

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No.1219/2011

c/w

SWP No.1380/2011

Reserved on 21.02.2023

Pronounced on 10.03.2023

Rokade Santosh Sandashiv & Anr.

...Petitioner(s)

Through: Mr. M. Ashraf Wani, Advocate in (SWP No.1219/2011)

Vs.

Union of India and Anr.

...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

SWP No. 1219/2011

1. Through the medium of instant writ petition, the petitioner has challenged the impugned notice of termination dated 30th May, 2011 which stands issued by the Chief Engineer Project beacon C/O 56 APO. Besides the petitioner has also sought a direction against the respondents to allow the petitioner to continue to discharge his duties as Nursing Assistant in the respondent department and pay salary/wages as attached to the post.

BRIEF FACTS OF CASE

IN SWP No.1219/2011

2. On 7th of June 2008, an Advertisement Notice No. 1 of 2008 came to be issued by the Border Roads organization for filling of post of Nursing Assistants. As a response thereto, the petitioner, who possessed all the requisite qualifications as required for the said post, filled form and duly participated in the selection process. The petitioner appeared in the test and qualified the same and got selected for the said post. Post the selection process, a verification process was initiated by the appointing authority in order to determine the genuineness of the documents submitted by the selected candidates. On receipt of a letter by the DHO dated 09th of July 2009, numbered

ZPS/Health/PUB, it came to fore that the experience certificate of the petitioner was alleged to be forged and as a consequence of which, a Notice of termination came to be issued on 26th of September 2009 against the petitioner by the Chief Engineer, Beacon. On 14th of October, 2009 a reply to the notice was submitted by the petitioner No. 1. On the basis of recommendations on 23rd of October 2009, the notice of termination was withdrawn in respect of petitioner, for the purpose of directing further enquiry with respect to the same. On 31st of October 2009, verification was sought by letter issued by Chief Engineer to the Mahajan Hospital Salapur Maharashtra to verify the genuineness of the certificate issued by them. On 14th of November 2009 verification certificate was endorsed by Mahajan Hospital in respect of petitioner and it was verified by them that the petitioner had gained the requisite experience in their hospital and the certificate was genuine. However, on 30th May 2011, another order of termination was passed against the petitioner No. 1, whereby, he was given one month notice for termination of his services on 30th June 2011.

SUBMISSION ON BEHALF OF PETITIONER No.1 and 2

3. Counsel for the petitioners has submitted that the Border Roads Organization issued a notification/advertisement notice No. 1 of 2008 for filling of posts in General Reserve Engineering Force from Indian (Male Nationals). The post of Nursing Assistant was advertised in the said notification at serial No. 11. The qualification prescribed for the Post No.11 Nursing Assistant in terms of qualification was prescribed as *“matriculate with science and passed first Aid course prescribed by St. Jon Ambulance Brigade conducted by St-Jon Ambulance Association and has practical experience from one year in a hospital or Matriculate or equivalent passed class two course for nursing Assistant as laid down in Defence Service Regulation, qualification regulations for soldiers possessing defense trade certificate for Nursing Assistant or matriculate or equivalent passed with two years regular service in General Reserve Engineer Force passed nursing Assistant class 4th course from AMC centre and School Lukhnow and class third Nursing Assistant Training in a Military Hospital”* and has to pass written and oral test in English / Hindi.”

4. The petitioners were fulfilling all the eligibility criteria's in terms of age and qualification and pursuant thereto responded to the notification and applied for the post of Nursing Assistants in unreserved Category.
5. Learned counsel for the petitioners submits that they qualified the test and got selected and consequently were appointed for the post of Nursing Assistant. Post the selection process, a verification process was initiated by the appointing authority in order to determine the genuineness of the documents submitted by the petitioners. Thereafter, it came to light that the experience certificate of the petitioners were alleged to be forged and as a consequence of same, a Notice of termination came to be issued on 26th September 2009 against the petitioner by the Chief Engineer, Beacon under Rule 5 Clause I of Central Services (Temporary Services Rules 1965) upon petitioner No. 1. On 14th October, 2009 a reply to the notice was submitted by the petitioner No.1. Thereafter, the notice was withdrawn in respect of petitioner No. 1, for the purpose of directing further enquiry with respect to the same. On 31st October, 2009, verification was sought vide letter issued by the then Chief Engineer to the Mahajan Hospital Salapur Maharashtra to verify the genuineness of the certificate issued by them. On 14th of November, 2009 verification certificate was endorsed by Mahajan Hospital in respect of petitioner and it was verified by them that the petitioner had gained the requisite experience in their hospital and the certificate was genuine. However, on 30th May, 2011 another order of termination was passed against the petitioner No. 1, whereby, he was given a one month notice for termination of his services on 30th June, 2011 vide order dated 30.05.2011.
6. It has been further submitted by the petitioner that Chief Engineer Beacon issued notice dated 26th September, 2009 under Rule 5 Clause 1 of the Central Services(Temporary Service Rules) upon the petitioner No.1. Notice of termination which was issued had to take effect from the date of expiry of one month from the date the notice is served. It has been further submitted by the petitioner that in the notice of termination no reasons were spelt out why the services of petitioner No. 1 were terminated, in the Notice of termination issued by

- the Chief Engineer Beacon dated 26th September 2009.
7. The specific stand of the petitioner which has been taken against his termination order was that he responded to it through proper channel and clarified the position that the experience certificate furnished by him is not forged but true and correct one and before appointment of the petitioner has a working experience as a Nursing Assistant with the Mahajan Hospital Salapur Maharashtra.
 8. The counsel for the petitioner has submitted that in the process of verification/investigation the Senior Administrative Officer on behalf of Chief Engineer has issued a letter to the Mahajan Hospital for verification of experience certificate against the Advertisement No.01 of 2008. The said hospital i.e., Mahajan Hospital in response to the verification issued a letter to the respondents and clarified the position that petitioner was working in the Hospital with effect from May 2007 to May 2008 as Nursing Assistant and was paid wages of Rs.1800/- per month but despite the fact that petitioner No.1 submitted the requisite experience certificate countersigned by the competent authority and also verified by the respondents independently from the Mahajan Hospital, the respondents have again resorted to Rule 5 of the Central Services Temporary Rules 1965.
 9. Another contention of the petitioner is that the notice of termination issued against the petitioner No.1 is unconstitutional and bad in the eyes of law.
 10. Another ground which has been urged by the petitioner is that they duly fulfilled and satisfied the eligibility criteria prescribed in the advertisement notice for the post of Nursing Assistant. Besides the petitioners possess the experience certificate from the hospital which is acknowledged by the Hospital, whereby the petitioner has worked as Nursing Assistant. It has also been submitted that in response to the earlier notice of termination the petitioner has submitted that his experience certificate is valid and was duly issued by the hospital. However, because of the whim and caprice of the respondents the notice of termination was issued under Rule 5 Clause 1 of CCS. The petitioners have submitted that when the notice of termination was withdrawn and verification/investigation was set into motion by the

respondent department in order to find authenticity and genuineness of the certificates. In response thereto, the hospital authorities which have issued the experience certificate have endorsed its genuineness and have independently submitted the report to the respondent department, what weighed with the authorities to again issue impugned notice to the petitioner No. 1 whereby the services of the petitioner have come to an end after 30th June 2011, is not forthcoming from the record. As such, the impugned notice of termination is bad in the eyes of law.

11. It has been further argued by the petitioners that they have not furnished or made any declaration which is false or suppressed any material fact. As such, the invoking of Rule 5 Clause 2 of CCS Temporary Service Rules 1965 is not applicable to their case and as such, the impugned notice of termination deserves to be set-aside.
12. It has been further submitted that petitioner No. 2 had also responded to advertisement notice No. 1 of 2008 for the post of Nursing Assistant. The petitioner No. 2 possesses the requisite qualification and experience as prescribed in the advertisement notice for the post of Nursing Assistant. The petitioner No. 2 was appointed as Nursing Assistant vide order / letter issued by Commandant GREF Centre. The letter of appointment was issued in favour of petitioner No. 2. It is respectfully submitted the petitioner No. 2 was issued a letter / notice under Rule 5 (1) of Central Services (Temporary Service Rules 1965). The notice provides the services of the petitioner No. 2 shall terminate from the date of service of notice. The notice was issued on 7th of October 2009. In response to the notice issued under Rule 5 clause 1 of CCS Rules 1965, the petitioner No. 2 also filed his response/objections stating therein that his termination is unjustified and whatever documents/certificates he has submitted are genuine and no document is forged or manipulated. Accordingly, the notice of termination issued against petitioner No. 2 was withdrawn with immediate effect by Commander 32 Border Roads Task Force C/o 56 APO on 3rd of October 2009.
13. A specific stand has been taken by the petitioner No.2 that Commander BRTF issued a communication to 329 SPL/56 RCC (GREF) C/O APO, whereby, he was requested to approach the

concerned hospital through registered post and check authenticity of experience certificate produced by the petitioner No. 2. The Medical Superintendent Hope Super Specialty Hospital Pvt. Ltd. Rambagh Purnea Bihar issued a verification letter to the respondents certified therein that the petitioner No. 2 has worked in the said hospital as Nursing Assistant. The verification letter/report submitted to the respondents by Hope Super Specialty Hospital Pvt. Ltd has been placed on record by the petitioner No. 2 in the present petition.

SUBMISSIONS ON BEHALF OF RESPONDENTS

14. Reply stands filed on behalf of respondents, who are being represented by Mr. T.M. Shamsi, learned DSGI, in the present writ petition.
15. Learned counsel for the respondents has submitted that the Writ Petition in hand is not maintainable as the petitioners have raised disputed questions of fact. The notice which stands challenged by the petitioners is strictly in accordance with rules occupying the field, therefore the writ petition is not maintainable.
16. It has been further submitted that the petitioner No.1 was appointed in General Reserve Engineer Force (GREF) on 24th February 2009 as Nursing Assistant as per Recruitment & Promotion (R&P) Rules, 1982 against Advertisement NO.01/2008, on the basis of St John Ambulance Association Certificate and one year experience certificate issued by the Mahajan Hospital, Salapur which has been duly countersigned by District Health Officer, Health Department, Zilla Parishad, Solapur.
17. The respondents have vehemently argued that the point which has been raised by the petitioner with regard to the relevancy of experience certificate, it is submitted that the genuineness of experience certificate is in question as the same has been intimated as “FORGED” by the concerned authority (Counter Signing Authority).
18. Another specific stand which has been taken by the respondents is that as per CCS (Temporary Service) Rules, 1965, the appointment was subject to termination by the Appointing Authority at any time during the period of probation by giving one month’s notice by either side, i.e., the appointee and the appointing authority without assigning any reasons. Reference has been made to Para 3(b) of Appointment Letter

provided to the petitioner No.1. As per Para 5 of Appointment letter,

“if any declaration given or information furnished by the appointee is found to be false or if he is found to have willfully suppressed any material fact, his services are liable to be terminated without giving any reasons under Rule 5 of CCS (Temporary Service) Rules, 1965 and CCS (Conduct Rules, 1964”). In this regard, it has been mentioned in the attestation form submitted by the petitioner No.1 that:-

“The furnishing of false information or suppression of any factual information in the attestation form should be disqualification and is likely to render the candidate unfit for employment under the Government. In case the false information has been furnished or that there has been suppression of any actual information in the attestation form comes to notice at any time during the service of a person, his service will be terminated”.

19. It is submitted by the respondents that after recruitment of candidates for the appropriate posts, GREF Centre (Recruiting Centre), verifies the genuineness of the certificates produced by the candidates. Accordingly, the experience certificate was verified by GREF Centre from District Health Officer, Health Deptt. Zilla Parishad, Slapur (Appropriate authority appointed by the Govt.). The District Health Officer, Health Deptt. Zilla Parishad Solapur has intimated vide letter No. ZPS/Health/PUB/196/09 dated 09 July 2009, that their office has not countersigned or issued the said certificate to petitioner No. 1.
20. Counsel for the respondents has submitted that HQ. DGBR has intimated the facts mentioned in Para supra immediately to HQ. CE(P) Beacon vide letter No.12456/VER/DGBR/381/EG2 dated 18th August 2009, with the instruction to take necessary action against petitioner No. 1 under the provisions of Rule 5 of CCS (Temporary Service) Rules, 1965 and also forwarded copies of:-
- a) ***GREF Centre letter No. 1460/Advt 012008/Gen/01/E1R dt 14 Jul 2009***
 - b) ***GREF Centre letter No. 1460/Advt 01-2008/Gen/26/E1R dt 27 Jul 2009***
21. As per the above said letters, the experience certificate of direct recruits inducted against Advertisement No. 01/2008 were sent to respective issuing authorities for verification because the experience certificate has been intimated as FORGED by the concerned authority. The verification letter of experience certificate in the particular case

was sent to District Health Officer, Health Deptt. Zilla Parishad, Salapur. The District Health Officer, Health Deptt. Zilla Parishad, Salapur vide letter No, ZPS/Health PUB/196/09 dated 09 July 2009 has intimated that their office has not countersigned or issued the said certificate to petitioner No. 1. The respondents have admitted that no reasons were assigned in notice of termination. As per the stand of the respondents, petitioner No. 1 has managed to obtain another experience certificate dated 06 Oct. 2009, duly countersigned by the District Health Officer, Health Deptt.Zilla Parishad, Solapur, i.e., after seven months of his appointment in GREF. Since the petitioner No. 1 has also requested the Chief Engineer to allow him to continue in service in the department, the case of the petitioner was referred to higher authorities for further necessary action. The respondents vide letter dated 23rd Oct 2009, has suggested HQ CE (P) Beacon to cancel the notice for further investigation and also advised to approach the concerned hospital through registered letter to check the authenticity of the experience certificate. Accordingly, as per the request made by petitioner No. 1, the notice has been withdrawn under Rule 5(2) (a)(iv) for making such other order in the case as it may consider proper, i.e., for further investigation/verification of experience certificate produced by him for recruitment as Nursing Assistant against Advt. No. 01/2008 in the Department. Accordingly respondents sought confirmation for authenticity of certificate from Mahajan Hospital, Solapur vide letter No. CF/1908041-I/N/14S5T/RSS/12/E1C dated 31stOct 2009. The Mahajan Hospital has intimated to HQ. CE(P) Beacon vide their letter No. MHK/276dated 14 Nov 2009, that the experience certificate No. M.H.K. Dated 06 June 2008 issued by them is correct and valid. However, the District Health Officer, Health Deptt. Zilla Parishd, Solapur has intimated to GREF Centre, Pune vide letter No. ZPS/Health/PUB/196/09 dated 09 Jul 2009that their office has neither countersigned nor issued the said certificate dated 06Jun2008 to petitioner No. 1. Thus, the hospital authority, i.e., Mahajan Hospital has confirmed that the specific experience certificate was issued by them, but the District Health Office confirmed that the specific experience certificate was neither countersigned nor issued by them. It

is submitted that due to the reasons submitted hereinabove, clarification was again sought from the Headquarter vide letter No. CF/190804H/N/ASST/RSS/14/E1C dated 26 Nov 2009. Since the petitioner No. 1 stood already appointed on 24 Feb 2009, his probationary period was due for completion on 23 Feb 2011. The case regarding fake nursing experience/forged countersignatures on experience certificate in respect of petitioner No. 1 was examined in detail by the Competent Authority which directed to take action under the provisions of Rule 5 of CCS (Temporary Service) Rules, 1965 against the petitioner No. 1. Accordingly notice of termination dated 30 May 2011 has been served to petitioner No. 1 on 31-05-2011.

22. The counsel for the respondents has submitted that as per CCS(Temporary Service) Rules, 1965, the appointment was subject to termination by the Appointing Authority at any time during the period of probation by giving one month's notice by either side, i.e. the appointee and the appointing authority without assigning any reasons.
23. The experience certificate was verified by GREF Centre from Civil Surgeon-cum-CMO, Purnea, Bihar (appropriate authority appointed by the Govt.) The Civil Surgeon-cum-CMO, Purnea has intimated vide letter No. 1683 dated 19 June 2009, that he has not countersigned or issued the *said* certificate to the petitioner No.2.
24. The experience certificate has been intimated as FORGED by the concerned authority, the verification letter of experience certificate in the particular case was sent to Civil Surgeon-cum-CMO, Purnea, Bihar.
25. The counsel for the respondents has submitted that HQ DGBR had suggested HQ CE (P) Beacon to cancel the notice for further

investigation and also advised to approach the concerned hospital through registered letter to check the authenticity of the experience certificate. Accordingly, as per the request made by petitioner No. 2, the notice has been withdrawn under Rule 5(2) (a)(iv) for making such other order in the case as it may consider proper, i.e. for further investigation/verification of experience certificate produced by him for recruitment as Nursing Assistant against Advt. No. 01/2008 in the Department. The respondents sought confirmation for authenticity of certificate from The Medical Superintendent, Hope Super Specialty Hospital vide letter No.CF/190796P/Kumar/12/E1 dated 09 Nov 2009. The Hope Super Specialty Hospital Pvt. Ltd. has intimated vide their letter No. Hope/09-10/053 dated 23 Nov 2009, that petitioner No. 2 has worked as Nursing Assistant in their Hospital since 01 Apr 2007 to 02 May 2008. However, the Civil Surgeon-cum-CMO, Purnea vide letter No. 1683 dated 19 June 2009 intimated that he has not countersigned the said certificate issued to petitioner No. 2. Thus, the hospital authority, i.e. Hope Super Specialty Hospital Pvt. Ltd. Purnea has confirmed that the specific experience certificate was issued by them, but the Civil Surgeon-cum-CMO, Purnea confirmed that the specific experience certificate was not countersigned by him. Accordingly, notice of termination dated 10 June 2011 has been served to petitioner No. 2 on 13-June 2011.

26. The counsel for the respondents submitted that the orders impugned in the *petition* have been rightly passed keeping in view the fraudulent practice resorted by the petitioners. While passing the order impugned



the answering respondents have followed all the procedure and there is no violation of any of the rights much less fundamental right of the petitioners, as such, the allegations leveled against the answering respondents that rules have not been followed are denied.

SWP No.1380/2011

27. Through the medium of instant writ petition, the petitioner has sought quashment of orders impugned dated 28.04.2011 bearing No.261387/EG2 (Rectt) passed by Director General, Border Roads dated 13.06.20211 passed under Rule (5) of the Central Civil Services (Temporary Service), Rues, 1965 issued by Chief Engineer (P) Beacons in consequence of the order dated. 28.2.2011 issued by Chief Engineer (P) Beacons. Besides seeking a direction against the respondents to allow the petitioner to continue as Nursing Assistant.

BRIEF FACTS OF THE CASE

28. In the year 2008, the respondents issued an Advertisement Notice No.01 of 2008 for the post of Nursing Assistant in the year 2008 and the selection process was carried in GREF Centre in Dighi Camp Pune. After participating in the process of selection, petitioner got appointed as Nursing Assistant vide order dated 24.2.2009 and his experience certificate was sent to District Health Officer, Salapur, Maharashtra vide communication dated 09.7.2009. Thereafter, an information was received by the GREF Center Pune that the certificate has not been counter signed nor stamped by the District Health Officer, as a result thereof, by invoking the power under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965, the service of the petitioner has been terminated by giving one months' notice which was served upon the petitioner on 25.09.2009. Petitioner immediately filed a representation along-with experience certificate, which was again countersigned by the District Health Officer, Salapur, Maharashtra. This representation and the experience certificate was forwarded to the Director General, Border Roads, the higher authority of the Beacons which directed that petitioner should not be discharged and accordingly, the Commanding Officer by virtue of which the petitioner was discharged his duties, issued an order dated. 24.10.2009 and the order of termination dated 22.9.2009 was withdrawn and the

matter was directed to be verified and investigation set into motion regarding the experience certificate of the petitioner. The communications were, accordingly, addressed to the District Health Officer who after verifying confirmed that the certificate produced by the petitioner was valid. The Commanding Officer on 15.2.2010 issued communication to the Chief Engineer that as the experience certificate of the petitioner was valid and for over the last six months the GREF records have not tendered any information or advice and there was no reply from the office of the Chief Engineer and when the question of probation arose, it was advised that the probation period be extended.

29. The Joint Director for the first time without checking the record of the petitioner with regard to the inquiry/verification about the validity of the experience certificate communicated to Director General, Border Roads that due to non-receipt of clarification regarding the experience certificate, the status of the petitioner after completion of the probation period cannot be decided so advice was sought. The office of the Director General, Border Roads, without checking the record after taking into consideration the order by which the termination notice was withdrawn and inquiry conducted afresh, directed the Chief Engineer (P) to take an action against the petitioner. Under Rule 5 of the CCS (Temporary Service) Rules, 1965. Thus, the order dated. 28.04.2011 was passed on communication dated 27.06.2009 and 14.07.2009. Communications by which the clarification was sought and report received. Before the order of termination dated 22.9.2009 was passed which was later on withdrawn by the Director General, Border Roads, directed reopening of the case which was done in pursuance of the letter dated 24.10.2010 by the Commanding Officer of the petitioner.

SUBMISSIONS ON BEHALF OF PETITIONER

30. Learned counsel for the petitioner submits that he responded to advertisement notice No. I of 2008 for the post of Nursing Assistant After participating in the process of selection, the petitioner got appointment as Nursing Assistant on 24.02.2009. Petitioner further submits that along-with the application he has also filed the

experience certificate. A communication was addressed to Director General Border Roads, that the experience certificate produced by the petitioner was forged. Thereafter, the Director General, Border Roads GREF Center Pune directed to forward the copies of verification of experience certificate of the candidates, who were appointed as Nursing Assistants to all the Projects, so that necessary action is taken in pursuance of Rule 5 of Central Civil Service (Temporary Service) Rules, 1965. On 09.07.2009, the GREF Centre, Dighi Camp Pune received the verification of the petitioner's certificate in which it was mentioned that District Health Officer, Zilla Parishad, Solapur has not signed the same. This communication was received by the GREF Centre Dighi Camp, Pune. The Commanding Officer 760, BRTF GREF after receiving this information on 22.9.2009 issued a notice of termination under Rule 5 (1) of Central Civil Service (Temporary Service) Rules, 1965, which was received by the petitioner on 25.09.2009.

31. The counsel for the petitioner further submitted that through the medium of notice the petitioner was intimated that after expiry of one month from the date of notice served upon the petitioner, his service would stand terminated. The petitioner immediately responded to this notice by submitting his experience certificate No.0029/07 on 17.10.2009, countersigned by District Health Officer, Salapur on 09.10.2009. The Commanding Officer forwarded the application of the petitioner along-with experience certificate of the petitioner to Headquarters.
32. The specific stand taken by the petitioner is that the application along-with the certificate submitted by him once again, after termination notice, was considered by the Director General, and the Director General, Border Roads agreed to reopen the case in consequence of which the notice of termination of one month dated 22.9.2009 stands withdrawn.
33. It has been submitted by the learned counsel for the petitioner that in the withdrawal notice of termination of service of the petitioner, it was mentioned that the notice stands withdrawn under Rule 5(2) (a) (iv) for further investigation/verification of the experience certificate. The Commander issued a communication to District Health Officer,

- Solapur on 30.10.2009 for verification of the experience certificate of the petitioner. That an application was received by the Commanding Officer from District Health Officer that the experience certificate was valid and was in fact countersigned by him. This verification certificate issued by Shyam Hospital and countersigned by District Health Officer was sent to GREF Center for further orders.
34. The specific stand taken by the counsel for the petitioner is that on 28.04.2011, a direction was issued to the competent authority to take action under Rule 5 of Central Civil Service (Temporary Service) Rules, 1965, on the basis of verification of experience certificate in which the experience certificate was shown as fake.
35. It has been contended by the learned counsel for the petitioner that on 13.06.2011 the Chief Engineer, who is appointing authority of the petitioner by invoking, the powers under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 passed an order by which it was made clear that after expiry of a period of one month from the date of service of notice, the services of the petitioner will stand terminated.
36. Petitioner has sought quashment of the order dated. 28.04.2011 and order of termination dated. 13.06.2011 passed in consequence thereof by appointing Authority. The petitioner has relied on Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which is reproduced as under:

Termination of Temporary Service: -

“(1). (a). The service of temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b). The period of such notice shall be one month; Provided that the service of any such Government servant may be terminated forthwith [and on such termination the Government servant shall be entitled to claim] a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rate at which he was drawing them immediately before the termination of his service or, as the case may be, for the period by which notice falls short of one month.”

Note:-The following procedure shall be adopted by the appointing authority by issuing notice on such Government servant:

- I. The notice shall be delivered or tendered to the Government in person; Where personal service is not practicable, the notice shall be served on such*

- Government servant by registered post acknowledgement due at the address of the Government servant available with the appointing authority. If the notice sent by*
- II.** *registered post is returned un-served, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.”*
2. *[Where the notice is given by the appointing authority terminating service of a temporary Government servant or where the services of any such Government servant is terminated either on expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, reopen the case, and after making such inquiry as it deems fit,*
- i). confirm the action taken by the appointing authority;*
 - ii). withdraw the notice;*
 - iii). reinstate the Government servant in service or*
 - iv). Make such other order in the case as it may consider proper;*

Provided that except in special circumstances, which should be recorded in writing, no case such be reopened under this sub-rule after the expiry of three months: -

- (a). (i). from the date of notice, - in a case where notice is given;*
(ii). from the date of termination of service, in a case where no notice is given.
- (b). where a Government servant is reinstated in service under sub-Rule (ii) the order of reinstatement shall specifically: -*
 - (i). the amount or proportion of pay and allowance, if any, to be paid to the Government servant for the period of absence between the date of termination of his service and the date of his reinstatement; and*
 - (ii). whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.”*

GROUND OF CHALLENGE

37. Learned counsel for the petitioner has challenged the order dated 28.04.2011 on the following grounds: -

- a). The petitioner who got appointed as Nursing Assistant on 24.03.2009 submitted his experience certificate and thereafter the respondents sent the experience certificate for verification. A communication was received on 09.07.2009 that the experience certificate which was subject of verification, of the petitioner was not signed by District Health Officer Salapur, Maharashtra. On the said communication, the Commanding Officer was directed to terminate the services of the petitioner by using the powers under Rule 5 of the CCS (Temporary Service) Rules, 1965. The Commanding Officer on 22.09.2009 issued a*

termination order, which was received by the petitioner on 25.09.2009. The petitioner responded to this termination order by submitting a representation and also an experience certificate, which was countersigned by District Health Officer, Salapur, Maharashtra dated 28.10.2009. The Commanding Officer forwarded the representation of the petitioner against his termination order dated. 22.0.2009 along-with experience certificate to Director General Border Roads. The representation of the petitioner was considered and after getting the verification by the Commandant, the order was issued whereby, it was directed that the petitioner will not be discharged and the termination notice dated 22.09.2009 under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965 is withdrawn.

It has been further directed that investigation and verification of certificate produced by the petitioner be completed. Thereafter, the investigation was conducted and a communication was written to the District Health Officer, Salapur Zilla Parashad, Salapur, Maharashtra, for confirmation of the experience certificate. The District Health Officer confirmed and verified that the verification certificate considered to be true as produced by the petitioner vide his letter dated 03.12.2009. This verification certificate was thereafter forwarded to the Headquarter for advice. Vide communication dated. 13.01.2010 as no reply was received, the Commanding Officer communicated with the Chief Engineer, Beacons on 15.10.2010 asking him as to whether the case be treated as closed because no reply has been received from GREF records. The Chief Engineer did not respond to the communication dated. 15.6.2010. The matter remains as it was. The question arose about the termination of the probation period. Accordingly treating the case as closed, a communication was addressed by the Joint Director Administration, Beacons to the GREF Center with a request that as the clarification regarding experience certificate has not been received so far what should be the action to be taken for confirming the services as the petitioner has completed the probation period. The mischief started here. The Commanding Officer had communicated with the Director General, Border Roads about the orders passed by him whereby the termination order dated. 22.09.2009 was withdrawn, fresh investigation was conducted and v because of that investigation, it was found that the verification certificate was not fake but was genuine; instead, the Joint Director (Adm) wrote that they have not received the

clarification regarding the experience certificate of the petitioner. The Director General, Border Roads, is without confirming the factual aspects regarding the case of the petitioner, directed that the period of probation be extended, thereafter without affording an opportunity of being heard to the petitioner, without going through the records and considering all the orders passed, verification conducted by the Commanding Officer, the Director General passes an order on 28.04.2011 directing the appointing authority to terminate the services of the petitioner under Rule 5 of the CCS (Temporary Service) Rules, 1965, and the appointing authority does so on 13.6.2011.

In view of aforesaid position, it is a case of non-application of mind. Further, it is a case where orders have been passed contrary to the record. In-fact in this case, where the Director General, Border Roads directed the termination of services of petitioner that a fact which is contrary to the record, therefore, the order is bad in law and is therefore passed on consequence of the order dated 28.04.2011 passed by the Chief Engineer, the appointing authority of the petitioner, on 13.6.2011.

b) The order impugned dated 28.04.2011 refers to the communication dated. 27.06.2009 and 14.07.2009 in its opening Para. These are the communications, which were addressed prior to termination of the service of the petitioner on 22.9.2009 and definitely prior to reopening of the case and the petitioner under Rule 5 (2) (a) (iv) of the CCS (Temporary Service) Rules, 1965, dated. 24.10.2009. These communications were basis for termination of service of the petitioner vide order dated. 22.9.2009 which order of termination stands withdrawn vide order dated. 24.10.2009. Thus, the order dated 28.04.2011 is based on letters which stand repealed and have become redundant in view of the order dated 24.10.2009, therefore, order is arbitrary, without application of mind and bad in the eyes of law as such, such liable to be set aside.).

c). The petitioner was appointed on 24.02.2009 and had completed his period of probation on 24.02.2011 and till date he is in service. No opportunity of being heard was given to the petitioner before the impugned orders were passed. It is submitted that the orders impugned have visited the petitioner with civil, consequences as such the petitioner was entitled to an opportunity of being heard. By not doing, so the respondents

have violated the principles of natural justice as such both the orders dated. 28.04.2011 and 13.06.2011.

d). The order of termination dated 28.04.2011 and 13.06.2011 have been passed under Rule 5 (1) (b) of the CCS (Temporary Service) Rules, 1965 which empowers the government to give one months' notice. As per this Rule position, the Government has powers to terminate the services. This Rule 5 (1) (a) or Rule 5 (1) (b) of the CCS (Temporary Service) Rules, 1965 but has no application to the case of the petitioner because his termination is based on producing of fake certificate, as such under Art. 311 of the Constitution it was incumbent upon the respondents to hold an inquiry and thereafter pass appropriate orders on the report of the Inquiry Officer. In the present case no inquiry was conducted even no charges were framed against the petitioner. The height of application of mind on part of the appointing authority and also Director General, Border Roads, is evident on the file a representation of the petitioner, after he was served with termination notice dated. 22.09.2009, an order was passed that an investigation and inquiry be conducted about the verification of the experience certificate produced by the petitioner and after the verification was done, the order of termination was withdrawn. As such, there was no order of termination but the basis of the order of termination dated. 13.06.2011 is that the experience certificate is forged. So, in this eventuality the order of termination is not simpliciter nor it has been passed in those situations for which powers have been conferred under Rule 5 (1) (b) of the CCS (Temporary Service) Rules, 1965.

e) As no inquiry as provided under Art. 311 of the Constitution has been conducted, the order impugned passed is a punishment inflicted upon the petitioner for producing fake certificate, which has been found to be not correct. Therefore, the orders dated 28.04.2011 and 13.06.2011 are bad in the eyes of law and are liable to quashed.

f) That after the order of termination was withdrawn, the case was reopened and it was directed that proceedings for investigation/verification of the experience certificate be done. Inquiry was conducted and communication of District Health Officer dated 03.12.2009 confirms that the experience certificate produced by the petitioner was valid. Rule 5 (2) (a) of the CCS (Temporary Service) Rules, 1965 gives power to the authorities to

reopen the case after making such inquiry as it deems fit. This process was initiated by the Commanding Officer vide his letter dated.24.10.2009. Accordingly after holding an inquiry the order of termination was withdrawn by the Director General, Border Roads. After the withdrawal under this provision, the order was to be passed for reinstatement of the petitioner or to pass appropriate orders in view of the inquiry. That is why, the Commanding Officer communicated with the appointing authority on 15.06.2010 seeking an advice as to whether the case is to be treated as closed. This was not replied at all by the office of the Chief Engineer meaning thereby that impliedly the case stands closed, as such, no further action was required on this subject. On the question of treating the period of probation, on communications which had become redundant, the Director General, Boarder Roads asked the appointing authority, that is, the Chief Engineer without considering the whole record of the petitioner and without affording an opportunity to the petitioner, passed an order of termination by invoking powers under Sub-Rule (1) of Rule 5 of the .CCS (Temporary Service) Rules, 1965 . The appointing authority also did not consider that in view of the order dated. 24.10.2009 the case was reopened, investigated and verified and confirmed that the experience certificate was valid, thus the order of the appointing authority is not only contrary to the record but is also violative of the principles of natural justice. In view of what has been discussed above, the orders dated 28.04.2011 and 13.06.2011 are bad in the eyes of law and liable to be set aside.

g) The Director General, Boarder Roads after receiving the representation of the petitioner, tendered by him against the order of termination dated. 22.09.2009 directed that the case be reopened and the petitioner should not be discharged from service meaning thereby that the case of the petitioner had to be considered by invoking the provisions of Rule 5 (2) of the CCS (Temporary Service) Rules, 1965 which was done and the certificate was found valid. The same Director General closing his eyes to his own orders directs the appointing authority to pass an order under Rule 5 of the CCS (Temporary Service) Rules, 1965 on basis of the communication which had become since redundant. It was verified that the certificate of the petitioner was valid. In view of what has been stated in this ground the communication dated. 28.04.2011 is bad in law, as such, the order of termination passed on 13.06.2011 in consequence of the

order dated 28.04.2011 is also bad in law and liable to be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENTS

38. The respondents have stated that as per CCS (Temporary Service) Rules, 1965, the appointment was subject to termination by the Appointing Authority at any time during the period of probation by giving one month's notice by either side, i.e., the appointee and the appointing authority without assigning any reasons. It has also been specifically mentioned in para 3(b) of Appointment letter provided to the petitioner. It has been further submitted by the respondents that as per para 5 of Appointment letter, if any declaration given or information furnished by the appointee is found to be false or if he is found to have willfully suppressed any material information, his services are liable to be terminated without giving any reasons under Rule 5 of CCS (Temporary Service) Rules, 1965 and CCS (Conduct) Rules, 1964.

"The furnishing of false information or suppression of any factual information in the attestation form should be disqualification and is likely to render the candidate unfit for employment under the Government. If the fact that false information has been furnished or that there has been suppression of any actual information in the attestation form comes to notice at any time during the service of a person, his service will be terminated".

39. The same is also mentioned in attestation form. It is stated that the petitioner has, at the time of appointment, submitted an affidavit to the effect that all the documents submitted by him are correct and true and if at any point of time these facts are found false, he will be liable for prosecution under IPC Sections 193(2), 199 and 200.
40. The Respondents further submit that the Petitioner has submitted the fresh experience certificate dated 22.05.2007 and counter signed on 09.10.2008/ 09.10.2009, to the DHO Zila Parishad Solapur for verification. In reply, the certificate was stated by the DHO to be a valid one issued by Shyam Hospital and counter signed by the DHO. The DHO stated that the earlier experience certificate was a forged one but the later one was stated to be valid/genuine by the DHO.
41. The Respondents have contended that the matter has been examined in detail by the higher authorities and the competent authority has

directed action under Rule 5 of CCS Rule vide communication dated 28.04.2011 and thus the order of termination has been passed on 13.06.2011 in consonance with the abovementioned communication, while following proper procedure. The notice of termination has been passed in consonance with the relevant rules and thus, there is no violation of the Petitioner's rights under Article 14, 16 or 311 of the Constitution.

42. The Respondent has also raised objection with respect to the maintainability of the Writ Petition on the ground that it raises disputed questions of fact. It is also contended that the Petitioner has an efficacious alternate remedy.

LEGAL ANALYSIS

43. Heard learned counsel for the parties at length and perused the record.
44. Admitted.
45. Since common question of law and facts are raised in both the petitions, the same are decided collectively by common judgment.
46. The primary rival contention between the parties is about the **relevancy of experience certificate.**
47. At the very outset it would be profitable to mention here that a counter signature is an additional signature added to a document that has already been signed. The counter signature serves to provide reconfirmation of the document's authenticity. In the instant case, the hospital authorities who have first-hand knowledge of the fact that the petitioner has worked with them are validating and verifying the same. However, the countersigning authority is denying the same on the ground that the said authority has not counter signed the experience certificate and the same is forged by the petitioner. Even if the allegations leveled against the petitioner are taken to its logical conclusion, this Court cannot lose sight of the fact that the documents already stand proved and verified to the extent of signing as well as verified by the issuing authority. With regard to the experience, the same has been verified by the hospital authorities where the petitioner gained the requisite experience in conformity with the terms and conditions of advertisement notice.

48. Looking at the facts in SWP No.1219/2011 in chronological order, the petitioner No.1 who was initially terminated from services on 26.09.2009 pursuant to receipt of letter dated 04.06.2009 by of DHO stating that he has not counter signed the document. On 23.10.2009 the termination order with respect to petitioner No.1 stood withdrawn for the purpose of further investigation. On 31-10-2009, a verification was sought from the hospital authorities with respect to the experience certificate of the petitioner, in response to the aforesaid communication, the hospital authorities vide communication dated 14-11-2009 duly verified the same. Despite the fact that the appropriate authority which has issued the said certificate has verified the same, on 30.05.2011, a second termination order was issued against the petitioner No.1 on the same grounds which also formed the ground in the first order of termination which stands withdrawn. If chronology of the case is taken into account, it is apparent that the second termination order was passed on the basis of same ground which was taken earlier by the official respondents. The respondents after feeling *prima facie* satisfied withdrew the earlier order of termination with the sole intention of carrying out further investigation; however, there is no whisper to the fact as to how the investigation was conducted by the respondents post withdrawal of the earlier termination order.
49. It is manifestly clear from the record that the initial termination order dated 26.09.2009 and the final order dated 30.05.2011 which is subject matter of the present petition pertaining to petitioner No.1, are based on the same order of denial by of DHO dated 04.06.2009. The only communication post the withdrawal for further investigation, was that of hospital, wherein the said hospital authorities have confirmed about the authenticity and validity of the experience certificate, therefore, it can safely be concluded that the investigation conducted by the respondents is in favor of petitioner No.1 and thus, there was no justification on part of the respondents to issue the second termination order on the same grounds.
50. The main ground which has been pleaded and urged by the respondents in issuing both orders of termination is that the signature of DHO has been denied and alleged to be forged. However, it must be borne in mind that a mere denial will not suffice the purpose in

absence of any enquiry or finding recorded by the respondents. The bar of proving forgery is high and must be supported by sufficient evidence and in absence of any detailed enquiry conducted in this regard, it cannot be assumed that the documents has been forged by the petitioner No.1.

51. The punishment of termination from service is a major punishment and cannot be inflicted without following due course of law or conducting detailed enquiry in this regard by associating the petitioner and the said punishment can only be inflicted with due care and caution.
52. It is worthwhile to submit that the petitioner No.1 duly qualified the test for the post in question and possessed all the requisite qualification as envisaged in the advertisement notice. The only point which has been canvassed against the petitioner No.1 is the validity of certificate with regard to counter signature and not the experience which the petitioner No.1 possesses in conformity with the terms and conditions of the advertisement notice. The validity of the certificate has not been denied by the issuing authority. It is only the counter signature which is denied by the respondents. Mere denial of counter signature on a certificate in absence of proper enquiry or finding recorded in this regard does not warrant major punishment of termination of service, which becomes punitive in nature, when the order of termination is not simpliciter but the stigma is attached to the said order.
53. The allegations leveled against the petitioner No.1 were never enquired into by conducting a detailed enquiry or associating the petitioner by providing him an opportunity of being heard and in absence of that, it cannot be assumed that the petitioner is guilty of producing forged document which can be basis for passing the order of termination. The order of termination though has been worded in simple words but the basis for issuance of the same is stigmatic which is attached to the termination and the allegations leveled against the petitioner No.1 was required to be enquired into by the respondents by conducting a detailed enquiry in conformity with the rules by associating the petitioner and giving him an opportunity of being

- heard. Even the punishment which has been awarded to the petitioner No.1 is disproportionate to the alleged misconduct attributed to him:-
54. In respect of petition No.1380/2011, on looking at the events in the chronological order it is manifestly clear that the first order of termination was passed against the petitioner on 22.09.2009 under Sub (1) of Rule 5 of CCS (Temporary Service) Rules 1965. On 24.10.2009 the termination order of the petitioner was withdrawn for further investigation vide letter No.1120/529/EIV. The sole purpose of the withdrawal of the termination order was to further investigate/verify the experience certificate of the petitioner. Pursuant thereto, the Commander 760 BRT issued a letter to the DHO for verification of the petitioner's experience certificate on 30.10.2009. In response to the aforementioned communication a letter dated 30.12.2009 was received from the DHO stating therein that the experience certificate was counter signed by the DHO. On 13.10.2010 a copy of letter dated 03.12.2009 was forwarded to GREF Centre for information seeking further advice. It is pertinent to mention here that no response was received from the GREF in this regard. Subsequently, there were a series of communications exchanged inter department with respect to the future course of action. On 13.06.2011, a fresh order of termination was passed against the petitioner by the Appointing Authority (Chief Engineer) under sub rule 1 of Rule 5 of CCS (Temporary Service) Rules of 1965. On the perusal of record, it appears that the first order of termination dated 22.09.2009 passed against the petitioner was subsequently withdrawn by virtue of a withdrawal order dated 24.10.2009. The initial order of termination as mentioned supra was withdrawn with the only purpose of carrying out the further investigation and pursuant thereto a verification letter was sought from the DHO who had issued the experience certificate. On the bare perusal of the verification letter received from the DHO concerned it is proved that the certificate was authentic but despite the verification in favour of petitioner by the DHO, the appointing authority did not give any weightage to the relevant material (verified experience certificate) on record and thus, it clear shows the non-application of mind on part of respondents. It would be apt to mention here that during the intervening period between the issuance of first

and the second termination order, there was no change of circumstances/compelling reasons which constrained the respondents to pass the stigmatizing termination order against the petitioner.

55. The principles have been culled out by a three Judge Bench of this Court way in **B.C. Chaturvedi Vs. Union of India and others**, wherein it was observed as under:

“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to main discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent in support thereof.

56. It has been further examined by Supreme Court in Lucknow Kshatriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and another versus Rajendra Singh summarized as follows: 2 1995 (6) SCC 749 3 (2013) 12 SCC 372.

19.1. When Charge (s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the department authorities.

19.2. The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only cases where such penalty is found to be shocking to the conscience of the Court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in 19.4 above, would be in those case where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine

of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable”

57. This Court is of the view that the order of *termination is disproportionate to the attributed misconduct and therefore warrants the interference of the Court.*

58. The second question which requires the consideration in the present case is *whether the probationer is entitled to certain protection under law and whether his services can be terminated arbitrarily without following due course of law by virtue of a stigmatic order: -*

59. The Supreme Court of India in *V.P. Ahuja vs State Of Punjab & Ors* *decided on 6 March, 2000, (2000) 3 SCC 239:-*

*“A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice. The affidavit filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in *Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Others, (1999) 3 SCC 60 = AIR 1999 SC 983 = JT 1999 (1) SC 396.* This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it. For the reasons stated above, the appeal is allowed, the judgment dated 26.3.1999, passed by the High Court is set aside and the Writ Petition of the appellant is allowed. The order dated 2.12.1998, by which the services of the appellant were terminated, is quashed with the direction that he shall be put back on duty with all consequential benefits.”*

60. Thus, in light of the judgment, the aforesaid question is answered in affirmative that the probationer like the petitioner No.1 in SWP No. 1219/2011 and petitioner in SWP No. 1380/2011 are also entitled for certain protections and their services cannot be terminated arbitrarily by virtue of a stigmatic order which becomes punitive in nature without complying the principles of natural justice. Thus, it was

incumbent on part of respondents to have heard the petitioners by conducting a detailed enquiry before issuing the order of termination with respect to the denial of counter signature by the DHO and since the order of termination has been issued without providing an opportunity of being heard the same is vitiated and liable to be quashed.

61. *The other rival contention is whether the non-supply of reasons vitiates the order of termination:*
62. For reference, Rule 5 of the CCS (temporary service) Rules. 1965, is reproduced as follows;

“5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and, on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

NOTE:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post, acknowledgement due at the address of the Government servant available with the appointing authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2) (a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant, or where the service of any such Government servant is terminated on the expiry of the period of such notice or forthwith the Central Government or any other authority specified by the Central Government in this behalf or a head of Department, if the said authority is subordinate to him, may, of its own motion or

otherwise, reopen the case and after making such inquiry as it deems fit-

*(i) confirm the action taken by the appointing authority;
(ii) withdraw the notice;
(iii) reinstate the Government servant in service; or
(iv) make such other order in the case as it may consider proper.*

Provided that except in special circumstances, which should be recorded in writing, no case shall be re-opened under this sub-rule after the expiry of three months-

*(i) from the date of notice, in a case where notice is given;
(ii) from the date of termination of service, in a case where no notice is given.*

(b) Where a Government servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify –

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

A Government of India decision, [MHA OM No.39/14/56-Estt (A) dated 22.06.1956.

(2) When action is taken as under Rule 5 to terminate the services of a temporary employee, the order of termination, which should be passed by the appointing authority, should not mention the reasons for such termination.

63. Furthermore, the petitioners also in their application form, while appending a signature to that, accepted the terms mentioned therein, wherein it was clearly mentioned that under clause 3(b):-

“The appointment is subject to termination by the Appointing Authority at any time during the period of probation by giving one month's notice by either side i.e., the appointee and the appointing authority without assigning any reasons. The appointing authority however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of, notice by making payment to you a sum equivalent to the pay and & allowance for period of notice or the unexpired period thereof. This provision of paying the sum equivalent to notice period or unexpired portion thereof will not be available to the appointee.”

64. On the bare reading of the aforementioned provision of law and on the basis of the appointment form duly signed by the petitioners, it is clear that the petitioners at the time of filling of the form and signing the appointment letter, accepted the terms and conditions of their service mentioned therein, therefore in light of the same they are estopped from claiming anything to the contrary.

65. ***Therefore, I hold that the claim of petitioner for a well-reasoned order doesn't stand in terms of aforesaid rule position”.***

66. The next question which arose for consideration in the present petition is whether the termination with stigma becomes punitive: -
67. The propositions in this behalf, as to what constitute a motive, and what constitutes a foundation for the action were crystallized in the judgment of this Court in Chandra Prakash Shahi v.State of U.P. reported in (2000) 5 SCC 152, wherein paras 28 and 29 of the judgment of this Court laid down the relevant propositions which are as follows:

28. The important principles which are deducible on the concept of motive and foundation, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of motive.

Motive is the moving power which impels action for a definite result, or to put it differently, motive is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary 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 found to be true in the preliminary inquiry.

One thing which emerges very clearly is that, if it is a case of deciding the suitability of a probationer, and for that limited purpose any inquiry is conducted, the same cannot be faulted as such. However, if during the course of such an inquiry any allegations are made against the person concerned, which result into a stigma, he ought to be afforded the minimum protection which is contemplated under Article 311 (2) of the Constitution of India even though he may be a probationer. The protection is very limited viz. to inform the person concerned about the charges against him, and to give him a reasonable opportunity of being heard.

68. The Supreme Court of India in *Abhujit Gupta vs S.N. B. National Centre, Basic Science and others decided on 18 April, 2006, 2002 II CLR 317* also dealt with the similar issue, wherein it was held that;

“Having observed thus, the Court formulated the judicial test to determine as to on which side of the fence the case lay, in the following words (vide para 21):

"One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct (c) which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

It referred to Dipti Prakash Banerjee (supra) and pointed out that in Dipti Prakash Banerjee (supra) the termination letter expressly made reference to an earlier letter which had explicitly referred to all the misconducts of the employee and a report of an inquiry committee which had found that the employee was guilty of misconduct and so the termination was held to be stigmatic and set aside. Finally, this Court said that whenever a probationer challenges his termination the court's first task will be to apply the test of stigma or the 'form' test. If the order survives this examination the "substance" of the termination will have to be found out. What this Court further observed in para 29 is crucial and of great relevance:

"Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above meter unsuitability for the job.

The above decision is, in our view, 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 inquiry 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.

According to our assessment of the aforementioned decision, any document that is referred to in the termination order or its annexes may contain the information that amounts to stigma rather than having to be a part of the probationer's

termination order. In this situation, the termination order would be invalidated because no routine investigation was carried out. On perusal of the record, it is clear that the ground for the termination was forged document and offence of forgery was attributed to him, which in turn that the order was stigmatizing in nature and not merely simpliciter.

The real test to be applied in a situation where an employee is removed by an innocuous order of termination is: Is he discharged as unsuitable or is he punished for his misconduct? In Allahabad Bank Officers' Association and another vs. Allahabad Bank and others (1996) 4 SCC 504, this Court was considering a challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (vide para 17) observed that if the order of compulsory removal from the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service."

69. I am also fortified by the judgment given by *Krishna Iyer, J. in Gujarat Steel Tube vs. Gujarat Steel Tubes Mazdoor Sangh [1980 (2) SCC 593]*. As to 'foundation', it was said by Krishna Iyer, J. as follows:-

".....a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it 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 different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry 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."

70. In *Samsher Singh v. State of Punjab* (1975) 1 SCR 814, a seven-Judge Bench considered the legality of the discharge of two judicial officers of the Punjab Judicial Service, who were serving as probationers. A. N. Ray, CJ, who wrote opinion for himself and five other Judges made the following observations:

"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a

given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may, in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case, the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside”.

71. In the instant case as well, though the termination order apparently is innocuously worded, yet on analyzing the entire record of the case it is apparent on the face of it that the order was stigmatizing in nature. The court can't overlook the fact, that merely because an order is worded in the simplest form, it can't be stigmatizing. In such cases, the *doctrine of piercing through the veil is to be applied*. In the case at hand as well, the termination order is worded quite simply yet on *piercing through it is manifest that the order imputes stigma to the petitioner and on that ground is liable to be quashed.”*
72. Reliance may also be placed on one of the landmark cases pertaining to the subject, the Supreme Court of India in case titled *Dipti Prakash Banerjee vs Satvendra Nath Bose National Centre for Basic Sciences, decided on 10 February, 1999, (3) SCC 60.*

“If findings were arrived at in inquiry 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 inquiry was not held, no finding was arrived at and the employer was not inclined to conduct an inquiry 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 inquire 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.

*In the matter of 'stigma', this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven Judge case in *Samsher Singh vs. State of Punjab [1974 (2) SCC 831]*, Ray, CJ observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma. "It*

was also stated in Bishan Lal Gupta vs. State of Haryana [1978 (1) SCC 202] that if the order contained a stigma, the termination would be bad for "the individual concerned must suffer a substantial loss of reputation which may affect his future prospects".

The judgment further lays down that, In the matter of 'stigma', this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven Judge case in Samsher Singh vs. State of Punjab [1974 (2) SCC 831], Ray, CJ observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma. "It was also stated in Bishan Lal Gupta vs. State of Haryana [1978 (1) SCC 202] that if the order contained a stigma, the termination would be bad for "the individual concerned must suffer a substantial loss of reputation which may affect his future prospects".

73. Adverting to the issue that whether probationers can seek relief against termination? This issue has more or less been dealt with, in State of Punjab and another v. Sukh Raj Bahadur (1968) 3 SCR 234, wherein Mitter, J. considered several precedents and culled out the following propositions:

"1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e., an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

74. From the perusal of the aforesaid proposition of law laid down by Apex Court with particular reference to point 3, the position has been

cleared with respect to probationers', wherein it is held that if an aspersion is cast on the character of a person, it is to be considered termination by way of punishment, even if the person claiming there under, is a probationer. Therefore, in view of the aforesaid settled legal position, ***it can be concluded that the termination was not simpliciter but stigmatizing and thereby warrants the interference of the court.***

CONCLUSION

75. Thus, in light of the judgments quoted above and the perusal of the record in both the petitions, it can be validly said that the order of termination passed by the authorities against the petitioners was not a termination simpliciter, as it was not based on fact whether the work done by them was satisfactory or not. On perusal of the record, it is evident that the termination was based on the ground that they supplied forged certificate of experience in relation to their matter of employment, which implies that they were terminated on account of misconduct. If we dive deep into the issue, it comes to fore that the alleged misconduct that was attributed to the petitioner No.1 wasn't even fully proved and in respect of issue involved in SWP No.1380/2001, despite providing a verification letter in his favour, the petitioner was termination from his services. The issue was only with respect to the countersignature and not the authenticity of the experience gained which was the guiding factor with regard to the eligibility in terms of the advertisement notice. The hospital authorities have authenticated that the petitioner had worked with them and that the certificate was true and not fake and in case of Patil Namdeo Trimbak, it was also authenticated by the DHO concerned.
76. The document, which in the instant case is the experience certificate, has two components, the first is the content and the second is the signature. With regard to the first component i.e., the contents, which signify that the petitioners actually possess the requisite experience stands proved by virtue of the verification letter given by the hospital authorities, thereby verifying the contents to be true. The second component which is the signature, also stand proved partially to extent of the hospital authorities. The only issue that exists and is subject

- matter of dispute is with respect to the countersignature which has been denied by the DHO. It is pertinent to mention here that the appointing authority has not given any credence to the verification which they themselves sought from the hospital authorities but relied only on the denial of the DHO for termination of the petitioner.
77. In case of the connected matter i.e., SWP No.1380/2011, even after seeking the verification, the same was not relied upon by the respondents.
78. Thus, the termination order of the petitioners is founded on the alleged misconduct attributed to the petitioners and therefore is a stigmatizing termination and not merely termination simpliciter. Accordingly, I am of the considered opinion that the order of termination issued by the respondents in the present case on the ***grounds of misconduct are punitive in nature.***
79. As such, the petitioners were required to be given an opportunity of being heard and the inquiry was to be undertaken, but in the instant cases, neither of those things have happened.
80. As a result, in accordance with the Apex Court's directive, the termination orders cannot sustain the test of law.
81. The next question which is required to be considered is ***whether the enquiry was conducted in the facts and circumstances of the present case***

“No whisper as to how the enquiry was conducted:”

82. Looking at the facts in SWP No. 1219/2011 in the chronological order, the petitioner was initially terminated from the service on 26/09/2009, pursuant to the receipt of the letter dated 04/06/2009 of DHO stating that he hasn't countersigned the document. On 23/10/2009, the termination order with respect to the petitioner was withdrawn, for the purpose of further investigation. On 31/10/2009, verification was sought from the hospital with respect to the experience certificate of the petitioner. Responding to which the hospital vide letter dated 14/11/2009, duly verified the same. And despite that on 30/05/2011, second termination order was passed

against the petitioner. If the chronology of the case is taken into account, it is apparent that the second termination order was passed on the basis of the same grounds which were taken earlier. The respondents withdrew the earlier order with the sole intention of furthering the investigation, however there is no whisper to the fact as to how the investigation was conducted post the withdrawal of the initial termination order. It is evident that the initial termination order dated 26/09/2009 and the final order dated 30/05/2011 were both based on the same order of denial by DHO dated 04/06/2009. The only communication post the withdrawal, for further investigation, was that of the hospital, wherein they confirmed about the authenticity and validity of the experience certificate. Therefore, in the investigation, there is only *one evidence and that is favorable to the petitioner.*”

83. Also, on the analysis of the factual matrix of the connected matter bearing SWP No. 1380/2011, it is evident that the petitioner was initially terminated from the service on 22/09/2009, on receipt of the communication from DHO stating that he hasn't countersigned the document. On 24/10/2009, the termination order with respect to the petitioner was withdrawn, for the purpose of further investigation. On 30/10/2009, verification was sought from the concerned DHO with respect to the experience certificate of the petitioner. Responding to which the DHO vide letter dated 03/12/2009, duly verified the same as authentic. But, despite that on 13/06/2011, a second termination order was passed against the petitioner. If the chronology of the case is taken into account, it is apparent that the second termination order was passed on the basis of the same grounds which were taken earlier. The respondents withdrew the earlier order with the sole intention of furthering the investigation, however, there is no whisper to the fact as to how the investigation was conducted post the withdrawal of the initial termination order. It is evident that the initial termination order dated 22/09/2009 and the final order dated 13/06/2011 were both based on the former order of denial of the DHO dated 09/07/2009. The only communication post the withdrawal, for further investigation, was that of the concerned DHO, wherein he confirmed

about the authenticity and validity of the experience certificate. Therefore, in the investigation, there is only one evidence and that is favorable to the petitioner.”

84. Thus, I hold the *order of termination in absence of any enquiry against the petitioners vitiates the order of termination.*

85. The next question which arises for consideration in the present case is whether the two termination orders can be issued on the similar grounds when there is no change of circumstances: -

“Two termination orders on similar grounds:

86. Another important issue that needs to be dealt with in the instant case is whether two termination orders could be passed on the same ground.

87. It is appropriate to refer to the first termination order, which is worded as follows:

“In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I Brig A K Bhutani, Chief Engineer (P) Beacon hereby give notice to Shri GS-190804H N/ASST ROKADE SANTOSH SADASHIV that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him”

88. On the perusal of the second order of termination it is apparent on the face of it that it is worded exactly the same:

“In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I Brig TPS Rawat, Chief Engineer (P) tice to Shri GS-190804H N/ASST ROKADE Beacon hereby give no SANTOSH SADASHIV that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.”

89. In context of SWP No.1380/2011, it would be apt to refer to the termination orders passed against the petitioner. The first termination order is worded as:-

“In pursuance of sub-Rule (I) of Rule 5 of the Central Civil Services (Temporary Service)Rules, 1965. I, Cot S

K Verma Commander, 760 BRTF (GRE hereby give notice to **Shri Paul Namdeo Trimbak GS-190815P N/As)** of 843 AMIRJ53 RCC that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on, or, as the case may be, tendered to him”

90. And the second termination order is worded as:-

“In pursuance of sub rule (1) of Rule- 5 of the Central Civil Services (Temporary Service) Rules, 1965, **I, Brig TPS Rawat, Chief Engineer. (P) Beacon** hereby give notice to **Shri Patill Namdeo Trimbak, N/Asst** of 843 AMIR/53 RCC/760 BRTF that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him”.

91. On a careful reading of all the termination orders in both the cases, it can be validly concluded that all the termination orders were worded similarly and were based on the same ground, which is producing forged experience certificate. If the earlier termination was withdrawn with the object of carrying forward the investigation, in that eventuality, there should have been some other reason rather a compelling reason which led the Appointing Authority to reach to the conclusion of again terminating the services of the petitioner. However, neither from record nor from the arguments there is any whisper of the further investigation or adverse conclusion which aided them to pass the termination order. There is no change of circumstance apparent on the record which could have enabled the authority to pass the similar order which they passed earlier and withdrew, subsequently. The only communication which appeared post the withdrawal of the earlier order was the verification of the experience certificate by the hospital/DHO concerned, which were not considered by the Appointing Authority while passing the subsequent orders of termination against the petitioners. The said communications were in-fact favorable to the petitioners but were not taken on board by the respondents and they passed the termination orders again on the similar grounds on which it was passed earlier, which implies that there was no application of mind by the authorities while passing the second order and as such the orders of termination are bad in the eyes of law.

92. Another aspect of the matter which cannot be lost sight of that the learned counsel appearing on behalf of petitioners in SWP No.1219/2011 has sought quashment of termination order dated 30.05.2011 issued by the Chief Engineer Project Beacon which pertains to petitioner No.1 only and on the other hand, the writ petition has been filed on behalf of two petitioners i.e., Rokade Santosh Sandashiv and Kumar Gi and the learned counsel for the petitioners in SWP No. 1219/2011 has made reference to petitioner No. 2 in the pleadings but inadvertently has not placed the order of termination of petitioner No. 2 nor there is any specific challenge.

93. The learned counsel appearing on behalf of petitioners has sought following relief which is reproduced as under: -

“Certiorari quashing the impugned notice of termination dated: 30th of May 2011 issued by the Chief Engineer Project beacon C/O 56 APO.

Further writ of mandamus be issued commanding the respondents to allow the petitioner to continue to discharge their duties as Nursing Assistants in the respondent department and pay salary / wages as attached to the post.”

94. With a view to do substantial justice, it is incumbent upon the Court to take note of the fact that there was an inadvertent mistake omission to challenge the termination order of petitioner No. 2 inspite of the fact that there are pleadings on the part of petitioner No.2 but neither the order of termination was placed on record nor there was any prayer to that effect.

95. Learned counsel appearing on behalf of petitioners has sought quashment of impugned notice of termination dated 30.05.2011 which ***pertains to petitioner No.1 only***, but the present petition has been filed on behalf of two petitioners and there is no specific challenge with regard to the termination of petitioner No.2 nor the said order of termination has been placed on record by the learned counsel appearing on behalf of petitioners. However, the order of termination of the petitioner No.2 has been placed on record by the respondents while filing the reply as Annexure-33 dated 10.06.2011, but no such specific objection has even been taken by the respondents with regard to the factum of not challenging the termination of petitioner No.2. In

absence of any specific challenge to the termination of petitioner No.2, nothing can be said and thus, the present writ petition bearing SWP No. 1219/2011 is confined to the extent of termination of petitioner No.1 only and is decided accordingly.

CONCLUSION

SWP No. 1219/2011

96. Thus, for the reasons stated hereinabove coupled with the judgments cited above, the present writ petition bearing SWP No. 1219/2011 is allowed and the impugned notice dated 30th May, 2011 is quashed to the extent of petitioner No.1 only. The respondents are further directed to allow the petitioner No. 1 to perform his duties as Nursing Assistant without any hindrance and the said petitioner is also entitled to all the consequential benefits of seniority and monitory from the date he came to be appointed as such. Since the order of termination has already been stayed by this Court by virtue of order dated 10.06.2011 which continues to be operative as on date and petitioner No.1 is continuing on the strength of the aforesaid order and thus the respondents are directed to allow the petitioner No.1 to continue his services.
97. However, petitioner No. 2 is at liberty to assail the termination order afresh and the period of limitation will not come in the way of petitioner No. 2 to assail the order of termination, afresh, if so advised.

SWP No. 1380/2011

98. For the reasons stated hereinabove, coupled with settled legal position, the present writ petition is allowed and the impugned order of termination dated 13.06.2011 shall stand quashed.
99. The respondents are further directed to allow the petitioner to perform his duties as Nursing Assistant without any hindrance and petitioner is also entitled for all the consequential benefits of seniority and monitory from the date the petitioner came to be appointed as such.
100. Since the impugned communications have already been stayed by this Court on the very first date of hearing i.e., 29.06.2011 and continues to be operative as on date and the petitioner is continuing

