Chandra Prakash Shahi vs State Of U.P. & Ors on 25 April, 2000

Author: S.Saghir Ahmad

Bench: D.P.Wadhwa, S.S.Ahmad

PETITIONER:
CHANDRA PRAKASH SHAHI

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 25/04/2000

BENCH:
D.P.Wadhwa, S.S.Ahmad

JUDGMENT:

S.SAGHIR AHMAD, J.

Leave granted. What is "motive"; what is "foundation"; what is the difference between the two; these are questions which are said to be still as baffling as they were when Krishna Iyer, J. in Samsher Singh vs. State of Punjab, (1974) 2 SCC 831 = 1975 (1) SCR 814 = AIR 1974 SC 2192, observed as under : "Again, could it be that if you summarily pack off a probationer, the order is judicially unscrutable and immune? If you conscientiously seek to satisfy yourself about allegations by some sort of enquiry you get caught in the coils of law, however, harmlessly the order may be phrased. And so, this sphinx-complex has had to give way in later cases. In some cases the rule of guidance has been stated to be `the substance of the matter' and the `foundation' of the order. When does `motive' trespass into `foundation'? When do we lift the veil of `form' to touch the `substance'? When the Court says so. These `Freudian' frontiers obviously fail in the work-a-day world." But, as we shall presently see, the law, on account of recent judgments concerning the services of a probationer, is fairly well-settled and there is no cause for being confounded or bewildered. The perplexity which, at one time, surrounded the torrid question involved in this case has yielded to the clarity of reasons propounded by this Court from time to time in recent times to which a reference shall be made during the course of this discussion. The appellant was recruited on 1.10.1985 as a Constable in 34th Battalion, Pradeshik Armed Constabulary, U.P. under the U.P. Pradeshik Armed Constabulary Act, 1948. He completed his training on 6th of September, 1986 and was, thereafter, placed on probation for a period of two years. He completed his period of probation on 5th of September, 1988 but a year later, on 19th of July, 1989, his services were terminated by a simple notice in terms of Rule 3 of the U.P. Temporary Government Servants (Termination of Service)

Rules, 1975. The order of termination was challenged by the appellant before the U.P. Public Service Tribunal which, by its judgment dated 18.1.1993, allowed the claim petition and set aside the order dated 19.7.1989 by which the services of the appellant were terminated. Respondents 1 and 2, thereafter, approached the High Court through a Writ Petition which was allowed on 27th of November, 1997 and the judgment passed by the Tribunal was set aside. Learned counsel for the appellant has contended that the order by which the services of the appellant were terminated, though innocuous apparently, was, in fact, punitive in nature. The appellant, it is contended, could not have been removed from service without holding a regular departmental enquiry. It is further contended that the courts including the Tribunal constituted under the U.P. Public Services (Tribunal) Act, 1976 have full jurisdiction to go behind the order to find out whether it was an order of termination simpliciter or it was an order passed by way of punishment. It is pointed out that this aspect of the matter was considered by the Tribunal which, on the basis of the facts set out in the counter-affidavit filed on behalf of the respondents as also the entire service record of the appellant which was produced before it, came to the conclusion that the order was punitive in nature. This finding, it is contended, could not have been disturbed by the High Court in a Writ Petition under Article 226 of the Constitution. Learned counsel for the respondents has, on the contrary, contended that the appellant was a temporary employee and, therefore, his services could be terminated at any time by giving him a month's notice in terms of U.P. Temporary Government Servants (Termination of Service) Rules, 1975. In the Counter-Affidavit filed before the Tribunal before which the order dated 19.7.1989 (termination order) was challenged by the appellant, it was, inter alia, stated that on 24th of June, 1989 while camping at Ghat Varanasi for Flood Relief Training, a quarrel had taken place between two Constables as a result of which Constable Arun Prakas Tewari used filthy and unparliamentary language against Constable Radhey Shyam Pandey. He also caused injuries to Constable Radhey Shyam Pandey by kicks and fists. He was joined by Constable Rajesh Kumar Pandey. Other Constables also joined the fray. A preliminary enquiry was conducted by Shri Kailash Chaube, Assistant Commandant, P.A.C. and a few constables including the appellant were found guilty of indiscipline and misbehaviour and it was for this reason that the services of the appellant were terminated. The respondents admitted in the counter- affidavit that there was no adverse material against the appellant before the incident in question. The original records which were produced before the Tribunal and were scrutinised by it indicated that the order by which the services of the appellant were terminated was passed on account of his alleged involvement in the quarrel between the constables at the Ghat Varanasi Camp. The Tribunal has found as under:- "The preliminary enquiry file No.Ja-2/89 relating to the petitioner and other constables of 34th Bn. P.A.C. Varanasi from page 21/34 to 22/33 dated 26.6.89 shows that the enquiry was conducted by Sri Kailash Chaube, Assistant Commandant, 34th Bn. P.A.C. Varanasi and in the preliminary enquiry report he concluded at pages 21/34 to 22/37 that the petitioner along with others had indulged in a misconduct of hurling blows and used filthy language to the superior officers of the Department and he was found guilty along with others for the said misconduct and misbehaviour. Thereafter on internal page 6 the impugned order of termination dated 19.7.89 was passed in respect of the petitioner and on the same day he was served the copy of the order." It was in view of the above finding that the termination order was held to be punitive in nature and was consequently set aside by the Tribunal but the High Court relying upon the decision of this Court in State of U.P. vs. Kaushal Kishore Shukla, (1991) 1 SCC 691 = 1991 (1) SCR 29, quashed the order of the Tribunal. The first contention of the learned counsel for the appellant is about the status of the appellant.

Learned counsel has contended that the appellant could not have been legally removed from service, except by way of disciplinary action in accordance with the requirements of Article 311(2) of the Constitution. It is contended that after completion of the period of probation, the appellant had acquired `permanent' status and, therefore, his services could not have been terminated by a mere notice or a month's pay in lieu thereof. This argument cannot be accepted. An assertion that on completion of the period of probation the appellant had acquired `permanent' status is based on a misreading of the provisions of Para 541 of the U.P. Police Regulations, relevant portion of which is quoted below : "541. (1) Recruits will be on probation for a period of two years, except that -- (a) those recruited directly in the Criminal Investigation Department or Districts Intelligence Staff will be on probation for three years, and (b) those transferred to the Mounted Police will be governed by the directions contained in paragraph 84 of the Police Regulations. If during the period of probation their conduct and work have been satisfactory and they are approved by the Deputy Inspector General of Police at the end of the period of probation for service in the force the Superintendent of Police will confirm them in their appointment." A perusal of the above provision would indicate that the period of probation is two years. The Regulation is silent as to the maximum period beyond which the period of probation cannot be extended. In the absence of this prohibition, even if the appellant completed two years of probationary period successfully and without any blemish, his period of probation shall be treated to have been extended as a `permanent' status can be acquired only by means of a specific order of confirmation. This Court in State of Punjab vs. Dharam Singh (1968) 3 SCR 1 = AIR 1968 SC 1210 ruled out the proposition of automatic confirmation on completion of the period of probation. This Court ruled that the `permanent' status can be acquired only by a specific order confirming the employee on the post held by him on probation. To the same effect is the decision in Partap Singh vs. U.T. of Chandigarh (1979) 4 SCC 263 = 1980 (1) SCR 487 = AIR 1980 SC 57. In Municipal Corporation, Raipur vs. Ashok Kumar Misra (1991) 3 SCC 325 = 1991 (2) SCR 320 = AIR 1991 SC 1402, the same principles were reiterated. In view of the above, the contention that the appellant had acquired `permanent' status cannot be accepted. His status was that of a probationer. Now, it is well-settled that the temporary Government servants or probationers are as much entitled to the protection of Article 311(2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. The courts can, therefore, lift the veil of an innocuously worded order to look at the real face of the order and to find out whether it is as innocent as worded. (See: Parshotam Lal Dhingra vs. Union of India, AIR 1958 SC 36 = 1958 SCR 828). It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was "founded" on those factors or other disqualifications. Following the decision of Parshottam Lal Dhingra's case (supra), this Court in State of Bihar vs. Gopi Kishore Prasad, AIR 1960 SC 689, held that if the services of a probationer are terminated on the basis of an enquiry into the allegations of misconduct and inefficiency, the order would be punitive. It was pointed out that in the case of a probationer, it is always open to the Government to hold an enquiry merely to assess the merits of the employee to find out whether he

was fit to be retained in service and confirmed. In another case relating to a probationer, namely, in State of Orissa vs. Ram Narayan Das, 1961 (1) SCR 606 = AIR 1961 SC 177, where the services were governed by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which provided that where the services of a probationer were intended to be terminated either during the period of probation or at the end of that period for any fault or on account of his unsuitability, he would be apprised of the grounds of unsuitability and would also be afforded an opportunity to show-cause against it before orders are passed against him, it was held that the termination order would not become punitive merely because of an antecedent enquiry but the real object or purpose of the enquiry had to be found out whether it was held merely to assess the general unsuitability of the employee or it was held into charges of misconduct or inefficiency etc. In Ranendra Chandra Banerjee vs. Union of India, AIR 1963 SC 1552 = 1964 (2) SCR 135, which again was a case relating to a probationer, it was held that on account of Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules if the enquiry was held for the limited purpose of finding out whether the employee was fit to be retained or not, the said enquiry would not make the order punitive as the enquiry could not be related to any misconduct of the employee. This view was reiterated in Jagdish Mitter vs. Union of India, AIR 1964 SC 449. In Madan Gopal vs. State of Punjab, AIR 1963 SC 531 = 1963 Supp.(3) SCR 716, the order by which the services of the employee were terminated was an order simpliciter in nature, which was innocuously worded, but it was held by this Court that the form of the order was not decisive and the Court could go behind that order to find out whether it was founded upon the misconduct of the employee. These cases, namely, State of Bihar vs. Gopi Kishore Prasad AIR 1960 SC 689; State of Orissa vs. Ram Narayan Das (1961) 1 SCR 606 = AIR 1961 SC 177; Madan Gopal vs. State of Punjab (1963) Supp. (3) SCR 716 = AIR 1963 SC 531; and Jagdish Mitter vs. Union of India AIR 1964 SC 449 were considered by this Court in Champaklal Chimanlal Shah vs. Union of India (1964) 5 SCR 190 = AIR 1964 SC 1854 where the services of the appellant, who was a temporary employee, were terminated by giving him a simple notice specifying therein that the services would stand terminated with effect from the date mentioned therein. But, before the termination of his services, he was called upon to explain certain irregularities and was also asked to submit his explanation, but no regular departmental enquriy was held. It was held that since no punitive action was taken against the appellant, there was no question of the applicability of Article 311(2) of the Constitution. In another significant decision in State of Punjab vs. Sukh Raj Bahadur (1968) 3 SCR 234 = AIR 1968 SC 1089 where the respondent, who was officiating in the Punjab Civil Service (Executive Branch) was reverted to his substantive post in the Delhi Administration after issuing him a charge sheet to which a reply was submitted by the respondent but the disciplinary enquiry was not proceeded with, and an order of reversion was passed, it was held that the order could not be treated to have been passed by way of punishment. The Court laid down the following propositions : "1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Art. 311 of the Constitution. 2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial. 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant. 4. An order of termination of service is unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311 of

the Constitution. 5. If there be a full-scale departmental enquiry envisaged by Art. 311, i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said Article." These principles as also the principle laid down in Champaklal's case (supra) were reiterated by this Court in Union of India and Ors. vs. R.S. Dhaba (1969) 3 SCC 603; State of Bihar vs. Shiva Bhikshuk Mishra (1970) 2 SCC 871 = 1971 (2) SCR 191 = AIR 1971 SC 1011; R.S. Sial vs. State of U.P. (1974) 3 SCR 754 = AIR 1974 SC 1317 = (1975) 3 SCC 111 and it was laid down that in order to attract the provisions of Article 311(2) it has to be seen whether the misconduct or negligence was a mere motive for the order of reversion or termination or whether it was the very foundation of that order. It was again reiterated that the form of the order was not conclusive of its true nature and the Court has to examine the entirety of circumstances preceding or attendant on the order of termination. To the same effect is the decision of this Court in State of U.P. vs. Sughar Singh (1974) 1 SCC 218 = 1974 (2) SCR 335 = AIR 1974 SC 423, which related to reversion and in which reliance was placed on two earlier decisions in Madhav Laxman Vaikunthe vs. State of Mysore AIR 1962 SC 8 = 1962 (1) SCR 886 and State of Bombay vs. F.A. Abraham AIR 1962 SC 794 = 1962 Supp. (2) SCR 92. It was, however, laid down that if the order visits the employee with penal consequences, the order would be punitive. It was for this reason that the order of reversion in that case was held to be bad. In the same year, came the Seven-Judge Bench decision of this Court in Samsher Singh vs. State of Punjab (1974) 2 SCC 831 = AIR 1974 SC 2192 = 1975 (1) SCR 814, in which "Motive" and "Foundation" theory was reiterated and it was laid down that the question whether an order terminating the services of a temporary employee or a probationer was by way of punishment or not would depend on the facts and circumstances of each case. The form of the order, it was observed, was not conclusive and an innocuously worded order, terminating the services of a temporary employee or a probationer may, in the facts of the case, be found to have been passed on account of serious and grave misconduct in utter violation of Article 311(2) of the Constitution. This decision was followed in State of Punjab vs. P.S. Cheema AIR 1975 SC 1096 = (1975) 4 SCC 84 and the termination order, regarding which a concurrent finding of fact was recorded by the trial court, the lower appellate court and also by the High Court in second appeal that it was punitive in nature, was held to be bad. While the judicial pronouncements stood at that stage, the entire case law was reviewed by this Court in State of U.P. vs. Ram Chandra Trivedi AIR 1976 SC 2547 = (1976) 4 SCC 52 = 1977 (1) SCR 462, in which it was contended that the legal and Constitutional position with regard to an order of termination was not settled as there were conflicting decisions of this Court on that question. This contention was not accepted and on a review of the entire case law, including the Seven- Judge Bench decision in Samsher Singh's case (supra), it was laid down that the Court has consistently held that the "motive", in passing an order of termination or reversion, operating in the minds of the Govt. was not a relevant factor for determining whether the order was passed by way of punishment. What was determinative of the true nature of the order was not its exterior form but the "foundation" on which it was based. If misconduct or negligence was the foundation of the order of termination, or for that matter, reversion, the order would be punitive in nature. The Court also referred to the decision in Regional Manager vs. Pawan Kumar Dubey (1976) 3 SCC 334 = AIR 1976 SC 1766 = 1976 (3) SCR 540, in which it was observed as under : "We think that the principles involved in applying Article 311(2) having been sufficiently explained in Shamsher Singh's case (AIR 1974 SC 2192) (supra) it should no longer be possible to urge that Sughar Singh's case (supra) could give rise to some misapprehension of the law. Indeed, we do not think that the principles of law

declared and applied so often have really changed. But the application of the same law to the different circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts." (Emphasis supplied) Termination simpliciter of a temporary Govt. servant on the ground of unsuitability does not attract the provisions of Article 16, nor is the protection under Article 311(2) of the Constitution available to a temporary Govt. servant unless the termination involved "stigma", was the dictum laid down by this Court in Commodore Commanding, Southern Naval Area, Cochin vs. V.N. Rajan (1981) 2 SCC 636 = AIR 1981 SC 965 = (1981) 3 SCR 165. In Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593 = (1980) 1 LLJ 137 = 1980 (2) SCR 146 = AIR 1980 SC 1896, it was laid down that a Court or Tribunal is entitled to find out the true nature of the termination order, namely, whether it is punitive or not. In this regard, the form of the order will not be decisive and the Court can lift the veil to see the true nature of the order. The Court observed that the substance, not semblance, governs the decision. The Court further observed that what was decisive was the plain reason for the discharge and not the strategy of a non-enquiry. If the basis was not the misconduct, the order could be saved. The Court further observed that the mere fact that after being satisfied of the guilt the Govt. abandons the enquiry and proceeds to terminate the services by a simple order, would not be the relevant factor in considering the true nature of the order. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion would be "dismissal" even if full benefits, as on simple termination, are given and non-injurious terminology is used. The tests for determining whether termination was a termination simpliciter or by way of punishment laid down in earlier decisions were reiterated in Oil & Natural Gas Commission vs. Md. S. Iskender Ali (Dr.) (1980) 3 SCC 428 = (1980) 2 LLJ 155 = 1980 (3) SCR 603 = AIR 1980 SC 1242 and Nepal Singh vs. State of U.P. (1980) 3 SCC 288 = (1980) 2 LLJ 161 = (1980) LIC 747. The latter was a case of termination simpliciter on account of the drive launched by the Inspector General of Police for weeding out Police Officers who were unsuitable or unfit to be continued in service. On the facts and circumstances of that case, it was held that the question whether the appellant, who was a temporary servant, should be retained in service, directly arose during the drive launched to weed out unsuitable officers and it was for this reason that the termination order was upheld, particularly as there was nothing to show that the termination order was made by way of punishment. In another decision which, incidentally, again is Nepal Singh vs. State of U.P. (1985) 1 SCC 56 = AIR 1985 SC 84 = (1985) 2 SCR 1, the Court held that where the services of a temporary Govt. servant are terminated on the ground that his reputation for corruption makes him unsuitable for retention in the service, the State, or for that matter, any statutory employer, must take great care when proceeding to terminate a career on the ground of unsuitability, to ensure that its order is founded on definable material, objectively assessed and relevant to the ground on which the termination is effected. It was observed that the Court will view with great disfavour any attempt to circumvent the requirement of Article 311(2). In Anoop Jaiswal vs. Govt. of India (1984) 2 SCC 369 = 1984 (2) SCR 453 = AIR 1984 SC 636, it was found on a consideration of the entire record that the real foundation for the order of discharge of the

appellant- probationer was the alleged act of misconduct. This, it was observed, made the impugned order punitive in nature and was, therefore, held to be bad. Shesh Narain Awasthy vs. State of U.P. & Ors. (1988) 2 LLJ 99 was a case of a temporary Constable in the U.P. Police whose services were terminated by an apparently innocuous order. On scrutiny it was found that the services were terminated on account of his alleged participation in activities of unrecognised Police Karamchari Parishad. The termination order, therefore, was held to be bad as having been passed without following the procedure prescribed under Article 311(2) of the Constitution. In Ravindra Kumar Misra vs. U.P. State Handloom Corporation Ltd. 1987 Supp. SCC 739 = AIR 1987 SC 2408 = 1988 (1) SCR 501, it was held that for finding out the effect of the order of termination, the concept of "motive" and "foundation" has to be kept in mind. It was further observed that no strait-jacket test can be laid down to distinguish the two, namely, the `motive' and the `foundation'. Whether motive has become the foundation has to be decided by the Court with reference to the facts of a given case. It was also observed that `motive' and `foundation' are certainly two points of one line - ordinarily apart but when they come together, `motive' gets transformed and merged into `foundation'. It was also observed that since in regard to a temporary employee or an officiating employee an assessment of the service is necessary, merely because the Authority proceeds to make an assessment and records its views, it would not be available to be utilised to make the order of termination, following such assessment, punitive in character. It was observed by this Court that in the relationship of master and servant there is a moral obligation to act fairly. There should be an assessment of the work of the employee and if any defect is noted in his working, the employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiency, indifference or indiscretion may be with the employee by inadvertance 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, it was observed, it would be arbitrary to give a movement order to the employee on the ground of unsuitability. In State of U.P. vs. Kaushal Kishore Shukla (1991) 1 SCC 691 = 1991 (1) SCR 29, which has been relied upon by the High Court in the impugned judgment, it was held that merely because a preliminary enquiry was held against a temporary Govt. servant, would not be a ground to hold that an order, otherwise innocuous on the face of it, by which the services were terminated, was punitive in nature. The decision in Nepal Singh vs. State of U.P. (1985) 1 SCC 56 = 1985 (2) SCR 1 = AIR 1985 SC 84 was held to be per incuriam as in that case, Champaklal's case (supra) was not considered, but the Court did observe that if on an overall assessment of the work and conduct of the employee the authority competent in that behalf to terminate the service, is satisfied that on account of the employee's general unsuitability and inefficiency or misconduct it would not be in the public interest to retain him in service, it may either terminate the services by an innocuous order or may proceed to take punitive action by holding a regular departmental enquiry. The Court, however, emphasised that the termination has to be in accordance with the terms and conditions of service regulated by relevant rules. In Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. & Anr. JT 1998 (8) SC 585 = (1999) 2 SCC 21, which related to a probationer, the whole legal position was reviewed by Brother M. Jagannadha Rao, J., in an illuminating and research- oriented judgment and after considering various decisions including the decision in Kaushal Kishore Shukla's case (supra) and a still later decision in Commissioner of Food & Civil Supplies, Lucknow, U.P. vs. Prakash Chandra Saxena (1994) 5 SCC 177 = 1994 (3) Scale 12, so as to trace the development of law relating to this aspect of service jurisprudence, laid down that there has not been any conflict of opinion inter se various

judgments including those laying down the "Motive" and "Foundation" theory. It was held that the question whether the order by which the services were terminated was innocuous or punitive in nature had to be decided on the facts of each case after considering the relevant facts in the light of the surrounding circumstances. Benefit and protection of Article 311(2) of the Constitution is available not only to temporary servants but also to a probationer and the court in an appropriate case would be justified in lifting the veil to find out the true nature of the order by which the services were terminated. The whole case law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulam; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi's case (supra) that there was a conflict of decisions on the question of order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of "motive" and "foundation" was always kept in view. 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 enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

> "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action. If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry. Applying these principles to the facts of the present case, it will be noticed that the appellant, who was recruited as a Constable in the 34th Battalion, Pradeshik Armed Constabulary, U.P., had successfully completed his training and had also completed two years of probationary period without any blemish. Even after the completion of the period of probation under Para 541 of the U.P. Police Regulations, he continued in service in that capacity. The incident in question, namely, the quarrel was between two other Constables in which the appellant, to begin with, was not involved. When the quarrel was joined by few more Constables on either side, then an enquiry was held to find

out the involvement of the constables in that quarrel in which filthy language was also used. It was through this enquiry that appellant's involvement was found established. The termination was founded on the report of the preliminary enquiry as the employer had not held the preliminary enquiry to find out whether the appellant was suitable for further retention in service or for confirmation as he had already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it is admitted by the respondent that the performance of the appellant throughout was unblemished, the order was definitely punitive in character as it was founded on the allegations of misconduct. There is another aspect of the matter. Para 541 of the U.P. Police Regulations provides as under : "541. (1) Recruits will be on probation for a period of two years, except that -- (a) those recruited directly in the Criminal Investigation Department or District Intelligence Staff will be on probation for three years, and (b) those transferred to the Mounted Police will be governed by the directions contained in paragraph 84 of the Police Regulations. If during the period of probation their conduct and work have been satisfactory and they are approved by the Deputy Inspector General of Police at the end of the period of probation for service in the force the Superintendent of Police will confirm them in their appointment. (2) In any case in which either during or at the end of the period of probation, the Superintendent of Police is of opinion that a recruit is unlikely to make a good police officer he may dispense with his services. Before, however, this is done the recruit must be supplied with specific complaints and grounds on which it is proposed to discharge him and then he should be called upon to show cause as to why he should not be discharged. The recruit must furnish his representation in writing and it will be duly considered by the Superintendent of Police before passing the orders of discharge. (3) Every order passed by a Superintendent under sub-paragraph (2) above shall, subject to the control of the Deputy Inspector General, be final." Where, therefore, the services of a probationer are proposed to be terminated and a particular procedure is prescribed by the Regulations for that purpose, then the termination has to be brought about in that manner. The probationer-constable has to be informed of the grounds on which his services are proposed to be terminated and he is required to explain his position. The reply is to be considered by the Superintendent of Police so that if the reply is found to be convincing, he may not be deprived of his services. If this procedure is followed and the services are terminated thereafter, it would not amount to a punitive action. The rule being mandatory in nature, compliance thereof would not alter the nature of the order passed against the probationer. This aspect was considered by this Court in two decisions, namely, The State of Orissa & Anr. vs. Ram Narayan Das (1961) 1 SCR 606 (supra) and Ranendra Chandra Banerjee vs. Union of India (1964) 2 SCR 135 (supra) in terms of Rule 55-B of the Civil Services (Classification, Control & Appeal) Rules, which, in all respects, is akin to Para 541 of the U.P. Police Regulations quoted above. Relevant portion of Rule 55-B which was extracted in the case of State of Orissa & Anr. vs. Ram Narayan Das (supra) is quoted below : "Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific

fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment." Immediately after quoting the Rule, the Court observed: "Notice to show cause whether the employment of the respondent should be terminated was, by Rule 55 B made obligatory." The Court, after considering that the State had complied with the requirements of Rule 55-B came to the conclusion that the order of termination of services of the probationer was not punitive in nature. In Ranendra Chandra Banerjee vs. Union of India (supra), the Court, while considering the provisions of Rule 55-B, observed as under : "Therefore in a case covered by r.55-B all that is required is that the defects noticed in the work which make a probationer unsuitable for retention in the service should be pointed out to him and he should be given an opportunity to show cause against the notice, enabling him to give an explanation as to the faults pointed out to him and show any reason why the proposal to terminate his services because of his unsuitability should not be given effect to. If such an opportunity is given to a probationer and his explanation in reply thereto is given due consideration, there is in our opinion sufficient compliance of r.55-B. Generally speaking the purpose of a notice under r.55-B is to ascertain, after considering the explanation which a probationer may give, whether he should be retained or not and in such a case it would be sufficient compliance with that rule if the grounds on which the probationer is considered unsuitable for retention are communicated to him and any explanation given by him with respect to those ground is duly considered before an order is passed." (Emphasis supplied) In two other cases, namely, State of Bihar vs. Gopi Kishore Prasad (supra) and Samsher Singh vs. State of Punjab (supra), the question of termination of services of a probationer was considered and it was laid down that the form of the order was not conclusive and the court could go behind the order to find out the real foundation of that order. Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. & Anr. JT 1998 (8) SC 585, which has been decided by Brother Jagannadha Rao, J., was also a case where the services of a probationer were terminated. As we have already seen above, there has been total non-compliance with the provisions of Para 541 of the U.P. Police Regulations and services of the appellant were terminated without ever issuing him any notice intimating the grounds on which his services were proposed to be terminated nor was his explanation ever obtained. The services were terminated because he was found involved in a quarrel between two other Police Constables.

For the reasons stated above, the appeal is allowed, the impugned judgment passed by the High Court is set aside and that of the U.P. Public Services Tribunal is restored, but without any order as to costs.

rights are dismissed. There shall be no order as to costs.