



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4814 OF 2017

**GENERAL MANAGER,
BANK OF BARODA AND OTHERS**

.....APPELLANTS

VERSUS

ASHOK KUMAR SINGH AND OTHERS

.....RESPONDENTS

J U D G M E N T

J.K. Maheshwari J.

1. The present appeal is directed against the impugned final judgment dated 16.10.2015 of the High Court of Calcutta passed in APO No. 30 of 2013, dismissing the appeal preferred by the Appellant – Bank of Baroda (hereinafter referred to as ‘**Bank**’) against the order dated 18.10.2012 passed by Single Bench in W.P. No. 2177 of 2005 preferred by Respondent No. 1 – employee. The

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of termination of the employee noting that it was vitiated on the account of irrelevant considerations.

FACTS

2. Bereft of unnecessary details, the facts are that the Respondent No. 1 was appointed to the post of Assistant General Manager (AGM), Networking on probation for a period of one year from the date of joining of Bank, which was extendable by a maximum period of one year. The confirmation of the Respondent No. 1 in the service was subject to satisfactory performance and conduct.

3. The Respondent No. 1 joined the Bank on 05.01.2004 and after expiry of one year of service, he was not confirmed. *Vide* office order dated 15.01.2005, the Respondent No. 1 was placed under suspension with immediate effect on the allegation of making an attempt to take away four boxes of files containing highly confidential tender documents relating to 'Manageable Switch Tender' from his office cabin at DIT, HO, unauthorizedly through his driver. He was further directed not to enter the premises of Bank without the written permission of the concerned authority except for the purpose of receiving monthly allowances. His probation was extended for another six months on 16.02.2005

w.e.f. 05.01.2005 on the premise that his work was not found satisfactory during the initial year of probation.

4. On 03.03.2005, the Bank sought reply from Respondent No. 1, which was furnished on 09.03.2005. Later, upon review, by order dated 12.04.2005, the Bank revoked the suspension of the Respondent No. 1 without prejudice to its right to initiate disciplinary enquiry. The Respondent No. 1 re-joined the duty on 13.04.2005, however he was transferred to Regional Office of the Bank at Kolkata. On 04.07.2005, probation of Respondent No. 1 was further extended for a period of 6 months citing unsatisfactory performance.

5. On 05.11.2005, services of Respondent No. 1 were terminated by the Bank under Regulation 16(3)(a) of Vijaya Bank (Officers) Regulations, 1982 (for short "**1982 Regulations**") read with Clause 3 of Offer of Appointment dated 17.12.2003 on the ground that his services during the entire period of probation were not satisfactory.

6. Aggrieved, Respondent No. 1 filed writ petition bearing W.P. No. 2177 of 2005 before the High Court of Calcutta challenging the termination order dated 05.11.2005. The learned Single Judge allowed the writ petition vide order dated 18.10.2012 and held that the order of termination was based on irrelevant considerations

and non-consideration of relevant factors, assigning the reasons:

(1) the Respondent No. 1 was placed under suspension during suspension followed by a show-cause notice. The said suspension was revoked without prejudice of the bank to initiate disciplinary proceedings. In absence of initiation of disciplinary proceedings, the suspension and show-cause notice, has no bearing on confirmation of service; (2) Commensurate to his assignment of work of core banking solution, appreciation of such work was not taken into consideration in the matter of confirmation; (3) On his transfer to Kolkata and after assignment of the duties of implementation of the core banking solution in the branches of Kolkata regions and ensuring smooth conduct of training programs, he was later posted to service branch office having no scope to discharge functions for which he was appointed and posted; (4) The communications dated 23.07.2005, 14.09.2005 and 31.10.2005 (not served) were taken into consideration to form an opinion for his non-confirmation, though the letter dated 23.07.2005 has no nexus with the core-banking solution network work and letter dated 14.09.2005 related to transfer of Itanagar to Kolkata Branch. Therefore, the basis of the decision-making

process was arbitrary. Hence, the order of termination was quashed.

7. Dissatisfied, the Bank assailed the order of the learned Single Judge before the Division Bench. *Vide* impugned order, the Division Bench dismissed the appeal granting liberty to the Bank to proceed against the Respondent No. 1, in case they desire, in accordance with the provisions with law. Hence, the present appeal.

8. This Court in the proceedings *vide* order dated 16.12.2015 issued notice and granted stay on operation of the impugned order passed by the Division Bench of the High Court.

9. On 08.05.2026, I.A. No. 145733 of 2026¹ was filed seeking the substitution of Bank of Baroda as the Appellant, in view of the amalgamation of the original Appellant (Vijaya Bank) with Bank of Baroda *vide* Gazette Notification dated 02.01.2019². The I.A. was allowed and Bank of Baroda was substituted as the Appellant.

ARGUMENTS ADVANCED

¹ Application seeking substitution on behalf of Vijaya Bank.

² Issued by Ministry of Finance, Department of Financial Services, Government of India.

10. Mr. Vikramjit Banerjee, learned Additional Solicitor General, appearing on behalf the Appellant-Bank submits that the employer, at any time, is entitled to terminate the services of the employee *simpliciter* during probation, without assigning any reason. The purpose of keeping an employee on probation is to ascertain his suitability or otherwise his conduct and performance. He further submits that, the misconduct, if any, committed by the employee during his probation, can be the 'motive' for termination but cannot be the 'foundation' of the termination. He further submitted that Clause 2 and Clause 3 of the appointment letter in clear terms stipulates that confirmation in service would be considered subject to satisfactory performance and conduct during probation. Further, it states that the Respondent No. 1 can be terminated giving one months' notice or payment in lieu thereof. It vested the discretion with the Bank to either confirm the probationer or extended his probation twice prior to the termination. The Respondent No. 1 was given maximum opportunities to improve his work and as such, the High Court erred in setting aside the termination order on the ground of being vitiated and based on irrelevant considerations and non-consideration of relevant factors.

11. Insofar as communication of the memo dated 31.10.2005 is concerned, it is urged that, the person serving on the probation does not have any right to hold the post on which he was appointed and hence, cannot claim a right to be heard before termination. The mandate to communicate the adverse material is only qua permanent employees and hence, the procedure adopted does not suffer from any irregularity *per se*.

12. As to whether the termination order is punitive, it is contended that there was never a full-scale enquiry into the allegations of misconduct culminating into findings of guilt. As such, the termination of Respondent No. 1 is punitive. Moreover, the learned Single Judge has held that the suspension or the show-cause notice has no bearing on the issue of confirmation of the service of the Respondent No. 1, and the same has attained finality.

13. The allegations of malice against superior officers being Respondent Nos. 2 and 3 herein, were turned down by the learned Single Judge and were not challenged by the Respondent No. 1. Therefore, they cannot now be re-agitated. Even otherwise, those allegations have been denied on record by way of counter-affidavit by Respondent Nos. 2 and 3. It is further urged that it was never

the case of the Respondent No. 1 against the Bank of malice in invoking Regulation 16(3)(a) of 1982 Regulations. The allegations were against the senior officers on the basis of personal bias and conspiracy, which has not been found to be proved by the learned Single Judge. Those findings have attained finality in absence of any challenge by the Respondent No. 1.

14. Additionally, the allegations do not stand a ground when looked in terms of the affidavit dated 28.11.2025 filed by the Bank in compliance of the order passed by this Court on 07.08.2025. The affidavit clearly states that the Respondent No. 1 was a party to the various official notes placed before the Competent Authority for selection of Wipro as Vendor based on tender floated by Bank. He had also signed notes placed before the Competent Authority for raising payments to Wipro against supply of goods without any protest and demur. At Kolkata, he had waived the condition of pre-inspection of delivery of material at the Branch Office. The allegations raised in the writ petition against the officers of the Bank were mere an after-thought.

15. In relation to the disciplinary proceedings, Mr. Banerjee, learned ASG submits that the Respondent No. 1 *vide* letter dated 24.11.2005 was informed that the proceedings have been kept in

abeyance in view of the termination order. Lastly, it is submitted that there was sufficient material on record including confidential reports, contemporaneous records and communication regarding deficiencies in discharge of duties on the basis of which competent authority formed an opinion that Respondent No. 1 was unfit for confirmation in service. Hence, Regulation 16(3)(a) of 1982 Regulations was rightly invoked and the present appeal deserves to be allowed. To buttress the submissions, Mr. Banerjee, learned ASG has placed reliance on ***Parshotam Lal Dhingra vs. Union of India***³, ***Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basis Sciences, Calcutta and Others***⁴, ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr.***⁵, ***Mathew P. Thomas vs. Kerala State Civil Supply Corporation Ltd. & Ors.***⁶, ***State of Punjab & Ors. vs. Jaswant Singh***⁷.

16. *Per contra*, learned senior counsel Mr. P.S. Patwalia appearing on behalf of Respondent No. 1 submits that there is absolutely no material on the basis of which Respondent No. 1

³ AIR 1958 SC 36

⁴ (1999) 3 SCC 60

⁵ (2002) 1 SCC 520

⁶ (2003) 2 SCC 263

⁷ (2023) 9 SCC 150

could have been terminated by Bank during his probation. The Bank has primarily relied on three memos dated 23.07.2005, 14.09.2005 and 31.10.2005 for demonstrating the shortcomings in the performance of Respondent No. 1 during the probation period. He submits that memo dated 23.07.2005 relates to a report prepared during routine branch inspection which was neither specifically aimed at Respondent No. 1 nor did it point out any shortcoming in his conduct. The said memo criticized the working of Online Tax Accounting System (for short "**OLTAS**") which was wholly unjustified, as a week prior to the inspection, the performance of the Bank in implementation of the said system under the supervision of Respondent No. 1 was appreciated as "praiseworthy" by the Government of India.

17. Regarding memo dated 14.09.2005, it is urged that the said memo pertains to delay in transfer of amount of Rs. 66 Crores from Itanagar Branch to Kolkata Branch through State Bank of India, which was delayed by a day due to technical fault on part of State Bank of India and was transferred on 13.09.2005 by way of cheque. The Respondent No. 1 vide letter 16.09.2005 clarified that the RBI cheque corresponding to the aforesaid payment was sent on 12.09.2005 itself, but still the money was transferred on

13.09.2005. The Respondent No. 1 had thereafter written to SBI seeking interest of 1 day delay, which reflects due diligence on his part.

18. With respect to memo dated 31.10.2005, it is at the very outset submitted that this memo was never communicated or served upon Respondent No. 1. It is further submitted by the learned senior counsel that the internal/confidential noting forming part of the assessment of services of Respondent No. 1 leading to his termination are counter-blast to the incident dated 15.01.2005. Drawing attention to office note dated 03.01.2005, it is contended that this document never saw the doors of the High Court and has been placed for the first time before this Court. This document is dated 03.01.2005 and is indicative of the fact that the Respondent No. 1 was suspected to be taking photocopies of sensitive documents and carrying them home. However, the actual incident as contested, occurred only on 13.01.2005 whereafter the Respondent No. 1 was placed immediately under suspension on 15.01.2005. Viewed in this sequence, it creates a serious doubt as to the veracity and authenticity of the document dated 03.01.2005 which appears to have been created as an after-thought to record the incident of 13.01.2005. In view of the same, it is urged that the

no interference is warranted in the concurrent findings of the High Court.

ANALYSIS

19. Heard the learned counsels for the parties at length and perused the material on record. The discord between parties is over the termination of services of Respondent No. 1 during his probation period citing unsatisfactory performance, in exercise of power under Regulation 16(3)(a) of 1982 Regulations. Before we advert to the rival contentions of the parties, it is imperative to deal with the Regulation 16(3)(a) of 1982 Regulations, which is reproduced below as thus:

“16. Confirmation –

(1) An officer shall be confirmed in the service of the Bank, if in the opinion of the Competent Authority, the officer has satisfactorily completed the training in any institution to which the officer may have been deputed for training and the in-service training in the Bank;

Provided that an officer directly recruited to the Junior Management Grade may be required also to pass a test in a language other than his mother tongue.

(2) If in the opinion of the Competent Authority an officer has not satisfactorily completed either or both the trainings referred to in sub-regulation (1) or of the officer has not passed the test referred to therein, the Officer's probation may be extended by a further period not exceeding one year.

(3) Where during the period of probation including the period of extension, if any, the Competent Authority is of the opinion that the officer is not fit for confirmation –

(a) In the case of a direct appointee, his services may be terminated by one month's notice or payment of one month's emoluments in lieu thereof; and

(b) In the case of a promotee from the Bank's services, he may be reverted to the grade or cadre from which he was promoted.”

On a bare perusal of the Clause 16(3)(a), it is clear that the Competent Authority retains the discretion to assess a direct appointee's suitability for confirmation at any time during the initial or extended probation period. If the Authority is of the opinion that the officer is not fit for confirmation, it may dispense the services of the probationer either by serving one-month notice, or by tendering one month's salary in lieu of such notice. However, the question that arises is, whether such discretion is absolute and unqualified? The clear and unambiguous answer is no.

20. In the realm of service law, particularly if the employer is the State, regardless of how sweeping or absolute the contractual language appears, such discretion is not unchecked or unscreened. The discretion should be based on some material, and the Authority cannot form an opinion based on whims and fancies. The subjective satisfaction of the Authority must be rooted in objective facts, such as performance appraisals, caveat, or specific

assessments of the probationer's work. It shall not suffer from the vice of arbitrariness.

21. A distinction is required to be drawn between a routine non-stigmatic termination for unsuitability and a disguised punitive termination. If the employer's decision is founded on allegations of misconduct or severe deficiency, the termination is stigmatic. It cannot stand in absence of compliance of due process, and the probationer should be afforded an opportunity of hearing or to defend his case. Furthermore, such discretion should not contain a whisper of arbitrary exercise of power or mala-fide. If a discharged probationer can demonstrate that the termination was driven by personal bias, vindictiveness, or an ulterior motive of a superior rather than a genuine assessment of their work, such termination, even during probation, is liable to be set-aside. In other words, while the Regulation appears to vest the Competent Authority with the discretion to terminate a probationer based on its satisfaction, it remains strictly bound by the established principles of administrative law.

22. We say so because, withholding constructive or adverse feedback deprives the concerned officer of a meaningful opportunity for improvement. The very object of placing an

employee on probation is to ensure that before he attains the status of a confirmed regular employee, his performance, conduct, and suitability are tested adequately. Probation is not a mere formality but a structured period during which the authorities are enabled to assess whether the officer satisfactorily discharges the duties and responsibilities attached to the post. In other words, the scheme of probation is designed to judge the ability, efficiency, and overall fitness of the probationer, so that the employer may pass appropriate orders either confirming the appointment or otherwise, based on a fair appraisal of the probationer's service. The probationary period is designed to be a time of learning and alignment. When critical feedback is withheld during such time, it not only sets the probationer for a potential failure, but also undermines the fairness of the evaluation process. More so, the reasons behind the termination of a probationer can prejudice his future employment prospects in case his termination is stigmatic. Adverse remarks akin to 'lack of integrity', 'misconduct' etc., should necessarily be communicated to him. A probationer's entire service record assumes relevancy for deciding his suitability.

23. Termination does not merely sever the immediate employment relationship; it often casts a long shadow over the

employee's career prospects, reputation, and future livelihood. Any decision of termination may impair the individual's ability to secure subsequent opportunities and thereby affect the trajectory of their professional life. Therefore, when the action of the employer carries such long-term effects, it becomes even more imperative to not only act with fairness and transparency but also to afford the person whose life will be impacted a meaningful opportunity.

24. In this context, reference is drawn to the judgment of this Court in **Sarita Choudhary v. High Court of M.P.**⁸, wherein this Court in a challenge to the termination of female judicial officers serving their probation in the Madhya Pradesh State Judicial Service based on adverse Annual Confidential Reports (ACRs) and alleged unsatisfactory performance, observed as thus:

“51. ...Thus, the test is, whether, in a given case the termination is simpliciter or by way of punishment. When termination is by way of punishment, the concept of stigma would arise. If a punishment casts a stigma on the competence of an employee, it can affect his future career. However, the dilemma is, even when the probationer, who has no right to hold the post in the first instance, could argue that a cessation of service owing to non-suitability, inefficiency or any other similar reason was stigmatic.

*52. As noted, if a termination from service is not visited with any stigma and neither are there any civil consequences and nor is founded on misconduct, then, it would be a case of termination simpliciter. **On the other hand, an***

⁸ (2025) 9 SCC 297

assessment of remarks pertaining to the discharge of duties during the probationary period even without a finding of misconduct and termination on the basis of such remarks or assessment will be by way of punishment because such remarks or assessment would be stigmatic. According to the dictionary meaning, stigma is indicative of a blemish, disgrace indicating a deviation from a norm. Stigma might be inferred from the references quoted in the termination order although the order itself might not contain anything offensive. Where there is a discharge from service after prescribed probation period was completed and the discharge order contained allegations against a probationer and surrounding circumstances also showed that discharge was not based solely on the assessment of the employee's work and conduct during probation, the termination was held to be stigmatic and punitive vide *Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corpn.* [*Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corpn.*, (2007) 10 SCC 71]

53. Even though a probationer has no right to hold a post, it would not imply that the mandate of Articles 14 and 16 of the Constitution could be violated inasmuch as there cannot be any arbitrary or discriminatory discharge or an absence of application of mind in the matter of assessment of performance and consideration of relevant materials. Thus, in deciding whether, in a given case, a termination was by way of punishment or not, the courts have to look into the substance of the matter and not the form.

54.However, all that is stated above would ultimately boil down to the question, **whether, the termination would prejudicially affect the future employment of the employee.** It is this delicate line which has to be discerned in every case where a challenge to a termination is made by a probationer. In other words, if the termination is simply owing to unsuitability having regard to the nature of the job and such other factors, it is not stigmatic. Before any probationer is considered for confirmation, the satisfactory nature of the work and suitability of the probationer have to be considered for which some inquiry

would have to be made and if it is found that he is unsuitable for the job then, he could be discharged and the same would be non-stigmatic and this would also not call for opportunity for hearing being given to a probationer.”

25. Reverting to the facts of the present case, the case put forth by the Bank is that the Respondent No. 1 was not holding a permanent post but was on probation and his services were terminated under Regulation 16(3)(a) of 1982 Regulations assessing his performance being unsatisfactory. He is not entitled to any protection under Article 311⁹ of the Constitution of India. His termination was non stigmatic and once the learned Single Judge has held that order of suspension or show-cause notice has no bearing on the issue of confirmation of Respondent No. 1, and the finding having attained finality, the present appeal deserves to be allowed. There were deficiencies in the work of Respondent No. 1, for which his probation was extended twice. Nonetheless, his performance did not improve and based on the subjective satisfaction, his services were terminated. Moreover, the Respondent No. 1 has failed to establish the malice against his superior officers.

⁹ Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

26. Refuting the case of the Bank, it is contended by the Respondent No. 1 that except three memos dated 23.07.2005, 14.09.2005 and 31.10.2005, the Bank has placed nothing on record to demonstrate any deficiency on his part during his probation. In addition to the arguments noted above, it is stated that, the Bank's administration victimized him by extending his probation with intent to fabricate evidence against him and to terminate his services.

27. Upon consideration of rival contentions and perusal of records, it is seen that the Respondent No. 1 joined the services of the Bank on 05.01.2004 on probation, whereafter, he was put under suspension *vide* notice dated 15.01.2005 on the allegations of taking away four boxes of highly confidential tender documents. Be that as it may, his probation was extended for another six months on 16.02.2005 citing that '*your performance as Probationary Assistant General Manager (Networking) during the period of your probation upto 04.01.2005 has not been found satisfactory*'. He was asked to submit a reply on the issue and in the meanwhile, his suspension was revoked by the Bank on 12.04.2005 noting that '*your suspension is revoked without prejudice to the Bank's right to initiate disciplinary proceedings*

against you as deemed fit, for the acts of misconduct allegedly committed by you.'

28. Notably, although the Bank took cognizance of the alleged misconduct by Respondent No. 1, it revoked the suspension without prejudice to its right to initiate a disciplinary enquiry. Though no such enquiry was ever initiated, however it appears to be the foundational reason against Respondent No. 1.

29. The Respondent No. 1 re-joined on 13.04.2005 and was transferred to Regional Office, Kolkata, where his probation was again extended for another six months on 04.07.2005 with a noting that *'your performance as Prob Asst General Manager (Networking) during the period of probation upto 04.07.2005 has not been found satisfactory, your period of probation stands extended for a further period of six months...'*

30. Mr. Banerjee, learned ASG drew our attention to the confidential reports and three memos dated 23.07.2005, 14.09.2005 and 31.10.2005, to substantiate that the performance of Respondent No. 1 was unsatisfactory. The argument of the learned ASG seems to be attractive at the first blush, but not effective to conclusion.

31. We shall first look into the memo dated 23.07.2005. The said memo relates to a branch visit report by Regional Manager highlighting certain irregularities pertaining to punctuality of employees, implementation of OLTAS system, sensitive accounts and maintenance of premises and records. Insofar as satisfactory work of Respondent No. 1 is concerned, the criticism in the report regarding implementation of OLTAS assumes relevance. The relevant part of the report is reproduced below for ready reference:

“.....

OLTAS

As per the branch record, the OLTAS account has been reconciled upto 30.06.2005 except 21 challans of Brabourne Road and Burrabazar branches, which are still pending for the period from 01.06.2004 to 31.03.2005 inspite of various instructions and guidelines issues by Head Office, these long outstanding entries are not reconciled by the branch and it seems that the branch has failed to collect the required data from the nearby branches (Brabourne Road is situated in the same floor of your branch)

During the current financial year, as regards the OLTAS data for the period from April 2005 to June 2005, the CBDT has furnished the list of missing date as follows:

April 2005 – 93 entries for 32.03 lakhs

May 2005 – 235 entries for 32.62 lakhs

June 2005 – full list not received

It is also observed that many of the newly opened branches in Kolkata city have not yet started collection of Direct Tax and some of the branches have not even reads the software in their system”

32. It is to be noted that the report majorly highlights the irregularities in reconciliation of outstanding entries for the period

between 01.06.2004 to 31.03.2005, i.e., prior to the transfer of Respondent No. 1 to Kolkata. However, this report stands in contradistinction to the letter dated 15.07.2005 from the Central Board of Direct Taxes, Ministry of Finance, Government of India, which commended the Bank for efficiently and accurately implementing the OLTAS system within a short timeframe. It further advised the other banks in the zone to contact the Assistant General Manager (Respondent No. 1 herein) of the Appellant-Bank, Service Branch in case they face any difficulty in implementation. The said letter is relevant and hence reproduced below for ready reference:

“TO WHOM IT MAY CONCERN

*Performance of all the Banks was evaluated at the special meeting regarding **procedural irregularities in implementation of OLTAS** held at Kolkata on 14.07.2005 and **performance of the Vijaya Bank is praiseworthy. Vijaya Bank adopted the OLTAS work very correctly and efficiently within a very short period of time.** All the bank of this zone are advised to contact the Assistant General Manager, Vijaya Bank Service Branch, Kolkata for any difficulty that arises during implementation of OLTAS.”*

It is manifestly clear that the letter of appreciation dated 15.07.2005 and memo dated 23.07.2005 are at complete variance and the inconsistency between both is writ large. It is highly contradictory that while the Kolkata Branch received appraisal

from Government for effective implementation of OLTAS, yet the Bank pulled up the same branch for infirmities citing internal reconciliation issues. What is more difficult to comprehend is that while the Bank was not satisfied with the performance of the Kolkata Branch, the Government had categorically advised other banks to approach Respondent No. 1 in case they face any difficulty in implementation of OLTAS. Therefore, in our considered opinion, it seems that the memo dated 23.07.2005 was issued on ground of extraneous considerations which cannot be read adversely against Respondent No. 1.

33. Subsequently, the second memo dated 14.09.2005, noted the delayed credit of a Telegraphic Transfer (TT) for Rs. 66 crores attributing fault on part of Respondent No. 1. Initiated by the Itanagar Branch on 10.09.2005 via SBI, the funds were not credited to the Bank's Kolkata Branch account on 12.09.2005. The memo alleged specific procedural lapses, primarily, the failure to utilize Real-Time Gross Settlement (RTGS) despite its availability. Furthermore, it questioned why an RBI cheque was not requested as an alternative, noting that these oversights caused a delay resulting in a financial loss to the Bank.

34. A holistic perusal of the records in juxtaposition to the memo dated 14.09.2005 shows that no liability can be attributed to Respondent No. 1 for the delayed credit of the funds in question. The issue of delayed credit was escalated by Respondent No. 1 *vide* letter dated 16.09.2005 to the SBI. Following this inquiry, SBI by letter 05.10.2005 admitted technical problem on their part due to which, the remittance got delayed as it could not be made through RTGS mode. In the said context, contents of letter dated 05.10.2005 assume significance and hence the relevant contents are reproduced below as thus:

“....

(b).....The issues were discussed with you in detail when you called on us on 14.09.2005. You are aware that as per your request we had approached the RBI Local Office, to give effect of the value of credit as 12.09.2005. In this connection, please refer to the endorsement on our letter No. 342 dated 14.09.2005 addressed to RBI (Copy enclosed for your ready reference)

*(c) **There was some technical problem due to which the above remittance could not be sent through RTGS.** However, the remittance was passed on to your Bank through Bankers cheque on the same date.*

.... ”

In addition, pertinently, Respondent No. 1 wrote a letter to the SBI seeking interest for the one-day delay caused in realizing the payment. Given the said circumstances, where the remittance was delayed due to a technical error, which was not on part of

Respondent No. 1, coupled with the fact that Respondent No. 1 had followed up with SBI and sought interest for the loss caused, for which, in our view, adverse inference as to his performance cannot be drawn.

35. Insofar as third memo dated 31.10.2005 is concerned, it deals with the multiple allegations against Respondent No. 1: enquiring about identification of Field Engineer as to whether he belongs to Wipro; making him wait for one hour and then giving him access to the system for merely three minutes; tearing off 'Field Engineer's Service Report' upon submission; threatening field engineer with his job; displaying lack of courtesy and good behaviour; found to be using BSNL/VSNL dial-up subscriber without specific approval of competent authority; accessing internet connectivity from computer system by connecting through external modem when the system is connected to the Corporate WAN through Closed User Group Network exposing it to virus; failure to observe adequate security measures despite being a technical member, etc. The Respondent No. 1 was called upon to submit an explanation within three days as to why necessary action should not be taken against him in view of the misdemeanor as stated above.

36. Now, admittedly, the Bank has failed to demonstrate that aforesaid memo was ever communicated to Respondent No. 1, effectively depriving him of an opportunity to put his defense. Therefore, any reliance placed on this uncommunicated memo would amount to violation of the principles of natural justice. It is a well-settled that uncommunicated adverse remarks or charges should not be read to the prejudice of an employee. Consequently, the memo dated 31.10.2005 also contains no value in the eyes of law.

37. At this juncture, we can profitably refer to the judgment of this Court in **Dipti Prakash Banerjee** (supra), wherein this Court dealt with the following points:

“18. On the basis of the above contentions, the following points arise for consideration:

(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?

(2) When can an order of termination of a probationer be said to contain an express stigma?

(3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?

... ..

Point 1

21. *If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “founded” on the allegations and will be bad. But if the enquiry was not held, no findings*

were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

Point 2

26. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a “stigma”. The other issue in the case before us is whether even if the words used in the order of termination are innocuous, the court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination.

27. As to what amounts to stigma has been considered in *Kamal Kishore Lakshman v. Pan American World Airways Inc.* [(1987) 1 SCC 146] This Court explained the meaning of “stigma” as follows: (SCC p. 150, para 8)

“8. According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary ‘stigma’ is a matter for moral reproach.”

Point 3

35. The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document

referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.”

38. In the present case, Respondent No. 1 was initially suspended on allegations of the unauthorized removal of four boxes of highly confidential tender papers from the DIT Head Office, with the assistance of his driver. The Bank termed this act as ‘misconduct’ and intended to initiate a disciplinary enquiry. Although the suspension was subsequently revoked, the Bank reserved its right to initiate disciplinary enquiry and permitted Respondent No. 1 to rejoin the Bank. Pertinently, the disciplinary proceedings were never initiated.

39. On a query put as to why the proceedings were abandoned, the Bank drew our attention to an office note dated 05.11.2005, wherein it has been indicated that the matter had been referred to the Central Vigilance Commission, which had advised initiating major penalty proceedings against Respondent No. 1. However, since Respondent No. 1 was still on probation, and his overall performance and conduct remained unsatisfactory despite two extensions, the Bank ultimately concluded that holding a formal

departmental enquiry was unnecessary. Therefore, the matter was remitted to Commission seeking advice on termination of Respondent No. 1 under Regulation 16(3)(a) of 1982 Regulations. The relevant portion of the office note dated 05.11.2005 is reproduced below as thus:

“.....

(6) *As regards the alleged irregularities observed on the part of Shri A.K. Singh in attempting to take away the confidential files from his office, the matter was referred to the Chief Vigilance Officer, Vigilance Department, H.O. seeking first stage advice. After referring the case to Central Vigilance Commission, New Delhi, the CVO, Vigilance Department, H.O. vide letter No.VD:BGL:1879:2005 dated 8.9.2005 had advised to initiate/disciplinary proceedings against Shri A.K. Singh under Major Penalty Proceedings.*

(7) *Shri A.K. Singh is still under probation and is yet to be confirmed in the services of the Bank. Since his performance and conduct was not satisfactory, his probationary period has been extended twice. We understand that during his previous employment at Indian Petrochemicals Corporation Ltd., Vadodara, he was placed under suspension from the services during the period between 18.12.1996 and 30.04.1999 and subsequently the said period was treated as on duty and this fact was suppressed by him from the knowledge of the Bank at the time of reporting for duty even though the service certificate issued by the employer did not contain the said information. Having regard to the above, it was felt that it may not be necessary to hold the departmental enquiry to comply with Central Vigilance Commission's advice, because the official is not a confirmed employee of the Dank (sic) as he is still under probation. Hence, the matter was once again referred to the CVD, Vigilance Department, H.O. seeking advice with regard to invoking Regulation 16(3) of Chapter IV of Vijaya Bank (Officers) Service Regulations 1982 to terminate his services on the ground of unsatisfactory performance of duties.*

Present Note:

Based on the observations/recommendation made by the Department, the CVO, Vigilance Department, H.O. had referred the matter to the Central Vigilance Commission, New Delhi. The CVO, Vigilance Department, H.O. vide letter dated 31.10.2005 has now informed that the CVC has conveyed vide Office Memorandum No. 0529/BNK/dt.31.10.05 that invoking Regulation 16(3) of Vijaya Bank (Officers') Service Regulations 1982 on Sri A.K. Singh, AGM is an administrative action contemplated by the Bank. While noting position, the Commission advised that if the services of the officer is terminated by invoking the conduct rules, initiating major penalty proceeding against him may be kept in abeyance.

In view of the above, we propose that Shri A.K. Singh [20416], Probationary Asst General Manager [Networking] may be terminated from the services of the Bank with immediate effect by invoking Regulation 16(3) of Vijaya Bank (Officers') Service Regulations 1982 since he has not made any improvement in his entrusted duties.”

A plain reading of paragraph 6 makes it clear that the Bank, acting on the advice of the Central Vigilance Commission, initially intended to initiate disciplinary proceedings against Respondent No. 1 for the alleged unauthorized removal of four boxes of confidential files. However, noting that Respondent No. 1 was still on probation, the Bank changed its course and sought advice from the Commission for resorting to Regulation 16(3)(a) of 1982 Regulations to terminate the services on the ground of unsatisfactory performance.

40. Nevertheless, following the advice, the Respondent No. 1 was terminated from the service on the very same date, i.e. 05.11.2005 under Regulation 16(3)(a) of 1982 Regulations. The termination order is relevant and hence reproduced below as thus:

“You were appointed as Probationary Asst. General Manager (Networking) in accordance with the terms and conditions contained in the offer of appointment dated 17.12.2003. Accepting the terms and conditions contained in the said offer of appointment, you have reported for work on 05.01.2004 whereupon you were assigned to work as AGM (Net Working), Department of Information Technology, H.O. Bangalore. Accordingly, you were initially placed on probation for a period one year from 05.01.2004. Since your performance during the period of probation was not found satisfactory, the said period of probation was extended for a further period of six months effective from 05.01.2005 In terms of Clause 3 read with Clause 2 and 8 (c) of the Offer of Appointment dated 17.12.2003. Once again your performance was reviewed as at the end of extended period of probation and as it was not found satisfactory the period of probation was further extended for a period of six months effective from 05.07.2005 vide order dated 04.07.2005.

I have carefully reviewed your performance during the entire period of probation/ and is of the opinion that it is not satisfactory. Hence, in terms of Regulation 16(3)(a) of the Vijaya Bank (Officers’) Regulations, 1982, read with Clause 3 of the Offer of Appointment dated 17.12.2003, your services are hereby terminated with immediate effect. In lieu of the period of notice contemplated under Regulation 16(3)(a), please find enclosed a cheque No. 884001 dated 05.11.2005 for Rs. 30,925.47 (Rupees Thirty Thousand Nine Hundred Twenty Five and Paise Forty Seven Only) (sic) representing one month’s emoluments.

Sd/-[M.S. KAPUR]

CHAIRMAN & MANAGING DIRECTOR”

41. On perusal of the records, it is clear that the termination order was primarily predicated upon the ‘misconduct’ alleged against the Respondent No. 1. It cannot be said that Respondent No. 1 was terminated from services because his work was found to be simply unsuitable. Upon consideration of the material placed on record, it is evident that the alleged misconduct was for all intent and purposes, the motive as well as foundation for the termination, even though the formal order ostensibly cites unsatisfactory performance.

42. This Court, relying on ***Dipti Prakash Banerjee*** (supra), in ***Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd. & Others***¹⁰, further observed as thus:

*“11. An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta* [(1999) 3 SCC 60] and *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences* [(2002) 1 SCC 520] after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation.*

.....

*From a long line of decisions it appears to us that **whether an order of termination is simpliciter or punitive has***

¹⁰ (2003) 3 SCC 263

ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so-called order of termination simpliciter of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct.”

43. In the sequel of events, the Respondent No. 1 in the present case was put under suspension on 15.01.2005 on the allegation of removing confidential documents on 13.01.2005 from the Bank premises. The Bank revoked his suspension ‘without prejudice’

and rather than initiating a formal inquiry, extended his probation twice, transferred him, and issued three performance memos before terminating him. This sequence clearly demonstrates a calculated intent on part of the Bank to retain Respondent No. 1 to gather adverse material and orchestrate a pretextual termination.

44. In light of the factual conspectus, it is unequivocally clear that the Bank discharged the services of Respondent No. 1 under the guise of a termination *simpliciter*. However, as borne from records, the Bank had initially sought advice to remove the Respondent No. 1 on the grounds of misconduct, but having found that process onerous, it chose instead to terminate him under Regulation 16(3)(a) of the 1982 Regulations. The Bank has primarily made an attempt to justify the termination relying upon on three memos dated 23.07.2005, 14.09.2005, and 31.10.2005.

45. As discussed in the analysis above, these memos lack the requisite evidentiary value to establish that Respondent No. 1's performance was genuinely unsatisfactory. Furthermore, the Bank's office note dated 05.11.2005 reveals that the alleged misconduct was the primary issue of variance and basis of removal at the first instance. While an employer undoubtedly retains the

right to terminate services for genuine inefficiency, the law does not permit the use of 'unsatisfactory performance' as a disguise to bypass formal disciplinary proceeding. It is a settled proposition of law that what cannot be directly cannot be done indirectly. In the present case, the Bank suspended Respondent No. 1 for misconduct, an action that necessitates a formal departmental enquiry. By consciously choosing to forego this enquiry and instead terminating Respondent No. 1 on unsubstantiated grounds of poor performance, the Bank rendered its termination order legally unsustainable for reasons recorded above.

46. In view of the above, we find no ground to interfere with the orders passed by the Single Bench and the Division Bench of the High Court. However, holding that the termination order is bad in law and having regard to the peculiar facts and circumstances of the case, we direct that Respondent No. 1 shall be entitled to 50% backwages from the date of his termination up to the date of his superannuation including all consequential benefits notionally. Accordingly, all benefits as directed, be settled within a period of three months.

47. We make it clear that since the Vijaya Bank stands amalgamated with the Bank of Baroda as indicated in paragraph

9, these directions shall be complied by the substituted Appellant-Bank of Baroda.

48. Accordingly, the present appeal stands disposed-of in above terms. There shall be no order as to costs.

49. Pending application(s), if any, shall stand disposed-of.

.....**J.**
(J.K. MAHESHWARI)

.....**J.**
(ATUL S. CHANDURKAR)

New Delhi;
May 29, 2026.