW/Meeting/05-06/276 dated July 15, 2005 is quoted below:

Performance of all the Banks was evaluated at the special meeting regarding procedural irregularities in implementation of OLTAS held at Kolkata on 14.7.2005 and performance of the Vijaya Bank is praiseworthy. Vijaya Bank has adopted the OLTAS work very correctly and efficiently within a very short period of time. All the bank of this zone are advised to contact the Assistant General Manager, Vijaya Bank Service Branch, Kolkata for any difficulty that arises during implementation of OLTAS.

10. By an order dated May 4, 2005 the petitioner was transferred to the service Branch, Kolkata of the respondent bank.

11. By a communication issued under memo No. PER/HRD/RCT/5112/2005 dated July 4, 2005 the respondent no. 3 extended period of probation of the petitioner FOR THE SECOND TIME for a period of six months with effect from July 5, 2005 on the ground that his performance had not been found satisfactory. Ultimately by a communication issued under memo no. PER: IRD: 4050; 2005 dated November 5, 2005 the respondent no. 2 terminated the services of the petitioner with immediate effect in terms of Regulation 16(3)(a) of Vijaya Bank(Officers) Regulations, 1982, read with clause(3) of the letter of appointment of the petitioner.

12. According to the petitioner, he had been made a subject of deep-rooted conspiracy by some senior officers of the respondent bank including the respondent nos. 5 and 6.

13. According to him, he was appointed to implement and maintain the Core Banking Solution Net working throughout India to provide online service in all branches of the respondent bank. In discharging his duties, the petitioner provided specific design for purchase of several computers and related hardware's for Net working. Consequent thereupon, the respondent bank floated tender for purchasing Manageable Switch. The members of the tender committee, which included the petitioner amongst other members, considered the tender documents of three participants in its meeting dated April 2, 2004 observing that technical bids submitted by CMC Ltd. and Wipro Ltd., were in compliance with the bank's requirement and decided to place the same before the General Manager, DIT seeking his approval for opening price bids. Ultimately, Wipro Ltd., succeeded in the tender. According to the petitioner, during the supply made by Wipro Ltd., the petitioner repeatedly asked the supplier to verify the quality of the product as per design since it was a pre-requisite in tender that a pre-delivery inspection would to be conducted prior to acceptance of the product. The Wipro Ltd. got the condition wiped out by the orders of the respondent no. 5. According to the petitioner he repeatedly emphasized upon the pre-delivery inspection in the interest of the respondent bank but he was scolded by the respondent nos. 5 and 6 in strong terms for restraining him from creating any hindrance in the matter. Ultimately, the Wipro Ltd. submitted test plan to the respondent no. 5 directly. According to the petitioner, the respondent no. 5 sent the test plain to a consultant who was not authorised for that purpose. Finally, the consultant sent his advice in favour of a test plan on January 10, 2005. The respondent no. 5 sent this plan along with advise of consultant to the petitioner on January 12, 2005.

14. According to the petitioner, he found fraud being committed by Wipro Ltd. as it was proposing the test plan on those designs/parts were was never purchased by the respondent bank and it was reported to the respondent no. 5 by the petitioner refusing to accept the above proposal. According to the petitioner, he was asked by the respondent nos. 5 and 6 at the chamber of the respondent no. 6 to accept the test plan and to sign the papers relating to the supply of the materials under reference so that payment could be made to Wipro Ltd. immediately untimarely on January 15, 2000. According to the petitioner his refusal was the cause of passing suspension order dated January 15, 2005. According to him, the above action resulted in termination of his service due to malice on the part of the respondent nos. 5 and 6.

15. It is submitted by Mr. Sakti Nath Mukehrjee, learned advocate appearing on behalf of the petitioner due to deep rooted conspiracy against the petitioner he was transferred to Kolkata head office. After seven days he was again transferred to the

service branch of the Kolkata. According to Mr. Mukherjee, though the petitioner was appointed to discharge the function relating Core Banking Solution Net working of the respondent bank, he was transferred to a service branch having no function relating to Networking service of the respondent bank.

16. According to Mr. Mukherjee right to be considered for conformation was a right attached to the services of the petitioner on probation. No shortcoming was pointed out by the respondent authority at the time of extending the periods of probation of the petitioner on two phases of six months. According to Mr. Mukherjee, a note sheet dated November 5, 2005 annexed to the affidavit-in-opposition (at page 34 of the affidavit-in-opposition affirmed on behalf of the respondent nos. 1,2,3 and 4) disclosed three communications dated July 23, 2005, September 14, 2005 and October 31, 2005 respectively in support of formation of opinion or termination of services of the petitioner. These communications were allegedly served upon the petitioner. According to Mr. Mukherjee, the communication dated July 23, 2005 (at page 40 of the affidavit-in-reply filed by the petitioner) had nothing to do with the performance of the petitioner in connection with Core Banking Solution Net working of the respondent bank. With regard to the communication dated September 14, 2005, the same was relating to transfer of funds from Guahati to Kolkata by State Bank of India and the petitioner had no role to play with regard to delay in transferring the aforesaid fund which occurred due to technical problem of the transferring system of that bank. Referring to the communication dated October 5, 2005 issued by the Assistant General Manager (Accounts and Administration) of the State Bank of India address to the Assistant General Manager(service Branch) of the respondent Bank(page 48 of the Affidavit-in-reply filed by the respondent) it is also submitted by Mr. Mukherjee that above the communication contained an allegation of rude behavior of the petitioner with the higher officers but the same never served upon the petitioner.

17. According to Mr. Mukherjee a simple order of termination could be passed against a Provisionary Officer. Terminability was inbuilt into such appointment but the above rule had its exceptions. It could not be mechanically applied in disregard of its evolution considering different safeguards guaranteed under the constitutional scheme of India against deprivation of basic human rights. According to him protections were available under the concept of equality under the provisions of articles 14 and 16 of the constitution of India. It is submitted by Mr. Mukherjee that fairness and reasonableness were attributed which in her democratic welfare state as designed in parts III and IV of the constitution of India and insecure or precarious tenure of the individual could not empower the state authority to disown and justify its actions which were manifestly unfair and unjust. It is ultimately submitted by Mr. Mukherjee that judicial review remained addressed to decision making process in such a case and not to the wisdom of the design taken.

18. Reliance is placed by Mr. Mukherjee on the decisions of [Tata Cellular Vs. Union of India](#), [Syed Azam Hussaini Vs. Andhra Bank Ltd.](#), [Dr. Mrs. Sumati P. Shere Vs. Union of India \(UOI\) and Others](#), , [Iswar Ch. Jain Vs. High Court of Punjab & Chandigarh](#), reported in (1999) 3 SCC 370, [Ajit Singh and Others Vs. State of Punjab and Another](#), [The Manager, Government Branch Press and Another Vs. D.B. Belliappa](#), [V. P. Ahuja Vs. State of Punjab](#), reported in (2000) 3 SC 239, [Rajesh Kohli Vs. High Court of J. and K. and Another](#), and [Kipti Prakash Banerji Vs. Satyandra Nath Bose National Centre for Basic Science](#), reported in (1999) 3 SCC 6.

19. On the other hand, it is submitted by Mr. S.P. Majumder, learned advocate appearing on behalf of the respondents that the petitioner was appointed on probation by virtue of the letter of appointment dated December 17, 2003 containing terms and conditions mentioned therein. The tenure of his probation was extended for a period of one year in two phases since his performances were not satisfactory during the aforesaid period of probation the appointment of the petitioner was terminated.

20. According to Mr. Majumder, the question of malice on the part of the respondent nos. 5 or 6 as alleged by the petitioner was not based on evidence. Drawing the attention of this court the resolution of the minutes of the meeting of the tender committee held on April 2, 2004 in respect of the tender no. 32/03-04 it is submitted by Mr. Majumder that the petitioner was a party to select CMC Ltd. and Wipro Ltd for supply of materials/parts to the respondents bank. According to Mr. Majumder the termination of the services of the petitioner was not a punishment. According to him, if the employer had, by contract, express or implied, or under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules was, prima facie and per se not a punishment and does not attract judicial review.

21. It is further submitted by Mr. Mujumder that the order of termination was simplicitor and it did not cast any stigma on the petitioner nor did it visit him with evil consequences, nor it was founded on misconduct. Therefore, according to Mr. Majumder there was not scope to go into the motive behind the impugned order of termination claiming the protection under Articles 14 and 16 of the constitution of India.

22. Reliance is placed on the decisions of [The State of Orissa and Another Vs. Ram Narayan Das](#), [Parshotam Lal Dhingra Vs. Union of India \(UOI\)](#), , [The State of U.P. Vs. Ram Chandra Trivedi](#), , [Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr](#), [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), , [State of Haryana and Another Vs. Satyender Singh Rathore](#), [State of U.P. and Others Vs. Ashok Kumar](#), , [Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others](#), , [State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla](#), , [Union of India \(UOI\) and Others Vs. A.P. Bajpai and Others](#), , High Court of Judicature at 1998 (1) PLJR 77 (SC) [Kunwar](#)

[Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others,](#) , [M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another,](#) , [Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali,](#) and Tapas Samanta Vs. State of West Bengal, reported in (2011) 4 Cal CLT 488(H.C.) in support of his above submission.

23. I have heard the learned counsel appearing for both the parties at length and I have given my anxious consideration to the facts and circumstances of this case for the purpose of examining the decision making process of the respondent bank in terminating the services of the petitioner during the period of probation. It cannot be ignored that an appointment of probation means that the appointee has been recruited on a trial basis for particular period. The concept of probation has been introduced in public service to cope with needs of a situation where it becomes difficult for the employer to dispense with the service of an employee without following certain procedural safeguard like disciplinary proceeding. The above concept has been advised so that an incompetent or inefficient employee is not foisted upon an employer because the charge of incompetence or inefficiency is easy to make out but difficult to prove. Reference may be made to the decision of [Ajit Singh and Others Vs. State of Punjab and Another,](#) and the relevant portion of the above decision are quoted below:

7. When the master servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. 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 incompetent 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 prohibition was devised. To guard against error of human judgment 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 the post. Period of probation gave a sort of locus poenitentiae 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 a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to. (See Purshotam Lal Dhingra v. Union

of India. The period of probation therefore furnishes all? valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer.

24. Though the period of probation is full of inglorious insurgencies in case of a public service, the decision not to conform cannot be irrational or arbitrary one in absence of any material to show that the work of the probationer is not satisfactory, it is unreasonable and illegal to terminate his service. In the matter of [Dr. Mrs. Sumati P. Shere Vs. Union of India \(UOI\) and Others](#), it is held by the Hon"ble Supreme Court that a probationer should be made aware of the difficulties in his work and deficiency in his performance. Without timely communication of assessment of work in such cases, it would be arbitrary to terminate the services of the probationer. Relevant portion of the above decision are quoted below.

5. We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability.

25. In the present case the petitioner was appointed on probation in the post of Assistant General Manager, Net working. He was concerned with core banking solution Net working during the period of his probation an order of suspension was passed. It was followed by a show-cause notice but ultimately the order of suspension was revoked without prejudice to bank"s right to initiating disciplinary proceeding against him for the acts of his misconduct allegedly committed by him. Ultimately, no disciplinary proceeding was initiated against him.

26. Therefore, the order of suspension or show-cause notice had no bearing on the issue of conformation of the service of the petitioner.

27. From the facts and circumstances of this case it is further revealed that the petitioner was transferred to regional office Kolkata of the respondent bank on April 13, 2005. Jobs connected branch computerization mainly setting right the problems, implementation of core banking solution in the Branches of Kolkata region,

arranging computer training to all employees to Kolkata Region and ensuring smooth conduct of training programmes were entrusted to the petitioner. Materials on record disclosed appreciation of the work of the petitioner in implementing Core Banking Solution under his communication dated July 15, 2005 (at page 42 of the affidavit-in-reply). No material is brought on record to show that the above fact of appreciation of the work of the petitioner was taken into consideration by the respondent authority in the matter of confirmation of his appointment. Therefore, the above relevant factor was kept out of consideration.

28. The petitioner was further transferred during the period of his probation to a service branch where there was no scope of discharging functions relating to core banking solution network. It was also a relevant factor for taking into consideration the decision making process of the respondent authority in course of judicial review in the light of the settled principles of law laid down by the Hon'ble Supreme Court in the matter of P. Shere(supra) as discussed hereinabove. On that ground also the decision making process of the respondent authority cannot be sustained in law.

29. That apart, the respondent authority relied upon three communications dated July 23, 2005, September 14, 2005 and October 31, 2005 to substantiate the basis of confirmation of opinion in the matter of non-conformation of the services of the petitioner. Admittedly, the communications date July 23, 2005 had no nexus with core banking solution networking. It was also not in dispute that the communication relating to September 14, 2005 was relating to transfer of fund from Guahati to Kolkata by State Bank of India Delhi in transferring the above fund was a situation beyond the control of the petitioner. It is revealed from the materials on record that the petitioner claimed additional interest from the State Bank of India for delayed transfer of fund. Surprisingly, the respondent authority raised its finger against the petitioner alleging his incompetence or inefficiency in discharging functions during probationary period. The decision making process of the respondent authority in the matter under reference cannot be sustained in law for taking into consideration the above extraneous factor.

30. Apart from the fact that the communication dated October 31, 2005 had not been served upon the petitioner at any point of time in the present case no defect in the work of the petitioner or deficiency was shown to him for giving him an opportunity to rectify his shortcoming as alleged.

31. I cannot agree with the submissions made by Mr. Majumder on behalf of the respondent bank that that order of suspension or show-cause notice or the communications dated July 23, 2005, September 14, 2005, October 31, 2005 respectively formed the foundation of the impugned order of termination of services of the petitioner.

32. I do not agree the submissions made by Mr. Majumder that since the termination was simplicitor and there was no evil consequence, the court cannot

examine the decision making process of the respondent bank claiming the protection under articles 14 and 16 of the constitution. In the matter of Azam Hussaini(supra) it was held that in absence of any material having been placed by the employer to show that the work of a probationary was not satisfactory and the services were terminated for that reason, it was a case having no reasonable cause for terminating the services of a probationer and relevant portions of the above decision are quoted below:

...In the absence of any material having been placed by the respondent-bank to show that the work of the appellant was not satisfactory and that his services were terminated for that reason, the Authority as well as the Labour Court were justified in recording a finding that there was no reasonable cause for terminating the services of the appellant. The said finding has not been upset by the High Court. The learned Judges of the Division Bench of the High Court were, therefore, not right in upholding the legality of the termination of the services of the appellant.

33. So far as the allegation of likelihood of bias is concerned, it can be defined as a pre-conceived opinion or a pre-deposition or pre-determination to decide a case or an issue not a particular manner so much so that such pre-deposition does not leave the mind open to conviction. In Metropolitan properties C.O.(FGC) Ltd. Vs. Lanon, reported in (1969) 1 QB 577 it is observed that considering whether there was a real livelihood of bias, the court does not look at the beyond of the judiciary himself, court does not look to see if he did in fact, favour one side at the acceptance of the other; the court looks at the impression which could be given to other people. The relevant portions of the above decision are quoted below:

With profound respect to those who have propounded the "real likelihood" test. I take the view that the requirement that justice must manifestly be done operates with undiminished force in cases where bias is alleged and that any development of the law which appears to emasculate that requirement should be strongly resisted. That the different tests, even when applied to the same facts, may lead to different results is illustrated by Reg. V. Barnsley Licensing Justices itself, as Devlin L.J. made clear in the passage I have quoted. But I cannot bring myself to hold that a decision may properly be allowed to stand even although there is reasonable suspicion of bias on the part of one or more members of the adjudicating body."

34. In the present case it has been held hereinabove that the impugned order cannot stand the test reasonableness but the allegation of livelihood bias was raised on a number of disputed question of fact like putting pressure on the petitioner to give a go-by to the pre-condition of pre-delivery instruction, proposal of test application on those designs/parts which were never purchased by the respondent bank which cannot be decided in an application under Article 226 of the constitution of India. In other words, the petitioner fails to establish the allegation of malice on the part of the respondent nos. 5 or 6.

35. In the matter of Ram Das(supra) the Hon"ble Supreme Court took into consideration the fact of pendency of a disciplinary proceeding against the public servant concern to uphold the decision of the respondent authority in terminating his service on probation. In the matter of Parshotam Lal Dinghra(supra) it has been held that the use expression "terminate" "discharge" is not conclusive. In that view of the matter the above decisions do not help the respondent bank. The matter of Ram Chandra Treevedi(supra) was decided on the distinguishable facts and circumstances that the order of termination was simplicitor in nature and the same was not founded on any mis-conduct. Therefore, it has no manner of application in the present case. The decision of Benjamin(A.G.)(supra) was also based on distinguishable facts and circumstances that the disciplinary enquiry against the employee concern was dropped before it could be completed and the intention of the authority was not to impose a stigma against him. Similarly, in view of the distinguishable facts and circumstances of this case a decision of Pravendra Narayan Verma(supra) with regard to placing reliance statements of the employer, the same is not applicable in this case. In the matter of Mahender Singh Gill(Supra), it has been held by the Hon"ble Supreme Court that a bad order cannot be validated on the basis of the additional grounds by way of an affidavit. So it does not held the respondent bank in nay way. In the matter of S. S. Rathore(supra), the Hon"ble Supreme Court held that it is not dismissal but termination simplicitor. If no injury as regard to reasons is found, mis-conduct is not the relevant factor in discharge. Therefore, this case also does not held the respondent bank. In the judgment of Ashok Kumar(supra) the Honb"le Supreme Court observed that the complained leads to injury which resulted in termination order it is the foundation of the order of termination. In view of the above distinguishable facts and circumstances it has no manner of application in the present case. The decision of Gujrat Steel Tubes(supra) was based on distinguishable facts and circumstances. The decisions of Kaushal Kishore Shukla,(supra), A.P. Bajpai(supra), P. M. M. Prasad Singh(supra), Kunwar Arun Kumar(supra), M. Venugopal(spura), Dr. Md. S. Iskender Ali(supra) were based on the general principle that order of termination simplicitor casting no stigma on a probationer is sustainable in law. But the distinguishable facts and circumstances of the present case makes it different altogether. In the matter of Tapas Samanta (supra), a Division Bench of this court was not inclined to interfere with an order of termination simplicitor of a number of Sepoys Kolkata Police Force taking into consideration the fact of frequent absence from services by one sepoy and inflicting of punishments on the others on the ground of unauthorized absence. Therefore, the above decision is also not applicable in the instant case.

36. On the basis of the discussion and observations made herinabove, the impugned order of termination was vitiated on the ground of taking irrelevant considerations into account and non-consideration of relevant factors and the same is quashed and set aside.

37. These writ application is disposed of accordingly.

38. There will be, however, no order as costs.

39. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Later:

A prayer is made on behalf of the Respondent-Bank for stay of operation of this Judgment. Considering the period of long vacation, operation of the order is stayed till December 31, 2012.