

HIGH COURT OF GUJARAT**SURAJ SUBHASHCHANDRA LAHERI***Versus***BANK OF INDIA & 1 OTHER(S)****Date of Decision:** 20 April 2022**Citation:** 2022 LawSuit(Guj) 4853**Hon'ble Judges:** [Vipul M Pancholi](#)**Eq. Citations:** 2022 LabIC 2275**Case Type:** Special Civil Application; Civil Application (For Direction)**Case No:** 19783 of 2015; 1 of 2022**Subject:** Constitution**Acts Referred:**[Constitution Of India Art 226](#)**Advocates:** [Shalin Mehta](#), [Vimal A Purohit](#), [Dharmesh Devnani](#), [Nanavati Associates](#)**Cases Referred in (+):** 7**Vipul M Pancholi, J.**

[1] This petition is filed Under Article 226 of the Constitution of India in which the petitioner has challenged the termination order dated 09.10.2015 as well as show cause notice dated 10.04.2015.

[2] Heard learned Senior Advocate Mr. Shalin Mehta assisted by learned advocate Mr. Vimal A. Purohit for the petitioner and learned advocate Mr. D. M. Devnani for Nanavati Associates for the respondents.

[3] Learned Senior Advocate Mr. Shalin Mehta appearing for the petitioner submitted that the respondent Bank issued an advertisement dated 25.04.2011 for the post of Agriculture Officers in Scale-I. Pursuant to the said advertisement, the petitioner applied by way of submitting online application form. It is submitted that while filling of the online application form, the petitioner downloaded his one of the photographs from his own facebook profile and attached the same in his online application form.

Thereafter, the petitioner appeared in the written examination, which was conducted on 03.07.2011, and while appearing in the written examination, petitioner had affixed his current passport size photograph in the said examination form. Same was signed by the petitioner. Thereafter, vide communication dated 02.10.2011, the respondent No.1 informed the petitioner that he has been shortlisted for interview and he has cleared the written examination. Thereafter, the interview was conducted on 17.10.2011 and offer letter was given by the respondent No.1 to the petitioner on 14.12.2011. Petitioner reported at the Zonal office of respondent bank at Vadodara and submitted all the documents for verification. The documents were verified and thereafter appointment letter dated 01.02.2012 was issued. Petitioner was appointed on probation for a period of two years from 13.02.2012.

3.1. Learned counsel Mr. Mehta thereafter submitted that petitioner had started working with the respondent bank from 13.02.2012 and as per the condition of the appointment letter, the probation period of the petitioner was completed on 12.02.2014. Thereafter, a show cause notice dated 10.04.2015 was issued to the petitioner, in which, it has been stated that petitioner agreed and accepted all the terms and conditions as stated in the appointment order dated 01.02.2012 and thereafter started working with the respondent bank. The respondent bank noticed alleged discrepancies in signature and photographs of the petitioner and therefore handwriting expert opinion was obtained by the respondent bank. By way of the said show cause notice the petitioner was asked to show cause as to why his services shall not be terminated in view of the discrepancies found in the photographs and signature. It is submitted that thereafter the petitioner initially given reply dated 14.05.2015 and thereafter detailed reply was submitted on 27.05.2015. Copy of the said reply is produced on record at page 52 of the compilation. Learned Senior Advocate has pointed out from the said reply given by the petitioner that petitioner has pointed out the correct facts in the said reply, in spite of that, by way of the impugned order, services of the petitioner were terminated on 09.10.2015. In the said order of termination, it has been stated that it was established through handwriting expert opinion that the photo image on call letters for written examination and personal interview appears to be dissimilar and the signatures on call letters for written examination and personal interview have not been signed by the same person. It is also stated that the petitioner allowed someone to impersonate on his behalf during the selection process for recruitment and therefore the claim of the petitioner that he himself had appeared in the written examination and personal interview is not correct.

3.2. Learned Senior Advocate Mr. Mehta has assailed the impugned order of termination by contending that before terminating the services of the petitioner,

full-fledged departmental inquiry was not conducted by the respondent bank. Learned counsel submits that the impugned order is stigmatic order and not an order of termination simpliciter and therefore the respondent bank was bound to conduct the departmental inquiry. Learned counsel would further submit that in the show cause notice issued by the respondent bank itself, the respondent bank has determined the fact in para 5 by stated as under:

"5. Thus it is clear that you have allowed a person to impersonate on your behalf during the selection process which fact has been confirmed in the report of the finger print and handwriting expert."

3.3. Learned counsel at this stage would submit that even as per Clause 13 of the appointment letter dated 01.02.2012, it was open for the respondent bank to terminate the services of the petitioner, however, when the order of termination is stigmatic, a departmental inquiry is required to be conducted. It is further submitted that even the report of the handwriting expert, upon which the reliance is placed by the respondent bank, was not supplied to the petitioner. Learned counsel further submitted that there is a reference in the affidavit-in-reply filed by the respondent bank that, 'the respondent bank had deputed one of its officers to the branch where the petitioner was posted to verify the matter. The said officer confirmed that the person working in the branch is not the same as the person whose photo was affixed on the call letter for written examination and the signature of the said person working there is also different from the signature of the person contained in the call letter for written examination.' Learned counsel, therefore, submitted that the name of the officer who was deputed by the respondent bank was also not given to the petitioner. Thus, behind the back of the petitioner, preliminary inquiry was conducted and thereafter the impugned order of termination has been passed by the respondent bank, which is stigmatic order and therefore when the departmental inquiry was not conducted by the respondent bank before passing the impugned order, the impugned order be quashed and set aside.

3.4. At this stage, learned counsel has pointed out from the record that this Court has passed an order on 30th November, 2015 and thereby ad-interim relief is granted in favour of the petitioner while admitting the petition, as a result of which, petitioner is in service as on today and the order of termination is not implemented.

3.5. Learned Senior Advocate Mr. Mehta has placed reliance upon the following decisions rendered by this Court as well as Allahabad High Court:

1. Judgment and order dated 24.07.2020 passed by the Division Bench of this Court in Letters Patent Appeal No.1596 of 2019 and allied matter;
 2. Order dated 15.04.2019 passed by the Division Bench of this Court in Letters Patent Appeal No.841 of 2019;
 3. Order dated 20.02.2018 passed by the Division Bench of this Court in Letters Patent Appeal No.189 of 2018;
 4. Judgment and order dated 22.03.2016 passed by the Division Bench of this Court in Letters Patent Appeal No.1349 of 2015 and allied matters;
 5. Judgment and order dated 04.12.2014 passed by the Allahabad High Court in the case of [State Bank of India Cor. Central Tulsiani & Ors v. Rajesh Kumar & Anr.](#), 2015 2 ALLJ 87; and
 6. Order dated 06.04.2022 passed by this Court in Special Civil Application No.7255 of 2015
- 3.6. Learned counsel for the petitioner, therefore, urged that the impugned order of termination be quashed and set aside.

[4] On the other hand, learned advocate Mr. Devnani appearing for the respondents has opposed this petition. Learned advocate has referred the averments made in the affidavit in reply filed on behalf of respondent No.2. Learned advocate has, more particularly, referred the terms of recruitment and placed reliance upon Clause Nos. 4, 9 and 13. Clause 13 provides as under:

"Clause (13): Your services are liable to be terminated with appropriate notice if it is revealed at any time after your appointment that the information given and the particulars furnished by you to the bank in the application for securing appointment or in connection therewith are materially incorrect or false or any particulars called for by you by the bank or otherwise are suppressed by you."

4.1. Learned advocate Mr. Devnani further submits that the petitioner was appointed on a probationary basis in the respondent bank on 14.02.2012 on the post of Agriculture Officer. Thereafter the respondent has started scrutinizing the documents submitted by the petitioner during the recruitment process as soon as the petitioner joined the services of the respondent bank and before the petitioner could be confirmed in the service. During the course of the said scrutiny, it was found that the signature and the photographs of the petitioner in the call letter for the written examination dated 03.07.2011 and the call letter for interview dated 17.10.2011 were dissimilar. Therefore, the aforesaid documents were sent for

proper scientific scrutiny to M/s. Square Advisors (P) Ltd. It is further contended that the said agency submitted its report dated 09.09.2014 in which it has been specifically stated that the signature contained in the call letter for written examination and call letter for interview of the petitioner had not been signed by the same person. It is further stated that the image of the person in the call letter for written examination and call letter for interview of the petitioner appears to be dissimilar. Learned advocate has referred the said report, copy of which is placed on record at page 123 of the compilation. Learned advocate further submitted that even the HR department in the Head Office of the respondent bank had deputed one of its officers to the branch where the petitioner was posted to verify the matter and the said officer has also confirmed about the aforesaid aspect. The respondent bank has, therefore, issued a show cause notice to the petitioner and after considering the reply submitted by the petitioner, impugned order of termination was issued and therefore it cannot be said that the respondent bank has violated the principles of natural justice. Before passing the order of termination, reasonable opportunity was given to the petitioner.

4.2. Learned advocate Mr. Devnani thereafter contended that termination of the services of the petitioner is not even a penalty as per clause 4(vii) of the Bank of India Officers Employees' (Discipline and Appeal) Regulations, 1976. Learned advocate has referred the said clause. Learned advocate, therefore, urged that since the termination of the services is not even a penalty as per the aforesaid Regulation, no departmental inquiry was required to be held.

4.3. Learned advocate Mr. Devnani, thereafter, submitted that when the petitioner has played fraud during the recruitment process which has been proved by the opinion given by the handwriting expert, the services of the petitioner came to be terminated and therefore looking to the seriousness of the matter, this Court may not interfere with the order of termination passed by the respondent bank.

4.4. Learned advocate Mr. Devnani would further submit that though the petitioner has completed two years of probationary service, it cannot be said that he is automatically confirmed on completion of two years probation period. Learned advocate has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of [Dr. Amritlal Dharshibhai Jhankharia v. State of Gujarat and Anr.](#), 1998 8 SCC 767 . Learned advocate has also placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of [Kamal Nayan Mishra v. State of Madhya Pradesh](#), 2010 2 SCC 169 .

At this stage, learned Senior Counsel Mr. Mehta appearing for the petitioner has admitted the aforesaid contention raised by learned advocate Mr. Devnani for the

respondent and submitted that probation does not end automatically unless the order of confirmation is issued.

4.5. Learned advocate Mr. Devnani submits that the decisions upon which reliance is placed by learned counsel for the petitioner would not be applicable to the facts of the present case.

4.6. Learned advocate Mr. Devnani, therefore, urged that this petition be dismissed.

[5] Having heard the learned advocate appearing for the parties and having gone through the material placed on record, it would emerge that pursuant to the advertisement dated 25.04.2011 issued by the respondent bank for the post of Agriculture Officers in Scale I, petitioner submitted online application with necessary details. After the recruitment process, petitioner was appointed on the said post on probation for the period of two years vide letter dated 01.02.2012 and petitioner has joined his services with the respondent bank on 13.02.2012. It is admitted by learned Senior Advocate for the petitioner that though the petitioner has completed two years probation period, his services cannot automatically be confirmed as the respondent has not issued any confirmation letter. Thus, this Court is not required to decide the said issue in the present petition. It is further revealed from the record that the respondent bank issued show cause notice dated 10.04.2015 and initially the petitioner submitted his reply on 14.05.2015 (page 50) and another reply dated 27.05.2015 (page 52). Thereafter the respondent bank has passed the impugned order of termination dated 09.10.2015, copy of which is placed on record at page 75. If the impugned order of termination is carefully seen, it is revealed that the respondent bank has placed reliance upon Clause 13 of the appointment letter dated 01.02.2012, which provides as under:

"Clause (13): Your services are liable to be terminated with appropriate notice if it is revealed at any time after your appointment that the information given and the particulars furnished by you to the bank in the application for securing appointment or in connection therewith are materially incorrect or false or any particulars called for by you by the bank or otherwise are suppressed by you."

[6] Further, in the impugned order of termination, the respondent bank has referred the opinion of the handwriting/fingerprint expert agency. It is not in dispute that the copy of the said report was not supplied to the petitioner. It is further revealed that even the reply submitted by the petitioner are not properly dealt with while passing the impugned order. At this stage, if the impugned order of termination is carefully seen, it is clear that the said order is stigmatic order and the said order of termination cannot

be termed as termination simpliciter. Thus, when the allegations are levelled against the petitioner, the respondent bank was required to conduct departmental inquiry before passing the order of termination.

[7] At this stage, this Court would like to refer the judgment and order dated 24.07.2020 passed by the Division Bench of this Court in Letters Patent Appeal No.1596 of 2019 and allied matter, wherein the Division Bench has observed in para 11 as under:

"11. From the overall material on record and in consideration of aforesaid observations, we see no distinguishable material to take a different view or deviate from the same. Since almost in similar issue, the proposition is to the effect that whenever any charge is levelled and action is found to be stigmatic, a full-scale departmental inquiry deserves to be undertaken irrespective of whether the delinquent was a regular employee or contractual employee on a fixed salary. As a result of this, we are of the considered opinion that since undisputedly by a brief procedure, an action is initiated against the respondents herein while dismissing their services, said action itself is found to be not on the touchstone of aforesaid proposition of law. As a result of this, no error is committed by the learned Single Judge. Having perused these material, we are not satisfied with the submissions made by learned counsel for the appellants in both these appeals.

7.1. In the order dated 15.04.2019 passed by the Division Bench of this Court in Letters Patent Appeal No.841 of 2019, the Division Bench has observed in paragraphs 3, 7, 8 and 9 as under:

"3. Before the learned Single Judge, contentions were raised by learned advocate for the petitioner about stigma attached to the petitioner by passing the impugned order of termination which in extenso referred to various misconducts on the part of the petitioner which formed the basis rather foundation of passing the order of termination and by learned Assistant Government Pleader about unsatisfactory work on the part of the petitioner employee and terms and conditions of the contractual employment based on G.R. dated 06.10.2011 issued on 08.08.2013 which specifically mentioned about 5 years of fixed term appointment in a fixed salary and discretion was conferred upon the employer to terminate the services of the petitioner by issuing one month notice or in lieu thereof pay for such period. However, the learned Single Judge by referring to various decisions of the Apex Court, contents of misconduct referred to in order of termination and relying on the pleadings filed in the petition, concluded about order of termination attaching stigma and allowed the petition with reliefs prayed therein.

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7. In the above context, the learned Single Judge relied on the decision of this Court in the case of Manishbhai Nayanbhai Mod vs. Vadodara Municipal Corporation dated 30.11.2017 wherein this Court relied on the cases of [Gujarat Steel Tubes Limited vs. Gujarat Steel Tubes Mazdoor Sabha](#), 1980 2 SCC 593, [Anoop Jaiswal vs. Government of India](#), 1984 2 SCC 369, [Radhey Shyam Gupta vs. U.P. State Agro Industries Corpn. Ltd](#), 1999 2 SCC 21 and for ready reference we reproduce paragraph no.

5.2 of the order passed by the learned Single Judge as under:

"5.2 In Manishbhai Nayanbhai Mod (supra), the position of law was discussed, which is highlight1ed and reproduced as under.

"5.1 In judging whether termination is simpliciter or punitive, a trite distinction is made between motive of the order and foundation of the order. In [Chandra Prakash Shahi v. State of U.P.](#), 2000 5 SCC 152, the Supreme Court explained the concept of motive and foundation in respect of probationer as under:

"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? It if was the factor of general unsuitability of the employee for the post held by him, the act would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry 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 to be true in the preliminary inquiry." (para 29) (emphasis supplied)

5.2 The Supreme Court in [Gujarat Steel Tubes Limited v. Gujarat Steel Tubes Mazdoor Sabha](#), 1980 2 SCC 593 stated and observed thus,

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is

dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and noninjurious terminology is used." (Emphasis supplied) (Para 9)

5.3 Having delineated the aforesaid principles, the Apex Court held that the order in the case before it could not be treated as a simple order of retrenchment and that it was an order passed by way of punishment. It was held that such order of dismissal which was passed without holding a regular departmental inquiry cannot be allowed to be sustained.

5.4 The above statement of law that if the order is punitive and stigmatic in nature, even if the employee concerned is a temporary employee or holding the post as on probation, his dismissal or removal would warrant a regular inquiry and full-fledge compliance of natural justice, emanated from the early decision of the Apex Court in [Anoop Jaiswal v. Government of India](#), 1984 2 SCC 369. In that case, the Apex Court held that it is permissible for the Court to go behind the formal order of discharge so as to find out the real cause of action. In that case, the appellant was an IPS Officer, undergoing training as a probationer, arrived late by about 22 minutes at the place, even though prior intimation was sent about the time on which, the candidates were required to reach the venue. The incident of delayed reporting was considered to be one by the authorities calling for an inquiry and an explanation was sought for from the petitioner and all other probationer-trainees who had arrived late. On the basis of explanation, the Director recommended the Government for discharge of the appellant from service. The Government passed order of discharge on the basis of recommendation of the Director with whom, the only ground prevailing was that the appellant did not show any sign of repentance. The High Court dismissed the Writ Petition. However, the Supreme Court allowed the Appeal and held that the order was punitive. The appellant was directed to be reinstated with full benefits.

5.5 The principle stated was that even the form of the order may be merely a camouflage for order of dismissal actually passed on the basis of misconduct. In such circumstances, the Apex Court stated, it is always open to the court before

which the order is challenged, to go beyond the form and ascertain the true character of the order. The Supreme Court held,

"If the court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground where the aggrieved officer is not afforded a reasonable opportunity to defend himself as provided in Article 311(2). It is wrong to assume that it is only when there is a full scale departmental enquiry any termination made thereafter will attract the operation of Article 311(2)." (Paras 11 and 13)

5.6 It is the foundation of the order which really matters. The Supreme Court in *Anoop Jaiswal (supra)* stated that if from the record and the attendant circumstances of the present case it becomes clear that the real foundation for the order of discharge of the appellant-probationer was the alleged act of misconduct, the impugned order would amount to termination of service by way of punishment and in absence of any enquiry held in accordance with Article 311(2), it was liable to be struck down. The Supreme Court thereafter directed reinstatement of the appellant of the said case in service with the same rank of seniority he was entitled to before the impugned order passed as if it had not been passed at all.

5.7 In *Ratnesh Kumar Choudhary (supra)* also the Supreme Court considered its own various decisions on the aspect and after referring to the decision in [Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.](#), 1999 2 SCC 21] observed that the proposition of law operating two ways. In certain cases of temporary servants and probationers if the inquiry undertaken about the very conduct forms the motive of termination order, then the termination could not be said to be punitive merely because principles of natural justice have not been followed. In such circumstances, without becoming stigmatic, the employer can exercise its right to terminate service of the employee concerned. In the other line of decisions, the Supreme Court has ruled that if the facts revealed in the inquiry or from the narration of the order itself that the inquiry into the conduct was not the motive but it was a foundation and the of misconduct considered against employee becomes foundation of termination of service of temporary servant or probationer, such action would become punitive and it would make the order legally unsound. The Supreme Court in *Ratnesh Kumar Choudhary (supra)* thereafter referred to the above quoted observations from *Gujarat Still Tubes Limited (supra)* terming them as instructive."

8. Even decision relied by learned Assistant Government Pleader in the case of *Chaitanya Prakash and Another (supra)* quotes decision in the case of *Pavanendra*

Narayan Verma (supra) where three tests are enumerated to determine whether in substance an order of termination is punitive or not. We find in the present case all above tests namely a full scale formal inquiry, allegation involving moral turpitude or misconduct and culminating into guilt stands satisfied and therefore we have no hesitation to hold that the learned Single Judge committed no error of fact or law or jurisdiction warranting interference in this appeal under Clause 15 of the Letters Patent.

9. When the appointment of the petitioner had genesis in the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, incorporation of certain terms and conditions contractual in nature pale into insignificance when the termination order is expressly stigmatic as rightly concluded by the learned Single Judge which required no lifting of veil and therefore the appeal is bereft of merit."

7.2. In the order dated 20.02.2018 passed by the Division Bench of this Court in Letters Patent Appeal No.189 of 2018, the Division Bench has observed in paragraph 4.2 as under:

"4.2 For the sake of convenience we reproduce hereinbelow paragraphs 6 to 6.2 of the order dated 30.11.2017 passed by the learned Single Judge:

6. When the impugned order is assessed, evaluated and considered in light of the aforesaid principles, it is even not necessary to adopt the process of lifting of veil. It is not necessary to remove the facade even, for, the order in these very recitals could be manifestly said to be based on allegations of misconduct. The plain reading of order casts stigma. It is a stigmatic action of termination of petitioner's service. Such an action could not have been taken, eventhough the petitioner was a fixed period employee, without giving the petitioner a fullfledge opportunity to defend and thus by holding a regular departmental inquiry. The employer is not allowed to hire and fire employee. Even if the temporary, adhoc or p robatationer employee is driven out of service on the ground of misconduct without holding inquiry and stigma is caste on his career by the punitive order, it is also a facet of behaving with hire and fire attitude by the employer.

6.1 A bare reading of impugned order dated 18th May, 2016 goes to show that it was mentioned therein that the petitioner had behaved untoward with a Telephone Operator. It was stated that the petitioner took law in his hand and there was a dereliction in discharge of duties and he had committed breach of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971. The order unequivocally stated that as a government servant he was negligent and careless in discharge of his duties and though he was on a sensitive post of Assistant Station Officer, because of his

behaviour and conduct, his services were liable to be terminated. It was mentioned that the explanation called for from the petitioner was not acceptable and in view of carelessness and negligency, his services were terminated. Evidently a stigmatic order it was containing allegations and mentioning of misconduct. The recitals in the impugned order themselves show the live nexus between misconduct alleged against the petitioner and the action of termination of his service by the employer.

6.2 Therefore, the petitioner is entitled to be reinstated in service, however since he was appointed on 21st July, 2012 for five years and termination of services was affected on 18th May, 2016, he would be entitled to continue on the post for the remainder period to make the total period for which he was appointed."

7.3. In the case of *Rajesh Kumar & Anr. (supra)*, in almost identical facts, the Allahabad High Court has observed in para 6, 7 and 8 as under:

"6. During the course of the hearing, it is clear from the records that the basis and foundation of the order of termination is an allegation that the respondent did not appear at the written examination which was conducted by the Bank on 8 November 2009 and had been impersonated by some one else. The foundation and basis of the order of termination is an act of misconduct by the respondent. The Bank has terminated the services of the respondent on the basis that it was not the respondent who had appeared at the written examination but some one else had appeared on his behalf, as a result of which, the employment was procured by an act of fraud and by suppressing material facts. The order of termination is not even facially an order of termination simpliciter since the order itself carries a stigma by referring to the fact that the respondent had been impersonated at the written examination.

7. In this view of the matter, the order of the learned Single Judge insofar as it directs reinstatement of the respondent and holds that the termination should have been preceded by a full fledged disciplinary enquiry, cannot be faulted. As the record before the Court would indicate, the termination of service was preceded by a report of a forensic expert. The forensic expert opined that the material produced before him establishes an act of impersonation. In a disciplinary enquiry, if this allegation is to be proved, the employee, who was a probationer, would have an opportunity of stating his defence and rebutting the case of the Bank. But more importantly, once it is evident from the order of termination that the cancellation of appointment was on account of a misconduct allegedly committed by the respondent, a disciplinary enquiry ought to have been held.

8. However, on the issue of back wages and other consequential benefits, we are of the view that the learned Single Judge, while exercising jurisdiction under Article 226 of the Constitution, ought to have taken due steps to structure the relief so as to protect the public interest. We deem it appropriate and proper to grant liberty to the State Bank of India to hold a disciplinary enquiry against the respondent in accordance with law. The competent authority would consider whether, in accordance with the applicable service rules, the respondent should be placed under suspension in contemplation of a disciplinary enquiry. We direct that the Bank shall take a decision on whether it intends to commence a disciplinary proceeding against the respondent within a period of three months of the receipt of a certified copy of this order. In the event that within the aforesaid period of three months, the Bank decides to hold a disciplinary enquiry against the respondent in terms as aforesaid, the impugned direction of the learned Single Judge for the payment of 50% back wages and other consequential benefits, shall stand set aside and the ultimate decision in regard to the payment of the back wages and other consequential benefits shall abide by the result of the disciplinary proceedings. The special appeal is, accordingly, disposed of. There shall be no order as to costs."

7.4. In the order dated 06.04.2022 passed by this Court in Special Civil Application No.7255 of 2015, this Court has considered various orders passed by this Court and observed in para 10 and 14 as under:

"10. Having heard learned advocates appearing for the parties and having gone through the material placed on record, it would emerge that pursuant to the advertisement issued by the respondent - board for the post of Panchayat Sahayak, the petitioner was appointed vide order dated 25.02.2008 on a fixed pay of Rs.2500/- p.m. for a period of five years, however, the services of the petitioner were not regularized on the ground that the petitioner has failed to pass CCC examination. It is further required to be noted at this stage that the petitioner has not challenged the aforesaid action of the respondent authority that the services were not regularized on a particular date on the aforesaid ground. It is further revealed from the record that immediately thereafter, FIR being C.R. No.8/2014 came to be filed against the petitioner for the alleged commission of offence punishable under the provision of the Prevention of Corruption Act. The concerned respondent authority has, therefore, terminated the services of the petitioner on the ground that FIR is registered against the petitioner. This Court has gone through the impugned order passed by the concerned respondent authority. From the impugned order, it is clear that the services of the petitioner were terminated only on the ground of registration of the FIR under the Prevention of Corruption

Act. Thus, it is not in dispute that before passing the impugned order, which is stigmatic order, show cause notice was not issued to the petitioner. Thus without affording opportunity of hearing to the petitioner, the impugned order came to be passed. The respondent authority has also not conducted departmental inquiry against the petitioner under the Gujarat Panchayat Services (Discipline and Appeal) Rules, 1997. In a decision in case of Sandip Ajitsinh Vaghela (supra), the Coordinate Bench of this Court has considered almost similar type of case, wherein the concerned petitioner was appointed as Clerk on a fixed pay for a period of five years and against him, an FIR came to be registered with Anti Corruption Bureau, District : Vadodara with allegation that the concerned petitioner had demanded illegal gratification and based on registration of FIR against the said petitioner, his services were terminated. This Court, after considering various decision rendered by the Hon'ble Supreme Court, has observed in Paragraph Nos.5.1 to 5.8 and 6 as under,

"(5.) The position of law in relation to effecting termination of service of an employee, even if on the fixed pay, by passing a stigmatic order without following principles of natural justice came to be delineated and discussed by this Court in *Imranbhai Anwarbhai Majothi v. State of Gujarat* being Special Civil Application No.17872 of 2017 decided on 30th November, 2017. In that case, petitioner was appointed as Beat Guard. The allegations were raised against him inter alia that he had stolen two passbooks, that he mentioned wrong information in the Register to allow trucks to pass-by illegally. It was stated in the order leading to his termination of service that he used the pass-book for illegal purpose for which it was stolen and due to the act of negligence, caused damage to the forest's properties to a large extent. It was mentioned in the order that if the petitioner was to continue in service, it would entail greater loss and that it was not advisable to continue the petitioner in service since the petitioner was found to be negligent and careless in discharge of his duties.

5.1 The law on the aspect was discussed with reference to the decisions of the Apex Court. In judging whether termination is simpliciter or punitive, a trite distinction is made between motive of the order and foundation of the order. In [Chandra Prakash Shahi v. State of U.P.](#), 2000 5 SCC 152, the Supreme Court explained the concept of motive and foundation in respect of probationer as under:

"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 act

would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry 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 to be true in the preliminary inquiry." (para 29) (emphasis supplied)

5.2 The above statement of law that if the order is punitive and stigmatic in nature, even if the employee concerned is a temporary employee or holding the post as on probation, his dismissal or removal would warrant a regular inquiry and fullfledged compliance of natural justice, emanated from the early decision of the Apex Court in [Anoop Jaiswal v. Government of India](#), 1984 2 SCC 369. In that case, the Apex Court held that it is permissible for the Court to go behind the formal order of discharge so as to find out the real cause of action. In that case, the appellant was an IPS Officer, undergoing training as a probationer, arrived late by about 22 minutes at the place, even though prior intimation was sent about the time on which, the candidates were required to reach the venue. The incident of delayed reporting was considered to be one by the authorities calling for an inquiry and an explanation was sought for from the petitioner and all other probationer trainees who had arrived late. On the basis of explanation, the Director recommended the Government for discharge of the appellant from service. The Government passed order of discharge on the basis of recommendation of the Director with whom, the only ground prevailing was that the appellant did not show any sign of repentance. The High Court dismissed the Writ Petition. However, the Supreme Court allowed the Appeal and held that the order was punitive. The appellant was directed to be reinstated with full benefits.

5.3 The principle stated was that even the form of the order may be merely a camouflage for order of dismissal actually passed on the basis of misconduct. In such circumstances, the Apex Court stated, it is always open to the court before which the order is challenged, to go beyond the form and ascertain the true character of the order. The Supreme Court held,

"If the court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground where the aggrieved officer is not afforded a reasonable opportunity to defend himself as provided in Article 311(2). It is wrong to assume that it is only when there is a full scale departmental enquiry any termination made thereafter will attract the operation of Article 311(2)." (Paras 11 and 13)

5.4 It is the foundation of the order which really matters. The Supreme Court in Anoop Jaiswal (supra) stated that if from the record and the attendant circumstances of the present case it becomes clear that the real foundation for the order of discharge of the appellant-probationer was the alleged act of misconduct, the impugned order would amount to termination of service by way of punishment and in absence of any enquiry held in accordance with Article 311(2), it was liable to be struck down. The Supreme Court thereafter directed reinstatement of the appellant of the said case in service with the same rank of seniority he was entitled to before the impugned order passed as if it had not been passed at all.

5.5 The Supreme Court in [Gujarat Steel Tubes Limited v. Gujarat Steel Tubes Mazdoor Sabha](#), 1980 2 SCC 593 stated and observed thus,

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological coverups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used." (Emphasis supplied) (Para 9)

5.5.1 Having delineated the aforesaid principles, the Apex Court held that the order in the case before it could not be treated as a simple order of retrenchment and that it was an order passed by way of punishment. It was held that such order of dismissal which was passed without holding a regular departmental inquiry cannot be allowed to be sustained. 5.6 In Ratnesh Kumar Choudhary (supra) also the Supreme Court considered its own various decisions on the aspect and after referring to the decision in [Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.](#), 1999 2 SCC 21 observed that the proposition of law operating two ways. In certain cases of temporary servants and probationers if the inquiry

undertaken about the very conduct forms the motive of termination order, then the termination could not be said to be punitive merely because principles of natural justice have not been followed. In such circumstances, without becoming stigmatic, the employer can exercise its right to terminate service of the employee concerned. In the other line of decisions, the Supreme Court has ruled that if the facts revealed in the inquiry or from the narration of the order itself that the inquiry into the conduct was not the motive but it was a foundation and the allegation of misconduct considered against employee becomes foundation of termination of service of temporary servant or probationer, such action would become punitive and it would make the order legally unsound. The Supreme Court in *Ratnesh Kumar Choudhary (supra)* thereafter referred to the above quoted observations from *Gujarat Still Tubes Limited (supra)* terming them as instructive.

5.7 In *Imranbhai Anwarbhai Majothi (supra)*, it was thereafter observed and held,

"6. When the impugned order is assessed, evaluated and considered in light of the aforesaid principles, it is even not necessary to adopt the process of lifting of veil. It is not necessary to remove the facade even, for, the order in these very recitals could be manifestly said to be based on allegations of misconduct. The plain reading of order casts stigma. It is a stigmatic action of termination of petitioner's service. Such an action could not have been taken, eventhough the petitioner was a fixed period employee, without giving the petitioner a fullfledge opportunity to defend and thus by holding a regular departmental inquiry. The employer is not allowed to hire and fire employee. Even if the temporary, ad-hoc or probationer employee is driven out of service on the ground of misconduct without holding inquiry and stigma is caste on his career by the punitive order, it is also a facet of behaving with hire and fire attitude by the employer."

5.8 Also stand to support the petitioner another decision of this Court in Special Civil Application No.1095 of 2016 decided on 21st September, 2016 in which, it was observed in paragraph 8 of the judgment that the order ex facie indicated that the basis of the order of termination was criminal complaint lodged against the petitioner. As the order was passed without compliance of natural justice, it was required indulgence of the Court, stated the Court, after discussing the position of law in that regard.

(6.) In light of the aforesaid principles and the position of law on the aspect, if the facts of the present petitioner are revisited, the petitioner was appointed on 28th September, 2012 as Junior Clerk for a fixed period of five years. His tenure was to come to an end as per appointment order on 28th September, 2017. Pursuant to

F.I.R. being C.R. No.I09 of 2016 registered on 19th December, 2016, the petitioner was supplied to the impugned order of termination is dated 21st August, 2017.

6.1 Looking at the contents and the recitals in the impugned order mentions about filing of F.I.R. against the petitioner at Vadodara (Rural) Anti Corruption Bureau Police Station, Vadodara. It was stated that the petitioner was a Clerk appointed. The complainant stated that he received a phone call from the petitioner to meet him in connection with the work of getting the land of the complainant converted into non-agriculture, that the petitioner asked the gratification of Rs.60,000/- which was ultimately agreed for Rs.50,000/- and Rs.30,000/- was given to the petitioner. The impugned order thereafter narrated the details of the charges applied against the petitioner under the Prevention of Corruption Act, 1988, the factum of his suspension and the extension of suspension from time-to-time. It was thereafter stated that since the offence was registered under the Prevention of Corruption Act and since the petitioner had committed a misconduct of asking illegal gratification, his services were liable to be terminated. Thus, it was clear from the bare reading of the recitals in the impugned order that the foundation in the impugned order was alleged misconduct of taking bribe for which F.I.R. was registered. By very nature of the contents of the order, the order could be treated as stigmatic. The order was passed without compliance of principles of natural justice. Since the allegation of misconduct was foundation for the penal action taken against the petitioner, above discussed position of law would operate to grant relief to the petitioner.

6.2 While the impugned order will be liable to be quashed and petitioner will be liable to be reinstated, it is clarified that his reinstatement would be for the period which would make up the total period of the fixed period for which he was appointed."

xxx xxx xxx

14. Thus keeping in view the aforesaid orders/ decisions rendered in similar type of cases by this Court, if the facts of the present case as discussed hereinabove, are carefully examined, it is revealed that in the present case also, the concerned respondent authority has passed impugned order without holding departmental inquiry only on the ground that FIR under the provision of the Prevention of Corruption Act has been registered against the petitioner. Thus in the facts of the present case, the impugned order passed by the respondent authority is required to be quashed and set aside."

[8] Keeping in view the aforesaid decisions rendered by this Court as well as Allahabad High Court, if the facts of the present case as discussed hereinabove are carefully examined, this Court is of the view that the respondent bank has passed the impugned order of termination which is stigmatic order, without holding departmental inquiry against the petitioner and therefore only on this ground the impugned order is required to be quashed and set aside. Accordingly, impugned order of termination dated 09.10.2015 is quashed and set aside.

[9] At this stage, it is pertinent to note that the impugned order is stayed by this Court vide order dated 30.11.2015 and therefore as on date petitioner is in service and he is getting regular salary. Thus, when the impugned order of termination is set aside, it is open for the respondent bank to consider the case of the petitioner for confirmation. It is also open for the respondent bank to conduct departmental inquiry as per the Rules and Regulation of the respondents. It is needless to observe that it is open for the petitioner to make a representation before the respondent bank with a request to grant all the consequential benefits which have been withheld because of pendency of present petition. As and when such a representation is made, the respondent bank shall decide the same in accordance with law.

[10] With the aforesaid observations, petition is allowed. Rule is made absolute to the aforesaid extent.

[11] In view of disposal of the main matter, civil application does not survive. Accordingly, it stands disposed of.

Direct service permitted.