

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.202/2003

Date of decision: 29.7.2003

R.K.Das

... Applicant

(By Advocates: Sh. Vikas Singh)

versus

Kendriya Vidyalaya Sangathan & Others ... Respondents

(By Advocates: Sh. S.Rajappa, proxy of Sh. H.Jairaman)

CORAM:

Hon'ble Sh. Govindan S. Tampi, Member(A)

Hon'ble Sh. Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal? No

S. Raju
(Shanker Raju)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A.No.202/2003

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 29th day of July, 2003

R.K.Das
s/o Late Sona Das
r/o Pocket A4, House No.31
Konark Apartment
Kalkaji Extension
New Delhi - 110 019. ... Applicant

(By Advocate: Sh. Vikas Singh)

Vs.

1. Kendriya Vidyalaya Sangathan through
the Commissioner
18, Institutional Area
Shaeed Jeet Singh Marg
New Delhi - 110 016.
2. Sh. S.D. Sharma
Assistant Commissioner
Kendriya Vidyalaya Sangathan
Jammu Regional Office
Hospital Road
Gandhi Nagar
Jammu.
3. Smt. Kumud Bansal
Vice Chairman (KVS)
Additional Secretary of Education
Ministry of HRD, Shastri Bhawan
New Delhi. ... Respondents

(By Advocate: Sh. H. Jairaman, proxy of Sh. S.
Rajappa)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 8.10.2001 discharging him from service on a sum equivalent to pay and allowances for the period of notice of one month as well as order passed in appeal rejecting the request for reinstatement on 13.1.2003/15.1.2003. Quashment of the above, has been sought with all consequential benefits.

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2. Before we proceed to resolve the controversy, brief factual matrix is essential to be reflected.

3. Applicant, a PGT was appointed on 29.9.1986 in Kendriya Vidhyalaya Sangathan (hereinafter called as "KVS") till 1994, he worked at Air Force Station, Tughlakabad, New Delhi.

4. By an order dated 18.12.1995, applicant was transferred to KV Dibyapur, Itawa. Applicant joined on 12.8.1998 and was transferred to KV Hindon, Ghaziabad.

5. In pursuance of his application for selection as Grade-I Principal, applicant was appointed on 8.10.1998 through direct recruitment. The terms and conditions stipulated probation for a period of two years which may be extended from time to time till orders are issued on successful completion of probation for confirmation as per the availability of permanent vacancy. It is also stipulated in the Memorandum of appointment that until confirmation, services are terminable by one month's notice on either side without assigning any reasons.

6. Applicant was posted at Bandipur, Baramula District Jammu & Kashmir before that he was under treatment for hypertension and spondylitis at Safdarjung Hospital, New Delhi since 1996. Applicant made a request to change his posting. By a communication dated 21.5.1997 by the Joint

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Commissioner (Acad.), KVS, New Delhi, proposed to be closed the KVS, BSF,, Bandipur (Jammu) due to lack of staff strength from Class-I to Class-X.

7. Applicant joined on 23.11.1998 at Bandipur, where he found that against existing post of seven teachers, only two teachers were available to teach secondary classes, and on account of forthcoming Board Examinations there was hardly any maths teacher to teach the students. Applicant repeatedly advertised in the newspapers for appointment as ad hoc teachers but nobody responded to. As the applicant's health was deteriorated and there was no good hospital in Bandipur and as a result, on 29.11.1998 he had to be taken to Srinagar from where he was flown to Delhi for treatment at Safdarjung Hospital.

8. Applicant made request for posting at Delhi on the ground of spouse case and being aggrieved by rejection of the representation, alleged discrimination by filing petition before National Commission for Scheduled Casts and Scheduled Tribes on 18.1.1999 against KVS Commissioner who allegedly favoured his own man. As a result of the proceedings Vice-Chairman of KVS was summoned.

9. On 12.2.1999, applicant faced difficulties in running the School and had requested Joint Commissioner, KVS to immediately transfer teachers to KV Bandipur as the results from Class-I to Class-VIII were good because applicant himself taught but results of Xth standard could not be improved due to acute shortage of teachers.

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10. One Shri S.D.Sharma who had been reviewing authority of the applicant and was Assistant Commissioner, Jammu Region directed applicant to accompany the daughter and son-in-law of the then Joint Commissioner (Academy) Sh. Puran Chand to Vaishno Devi. Though the applicant was not well he was forced to undertake the journey.

11. On 8.10.1999 as a token compliance of the orders passed by the Vice-Chairman of the KVS, applicant was transferred from Bandipur to Rajouri, after cancelling the posting of one Sh. H.O.Memoria, where applicant was joined as Principal on 12.10.1999.

12. As per the applicant, his sincere efforts, and determination and dedication remarkably improved the attendance of School, and results of the School were enhanced upto 90% from Class-I to IX. However, due to shortage of Maths Teacher in the result of Class-X Board remained as 45%. Though the applicant had written for a Math Teachers, and one Shri M.Mouiddin, who was the then teaching maths, remain absconded and ultimately terminated.

13. By an order dated 4.9.2000 probation of the applicant was extended for a year applicant immediately represented against it.

14. On a routine annual inspection of the School conducted on 19.10.2000, by a team comprising of Education Officer of the area and two senior Principals, performance of the applicant was found

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commendable and functioning of the School was excellent. As alleged by the applicant, on a threat to him by Sh. S.D.Sharma he lodged a complaint on 23.7.2001 as well as on 13.8.2001.

15. Applicant also filed a complaint on 20.11.2001 regarding atrocities on him by the authorities. The aforesaid case was registered and Additional Sessions Judge as a Special Court framed charges against Sh. S.D.Sharma for using derogative words under the provisions of SC/ST Act.

16. Applicant had filed OA 2386/2001 challenging the order extending his probation. By an order dated 28.9.2001, the Tribunal dismissed the OA in limine observing that the Court cannot sit in Judgement over the decision of KVS regarding extension of probation.

17. By an order dated 8.10.2001, applicant was discharged from service.

18. Applicant preferred an appeal against the order of discharge as the same has not been disposed of, filed OA 2441/2002 before this Tribunal. By an order dated 19.9.2002, OA was disposed of directing the appellate authority to dispose of the representation of the applicant within a period of two months. Against this, the respondents have filed CWP No.7503/2002 before the High Court of Delhi which was withdrawn. Applicant was called for personal hearing

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on 18.12.2002 and 19.12.2002 by the appellate authority and ultimately rejected his appeal by an order dated 15.1.2003, giving rise to the present OA.

19. Shri Vikas Singh, learned counsel appearing on behalf of applicant, assails the impugned order on the ground of mala fides and in violation of Articles 14 and 16 of the Constitution of India.

20. It is the contention of the applicant that Respondent No.2 to whom he impleaded by name as a party who was the reviewing authority of the applicant working as Assistant Commissioner in KVS at Jammu Region Office has acted with bias and mala fide to mar the record of the applicant during the probation.

21. It is in this conspectus, Shri Vikas Singh stated that consistently the applicant made complaints against Shri S.D.Sharma who had no occasion to supervise the working of the applicant sitting at Jammu.

22. In the report of the probationer, on completion of 11 months service, reporting officer observed the work and conduct of the applicant as satisfactory whereas Respondent No.3 disagreed with the remarks of satisfactory work report and observed the work as unsatisfactory though it is stated that deficiency was brought to the notice of the applicant verbally on several times without any improvement, yet no such verbal warnings have been issued and in absence of any written communication by way of Memo. or Advisory Notes, the aforesaid statement lacks

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conviction as it is mandated upon the authorities during probation to apprise probationer his deficiencies and unsatisfactory performance through written communication so that he gets an opportunity to improve. In absence of any such communication, the remarks are an outcome of personal vendetta of Sh. S.D.Sharma towards applicant as he had been complained against by the applicant for his humiliating behaviour.

23. Moreover, it is contended that Deputy Inspector General, Chairman, Vidyalaya Management Committee had strongly appreciated the work and performance of the applicant and the fact that on his joining at Rajouri due to his dedicated efforts and excellent work the Board results have improved from 33% to 75%. In this backdrop, it is stated that extension of his probation at that point of time without recording any reasons and on mere observation that on review of his work and performance the probation period was extended, is not legally tenable.

24. It is further stated by Shri Vikas Singh that though the appeal had been preferred against extension of probation period, highlighting the various efforts made by the applicant at Rajouri yet the same was rejected by a non-speaking order.

25. In so far as the decision of the Tribunal, wherein by an order dated 4.9.2000 extending the probation period of the applicant has not been interfered is concerned, it is stated that the Tribunal on the basis that appreciation of the

performance is the discretion of the competent authority, it is not permissible in a judicial review to sit over as an appellate authority over the decision of the respondents.

26. However,, the facts and circumstances leading to extension have not been perused as the matter has been dismissed without hearing the otherside and perusing the record, accordingly, challenge to the extension and highlighting the mala fides on the part of the respondents cannot be treated as resjudicata.

27. Shri Vikas Singh states that the earlier report when the applicant completed 12 months of service and during the period he was at Bandipur, no unsatisfactory remarks have been made by the reporting officer. It is only because Shri S.D.Sharma against whom he made complaints regarding financial irregularities without substantiating his conclusions, mechanically disagreed with the remarks of the reporting officer.

28. It is stated that at Bandipur applicant had performed with utmost devotion and, had in fact joined when half of the session was gone.

29. However as the applicant was not apt to the high attitude yet he remained there, his request with medical certificates sent to respondents for transfer to another place was rejected. Applicant worked hard and vide his communication dated 12.2.1999, he apprised the Joint Commissioner that

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total number of students are 50 and only two teachers are available had requested for more teachers and as no follow up action was taken due to lack of strength of the staff, the result was deteriorated. However,, after the extension of probation period at Rajouri applicant's performance remained satisfactory.

30. Shri Vikas Singh by referring to academic supervision of KV by Education Officer, Shri S.K.Verma and two other Principals states that the general remarks in an academic supervision have been found Verygood and nothing adverse had been found which could have thrown doubts over the performance of the applicant. However, the applicant at Rajouri was subjected to humiliation and bias of Shri S.D.Sharma and by stating that his contribution from the salary to the Prime Minister Relief Fund has not been acknowledged and he has not been included in any of the Committees in the regional conference held during 2001, he preferred complaints to the Commissioner, highlighting the threats given by Shri S.D.Sharma. Even though the applicant had discharged his duties efficiently. As a result Board results have improved.

31. In so far as the mala fides against Respondent No.3 is concerned, it is stated that a complaint was made on 13.8.2001 as Shri Sharma was in the habit of levelling false charges against his subordinates. Applicant at Rajouri had requested for change of policy to send the regular teachers as Contract Teachers despite advertisement had not come



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forward to join KVS and the maths teacher remained absent despite issue of communications had not joined back and was ultimately terminated.

32. Regarding mala fide of Shri Sharma, it is stated that complaint has been made by the Superintendent of Police regarding claim of false TA transfer of teachers of the Schools. As it constituted misconduct, suitable disciplinary proceedings have been recommended. However, no action has been taken against Sh. Sharma. It is further stated that one Shri Bhagwan Singh had also, regarding financial irregularities committed by the S.D.Sharma, complained to Minister of HRD. It is also stated that on several occasions Courts have deprecated the careless behaviour of Respondent No.2. It is in this backdrop, stated that the General Secretary of the Teachers Body had also complained against Shri S.D.Sharma.

33. Lastly, it is stated that as Shri Sharma was complained against, he developed bias towards applicant which was real and imminent lead to writing of disagreement and unfounded adverse remarks.

34. In his rejoinder learned counsel stated that he had made his sincere efforts at Rajouri to improve upon the results. As per the Commissioner visit on 17.7.1999 the grievance have been noted and on 1.12.1999, applicant had approved in the meeting of Executive Committee appointment of teachers on

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contractual basis for which an advertisement was published in the daily newspapers but nobody turned upon respondents..

35. As regards position in law, it is contended that though the probationer has no right to the post but his services cannot be dispensed with arbitrarily, mala fides and without informing him of the deficiencies, behind his back on a material which has not been put to him. It is therefore contended that the discharge is not simple as per the terms but is punitive founded on a misconduct of the applicant for which a reasonable opportunity has been denied to him.

36. It is further stated that the aforesaid performance adversely communicated by the Assistant Commissioner, Shri S.D.Sharma is actuated with mala fides and has not been founded on credible material. Though applicant has a right to continue and on satisfactory performance, to be confirmed in accordance with rules.

37. In so far as the appellate authority is concerned, it is stated that the decision arrived at by the appellate authority was not independent. Whatever has been considered is on the basis of the clarification given by the Assistant Commissioner and Commissioner, i.e., KVS authorities.

38. On the other hand, Shri S. Rajappa, learned counsel of respondents has relied upon the following cases to contend that probationer has no

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right to post during the probation period and dispensation of his services on account of his unsatisfactory performance, as per the terms and conditions of the appointment, does not attract Article 311(2) of the Constitution of India.

- (1) Krishnadevaraya Education Trust & Anr. v. L.A. Balakrishna, 2001(9) SSC 319.
- (2) Dipti Prakash Benerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others, 1999 (3) SCC 60.
- (3) In OA 1553/2002 dated 30.5.2003 in Dinesh Kumar v. Union of India.
- (4) Decision of the Tribunal in T.A. 34/99 dated 29.1.2001 in Dr. K.C. Rakesh v. Union of India.

39. Shri S. Rajappa has also produced the relevant record for our perusal. According to him, against extension of probation period, applicant approached the Tribunal where his pleas were rejected. Accordingly, upto 4.9.2000, challenge to his performance as well as extension of probation and agitation to the same is barred by doctrine of resjudicate. As the aforesaid OA has not been further challenged the decision has attained finality and acts as a seal of approval.

40. Commending upon the report of academic supervision of KVS, it is stated that the same pertained to the School and was not related to performance of an individual rather the performance has been evaluated of the staff as a team.



41. In so far as the contention that the discharge is founded on misconduct is concerned, it is stated that the report of the applicant of the extended period of probation was not satisfactory. As far as report of the A.C. is concerned, applicant, who had been issued verbal warnings, could not improve his performance. Accordingly, as per terms of appointment contained in Clause-III, as a simple order without casting any stigma, applicant was discharged from service.

42. Referring to the decision in Dipti Prakash Banerjee's case supra, it is stated that when the management does not hold any inquiry into the misconduct and simultaneously does not desire to keep an employee whose performance has been found unsatisfactory without probing into his misconduct, the discharge would be a case of mere motive.

43. It is further stated by Shri S.Rajappa that mala fides alleged against Vice-Chairman Sh. S.D.Sharma are not well founded and could not be established by the applicant. Mere filing unsubstantiated complaints, on vague averments without laying down specific firm foundation mala fides cannot be established. However, it is stated that appellate authority examined this issue and had not find any mala fides attributable to Respondent No.3.



44. It is stated that apart from the remarks of Sh. S.D.Sharma, no colourable exercise of power has been made as the unsatisfactory performance has also been reflected from the audit reports and reports submitted by two independent Education Officers..

45. According to Shri Rajappa it is the prerogative of the authorities to continue the applicant's probation period and his confirmation is dependent on his successful completion of the period. As the applicant has failed despite opportunities, to improve his performance, earlier the probation period was extended though discharge was recommended by the competent authority as an opportunity to improve. Having failed to avail the same, and as performance remained unsatisfactory, there is no legal infirmity in the orders passed.

46. On the grounds of mala fide, it is stated that the allegations are vague as the first posting of a Principal was to be made in a remote area. However, request of applicant was considered as per the policy and was posted at Bandipur where he had failed to discharge his duties. Result for Board examination was zero percent. As the applicant, having failed to discharge the duties properly and effectively, and had not acted in the interest of organisation, yet he was brought to Rajouri on his own request. Posting of Shri H.O.Memoria was cancelled, as he refused to join. Applicant in order to cover his own lapses look a pretext of inadequacy of teaching staff to justify poor results of the School.



47. It is stated that Assistant Commissioner, being the Controlling Officer assessed the performance of the applicant as unsatisfactory, on the material on record, recommended discharge to the Chairman. Which was on thoughtful consideration has been acted upon.

48. We have carefully considered the rival contentions of the parties and perused the material on record.

49. A seven Judges Constitution Bench of the Apex Court in Samsher Singh v. State of Punjab, 1974 SCC (L&S) 550 held as follows:

"64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. In Gopi Kishore Prasad v. Union of India it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion in his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course, the Government

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chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer."

50. Apex Court in Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. and Another.
1999(2) SCC 21 held as follows:

"33. It will be noticed from the above decisions that the termination of the service of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah. J. (as he then was) in Ram Narayan Dass case. It is done only with a view to decide whether he is to be retained or continued because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started a charge-memo issued, reply obtained, and an enquiry officer is appointed - if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case and in Benjamin case. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer

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from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive."

51. Apex Court in Chandra Prakash Shahi v. State of U.P. & Others, 2000(5) SCC 152 held as follows:

"28. The important principles which are deducible 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 inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegation of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry 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".

52. Apex Court in Union of India & Ors. v. A.P. Bajpal & Ors., 2003(1) SCSLJ 202 held as follows:

"7. The grounds stated in the counter affidavit filed by the appellants in answer to the challenge made by the respondent no.1 in the O.A. before the Tribunal were only the basis to assess the unsuitability of the respondent no.1 to continue in the sensitive post for which he was appointed. It may be added that Annexure C-3 on which the Tribunal heavily relied to say that the impugned order was stigmatic was an annexure to the counter filed by the appellants. It was a confidential letter written by the Assistant Director of the Department. In our view, the Tribunal committed a serious error in law and on facts of the

present case in concluding that the order of termination of services of the respondent no.1 involved stigma attached to respondent. The grounds stated in the counter affidavit in answer to the challenge made by the respondent no.1 to continue in service. Having regard to all relevant aspects, the authorities reached a conclusion that respondent no.1 was not suitable to continue in service. The order of termination of his services was simpliciter without attaching any stigma to the conduct of respondent no.1. In this view, the impugned order cannot be sustained. Accordingly, it is set aside and the appeal is allowed. No costs."

53. In Krishnadevaraya Education Trust & Anr. v. L.A.Balakrishna, 2001(9) SCC 319, the following observations have been made:

"6 There can be no manner of doubt that the employer is entitled to engage the services of a person on probation and if his services are not satisfactory during the period of probation, which means he is not suitable for the job, then the employer has a right to terminate the services. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. The Court went on to add "Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment."

54. Apex Court in Commissioner of Police v. R.S.More, 2003 SCC(L&S) 178 held as follows:

"8. In our view, the case at hand falls under Category 3. As noticed,, subrule(2) of Rule 5 requires that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. No specific order having been passed by any authority, certifying the satisfactory completion of probation period of the respondent, has been brought to our notice. Mr. Hegde, learned counsel, submitted that no order as contemplated under sub-rule (2) of Rule 5 has been passed by the competent authority. Admittedly, the order discharging the respondent, in exercise of powers under

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Rule 6, has been passed after the extended period of probation was over. In our view, however, that itself would not entitle the respondent to have claimed deemed confirmation in absence of the specific order to that effect. In service jurisprudence, confirmation of service on a particular post is preceded by satisfactory performance of the incumbent unless service rules otherwise prescribe. In the instant case, sub-rule(2) of Rule 5 of the Rules provides that unless there is a specific order that the probationer has satisfactorily completed the period of probation, he shall not be entitled to be deemed to have satisfactorily completed the probation by reason of his being continued in service beyond the extended period of probation. The High Court has failed to consider this important aspect of the matter, resulting in miscarriage of justice. In our view, the High Court fell into error resulting in miscarriage of justice."

55. If one has regard to the ratio deci dendi of the above cases, a probationer during the extended period of probation as per the terms and directions of appointment on unsatisfactory performance cannot successfully assail an order of discharge unless the same is founded on misconduct.

56. Regarding opportunity to point out deficiencies and shortcomings and an occasion to improve to a probationer is concerned, the Apex Court in Dr. (Mrs.) Sumati P. Shere v. Union of India and Others 1989(3) SCC 311 held as follows:

"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

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opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability."

57. If one has regard to the above, what has been laid down is that an employee should be made aware of the default in his work and efficiency in his performance, which can be oral and informal. There is no requirement of such communication in writing to an employee.

58. As regards mala fides is concerned, Apex Court in Indian Railway Construction Co. Ltd. v. Ajay Kumar, 2003(4) SCC 579 held as follows:

"23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fides in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See S. Partap Singh v. State of Punjab). It cannot be overlooked that the burden of establishing mala fide is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. courts would be slow to draw dubious inferences from incomplete

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facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration."

59. If one has regard to the above, merely because the applicant had made certain complaints against Sh. S.D.Sharma ones the complaints have also come from all quarters and the fact that Sh. Sharma was indulged in financial bungling and was bashed and deprecated by this Tribunal, could not per se show any ill motive towards applicant.

60. Sh. S.D.Sharma has discharged his official duties as a Controlling Officer to forward the report on probation of the applicant though the performance was found satisfactory by reporting officer, but as a reviewing authority, he has every right to disagree, on his conclusions derived from the material, the same cannot be questioned in a judicial review.

61. Moreover, earlier report of probationer which lead to, extension of probation of the applicant, when assailed before the Tribunal has been found to be justified. The aforesaid attained finality as the decision of the Tribunal has not been challenged by the applicant further. This has a seal of approval.

62. However, in a judicial review, this Court cannot act as an appellate authority over the assessment of respondents as to the performance of applicant. They are the best judges in the circumstances.

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63. Admittedly, at Bandipur, applicant not only failed to achieve result for Board examination which was zero percent but has also failed to secure the requisition of teachers on contract basis in case of shortage.

64. Contention put forth that the inspection carried out in School has graded him good cannot be countenanced as report of academic supervision of KVS pertained to the School, and staff as a team, individual performance had not been evaluated. As regards Chairman, as a Reporting Officer, recommending satisfactory performance, the same was disagreed by the reviewing authority.

65. We have scanned through the records and find that apart from the comments sent by the reviewing authority, i.e., Shri S.D.Sharma, there are independent reports of individual performance of the applicant by Education Officer, Shri S.K.Verma and another E.O. regarding inefficiency and ineffectiveness of applicant as a Principal. The audit report also found financial irregularity against the applicant.

66. Merely, because the applicant has instituted a criminal case under SC/ST Act is not a deciding factor or a conclusive evidence to infer mala fides of Respondent No.3. As the Special Court has framed a charge against the applicant, Law shall take

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its own course in the proceeding. The above complaint has no bearing on the assessment of performance of the applicant during probation.

67. As held by the Apex Court in Education Trust case supra, services of a probationer can be legally terminated on his unsuitability. This requires no reasons.

68. As per the decision of the Apex Court in Dipti Prakash Benerjee's case supra, we do not find the material relied upon by the respondents, i.e., report and annexures sent by the Assistant Commissioner, as foundation on the allegations of misconduct. Admittedly, no inquiry has been held and no findings have been arrived at. Even if there is an inquiry conducted into by the respondents to ascertain work and performance of a probationer during the period of probation or extended probation period but without holding inquiry into the truth of the allegations or misconduct, the same would constitute motive only. In that event an order of discharge would be an order simplicitor.

69. Admittedly, in the present case, as per the memorandum of appointment, applicant was on probation for a period of two years, which can be extended. Confirmation is only when the probation period is completed successfully on declaration by the respondents. During the period of probation and extended period as well, as per terms and conditions, the services of applicant are terminable by one month's notice.

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70. Accordingly, resorting to terms and conditions, without holding an inquiry into alleged irregularities committed by the applicant, the action resorted to does not require protection of Article 311(2) of the Constitution of India.

71. In so far as the appellate authority's order is concerned, substantially all the contentions of the applicant have been meticulously dealt with. His ground of mala fides alleged against Respondent No.3 has also been considered and rejected. Merely because the comments have been sought from the authorities, by the appellate authority would not render the order as illegal as long as it shows application of mind and recording of reasons which is a paramount requirement of fair play and natural justice.

72. Probationer, like applicant, having no right to the post and the services dispensed with on his unsatisfactory performance, which is explicit on the basis of records, this Court cannot assume in a judicial review role of appellate authority to evaluate the performance of the applicant which is prerogative of the respondents. Having failed to establish any ill will, his failure to lay down a specific foundation to the mala fides, by specific substantiated facts, burden to prove has not been discharged.

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73. In the result, for the foregoing reasons, we do not find any infirmity in the orders passed by the respondents, OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

(Govindan S. Tampi)
Member(A)

/rao/