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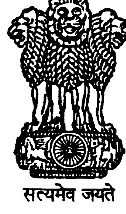

புதுச்சேரி மாநில அரசிதழ்

La Gazette de L' État de Poudouchéry

The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு Publiée par Autorité Published by Authority

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No.	**16**	**Poudouchéry**	**Mardi**	**18**	**Avril**	**2023 (28 Chaitra 1945)**
No.		**Puducherry**	**Tuesday**	**18th**	**April**	**2023**

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 18/AIL/Lab./T/2023, Puducherry, dated 16th February 2023)*

NOTIFICATION

Whereas, an Award in I.D (L) No. 09/2018, dated 20-12-2022 of the Industrial Tribunal-*cum*-Labour Court, Puducherry, in respect of Dispute between the Tmt. G. Rathika, wife of S. Vengadessaperumal, Puducherry, against the management of M/s. Pondicherry Institute of Medical Sciences (PIMS), Ganapathichettikulam, Puducherry over non-employment has been received.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

P. Ragini,
Under Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT AT PUDUCHERRY

Present : Tmt. V. Sofana Devi, M.L.
Presiding Officer.

Tuesday, the 20th day of December, 2022.

I.D. (L) No. 09/2018
C.N.R. No. PYPY06-000110-2018

Rathika,
W/o. Vengadessaperumal,
No. 1, Kuppam South Street,
Ganapathichettikulam,
Puducherry. . . Petitioner

Vs.

The Personal Manager,
M/s. Pndicherry Institute of Medical Sciences (PIMS),
Ganapathichettikulam,
Village No. 20, Kalapet,
Puducherry. . . Respondent

This industrial dispute coming on 06-12-2022 before me for final hearing in the presence of Thiruvalargal G. Krishnan and R. Rajavelu, Counsel for Petitioner, Thiruvalargal L. Sathish, S. Ulaganathan, T. Pravin, S. Velmurugan, V. Veeraragavan and E. Karthick, Counsel for Respondent and after hearing the both sides and perusing the case records, this Court delivered the following:

A W A R D

This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 20/AIL/Lab./T/2018, dated 13-02-2018 of the Labour Department, Puducherry to resolve the following dispute between the Petitioner and the Respondent, *viz.*

(a) Whether the dispute raised by the Petitioner Tmt. G. Rathika, wife of S. Vengadessaperumal, residing at No. 1, Kuppam South Street, Ganapathichettikulam, Puducherry, against the Management of M/s. Pondicherry Institute of Medical Sciences (PIMS), Ganapathichettikulam, Puducherry, over non-employment is justified or not? If justified, what relief the Petitioner is entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. Brief facts of the case of the Petitioner averred in the claim petition:

The Petitioner, a weaker party amongst the two contracting parties, was appointed as Ward Secretary in Department of Pediatrics (OPD) in the Respondent Institution *vide* Appointment Order, dated 21-01-2013 for a period of two years with entitlement for grant of probationary status and subsequently for confirmation as provided under the Appointment Order. The post for which the Petitioner was appointed is of permanent nature and the said post is still in existence and appointment on contract basis instead of appointing on *ad hoc* and regular basis is illegal and is carried on with an attempt to defeat her rights under the law. The Respondent Management as adopted the policy of hire and fire which is deprecated by the Hon'ble Supreme Court in a number of judgments and it amounts to exploiting the service of unemployed youth.

(ii) Clause 3 of the Appointment Order provides for monitoring of Petitioner's performance regularly and there was no adverse remarks in the petitioner's service records and she had discharged her duties without any blemish and became entitled to continuance in service and for confirmation/ regularization, but, the Respondent Management by Order, dated 19-01-2015 discontinued Petitioner's service w.e.f. from 20-01-2015 on the ground of non-satisfactory performance of service. The service

records of the Petitioner reveals that the Respondent Institution was fully satisfied about her work and conduct and in spite of such satisfactory performance the Respondent has chosen to terminate her services on account of active participation of Petitioner's husband in lawful association activities which irked the Respondent. Further, the Respondent has also pressurized the Petitioner to advise her husband to disassociate himself from the association activities unpleasant to the Management which she didn't heed.

(iii) The termination of the Petitioner's services was not *bona fide*, but, was a colourable exercise of the power reserved to the Management under the Appointment order. It is a well established proposition in Industrial law that even if the Management has power under the contract of employment or under the Service Rules to terminate the services of an employee that power can be exercised only for the purpose for which it was conferred and cannot be exercised to victimize the employee and *bona fides* in the exercise of the power is absolutely essential, even if, the power is unfettered by the terms of the contract and the form of the order in such a case is not conclusive and the Tribunal can go behind the order to find the reasons which held to the order, and then consider for itself whether the termination was a colourable exercise of the power.

(iv) The order of termination was admittedly not made on non-renewal of contract but based on the alleged non-satisfactory performance of the Petitioner without hearing her and therefore the said order having been passed in violation of principles of natural justice is unsustainable. The clause 6 of the appointment order states that the Petitioner will *suo moto* not entitled for continuation of employment after the two years contract period and only in case of requirement her case for probation will be considered. The post held by the Petitioner is permanent in nature and in spite of requirement she was not considered for probation.

(v) The Respondent after passing the impugned order, dated 19-01-2015 has shown the Petitioner as an employee on the role in the application submitted to the Pondicherry University for extension of provisional affiliation for the UG & PG courses for the academic year 2015-2016. The clause 10 of the Appointment Order states that the Petitioner will be governed by the Institute's Service Rules relating to attendance, leave, conduct and other conditions for employment by which the terms and conditions in the Appointment Order have been superseded by the Service Rules of the Respondent Institution and therefore, the appointment of the Petitioner on contract in a permanent post and subsequent termination are in gross violation of the Service Rules.

(vi) The Order, dated 19-01-2015 is also bad in law being arbitrary, *mala fide*, unjust, improper, unlawful and against principles of natural justice and settled principles of law and in violation of the terms of Appointment Order and Service Rules of the Respondent Institution. The Petitioner prayed to set aside the order, dated 19-01-2015 and to reinstate the Petitioner in the Respondent Institution with full back wages, continuity of service and other consequential benefits. Hence the petition.

3. The brief averments of the counter filed by the respondents are as follows:

Respondent Institution is a Multi-Speciality Hospital and Trauma Care Centre, providing plethora of Medical facilities and treatments to people in and around Puducherry region. It also runs a reputed Medical College and Nursing College. Respondent has qualified and efficient Doctors, Nurses, Staffs, Administrators, Faculty Members, Latest equipments, Medical Gadgets, Best machineries, well furnished laboratories and all the other required facilities to facilitate best possible treatment to patients and best education to students. Respondent has assumed strategic importance for people of Pondicherry in providing quality medical care in complicated fields of medicine.

(ii) The Petitioner was appointed by Respondent as Ward Secretary *vide* letter of Appointment, dated 21-01-2013 for a period of two years. But, it is absolutely false to claim that.

(i) The Petitioner is a weaker party amongst the two contracting parties.

(ii) The post for which Petitioner was appointed is of permanent nature and the said post is still in existence and appointment on contract basis instead of appointing an *ad hoc* and regular basis is illegal and is carried on with an attempt to defeat Petitioner's rights under the law.

(iii) The Respondent has adopted the policy of hire and fire.

(iv) There were no adverse remarks in Petitioner's service records and she had discharged her duties without any blemish and became entitled to continuance in service and for confirmation/ regularisation.

(v) Service records of Petitioner reveals that Respondent institution was fully satisfied about her work and conduct and in spite of such satisfactory performance, Respondent has chosen to terminate her service on account of active participation of Petitioner's husband in lawful association activities which irked the Respondent.

(vi) Respondent has also pressurized Petitioner to advise her husband to disassociate himself from association activities unpleasant to management, which she didn't heed.

(vii) Petitioner was victimized and her termination was not *bona fide*, but, was a colourable exercise of the power reserved to the Management under the appointment Order.

(viii) The Order of termination was admittedly not made on non-renewal of contract, but, based on the alleged non-satisfactory performance of the Petitioner without hearing her and therefore, the said Order having been passed in violation of principles of natural justice is unsustainable.

(ix) The post held by the Petitioner is permanent in nature and in spite of requirement she was not considered for probation.

(x) Respondent after passing the impugned Order, dated 19-01-2015 showed the Petitioner as an employee on the role in the application submitted to the Pondicherry University for extension of provisional affiliation for the UG & PG courses for the Academic Year 2015-2016.

(xi) The terms and conditions in the Appointment Order have been superseded by the Service Rules of the Respondent Institution and therefore, the appointment of the Petitioner on contract in a permanent post and subsequent termination are in gross violation of the Service Rules.

(xii) The Order, dated 19-01-2015 is also bad in law being arbitrary, *mala fide*, unjust, improper, unlawful and against principles of natural justice and settled principles of law and in violation of the terms of Appointment Order and Service Rules of the Respondent Institution.

(iii) The Petitioner was admittedly engaged as Ward Secretary. The role of an Office Secretary need not be overemphasized as it is a common knowledge that Secretaries must have multi-tasking abilities and must be able to perform various clerical and non-clerical works associated with the Chair with astuteness and deftness. Secretaries are required to be proficient in communication and must have interpersonal skills. He or she must have knowledge of computers and its applications, must have cognitive skills. Thus, Secretary's work is multi-dimensional and more so in a hospital of Respondent's magnitude where the Secretaries are required to be affable and accommodative to patients and their attendants. They act as a bridging gap between the doctors, the administrative departments of the institution, the patients, their attenders and to other outsiders, who come in contact with the Department through such Secretaries. Hence, appointment of Secretaries in an institution is very crucial and such appointment can be done only after the candidate is throughly appraised. Respondent was and is statutorily entitled to engage Secretaries on probation or on fixed term contract basis to assess their skill levels and appraise their performance during the period of contract or probation and based on their performance, take a considered decision regarding continuance of their service. Therefore, though the post of Office Secretary (in this case Ward Secretary) is not necessarily peripheral or temporary in nature, their engagement on contract basis for limited period is legally and morally justified and such appointment cannot be challenged by claiming that such jobs are perennial in nature.

(iv) The Industrial Disputes Act too permits Management to employ workers on fixed term basis and there is absolutely no mandate that only jobs of peripheral nature or temporary nature are reserved for fixed term contracts. Hence, the thrust of the Petitioner that her engagement as fixed term employee for a period of two years because the job is perennial is illegal is wholly unfounded and baseless.

(v) The Petitioner's offer letter makes abundantly clear in no uncertain terms that she was employed only for a fixed term for 2 years. Clause No. 6 of the said Appointment Order reads "You (Petitioner) will *suo moto* not be entitled for continuation of employment after the two years contract period and only in case of requirement your case for probation will be considered".

7. Clause No. 3 of Petitioner's appointment order also mentions that "Your (Petitioner) conduct and performance are required to be excellent ordinarily. We (Respondent) suggest that you co-operate with our monitoring of your performance regularly and after a period of six months you will be evaluated and in case of any lapses in your performance the institutional rules will apply for your assessment and discontinuation of our service".

(vi) Thus, the appointment order of Petitioner made it abundantly clear that she has no right to seek continuation of employment on completion of 2 years of contract, irrespective of her performance or appraisal and the discretion of continuing with contract beyond 2 years was solely at the discretion of Respondent. Petitioner had every option to refuse to take up employment for fixed term of 2 years. But, she accepted the offer of employment with full knowledge, consent and with her eyes, ears and mind fully open. Having accepted the terms and conditions of her appointment and having worked for 2 years as per terms of said appointment, she has no legal or moral right to challenge the said contract on any ground of unfairness or illegality.

(vii) The contention that Petitioner was a weaker party amongst the two contracting parties is incredible to say the least. Petitioner was well educated as she claimed to have completed her Bachelor's Degree in Computer Science and MBA in Human Resource Management. She had also claimed to have completed few Diploma Courses and had past experience of working in another company. It, therefore, does not suit her to play the card of being weaker party amongst the two contracting parties. She was under compulsion or pressure to accept such fixed term employment.

(viii) The Petitioner's performance was assessed during the period of contract and she was periodically advised by the Respondent to improve her performance. But, her performance was found to be below par by the immediate superiors of Petitioner, giving her only average score of 51.21% on 1st appraisal and 47.57%. In fact, the superior of Petitioner has clearly observed that Petitioner's Secretarial skills were found to be wanting, though she was found to be co-operative. Thus, though there were no allegations of misconduct against Petitioner, her performance as Secretary was not appreciable. Hence, the Respondent was well within its right to decide against renewing the contract of employment on expiry of her fixed term contract, dated 20-01-2015.

(ix) The Negative appraisal of Petitioner cannot be termed as allegations of misconduct or stigmatic. Once no allegations of misconduct is levelled against the Petitioner, there is no scope for her to seek a hearing before the decision on non-renewal of her Fixed Term Contract is taken. Thus, the contention that Respondent was fully satisfied about the work of Petitioner in spite of such satisfactory performance she was terminated on account of her husband's Union activities is untrue.

(x) Petitioner, by claiming that she is victimized for her husband's Trade Union activities is merely attempting to twist the issue and give another dimension. It is not out of context to mention that Petitioner has not disclosed the name of the Union to which her husband is member, his designation in the said Union. She has not been able to pinpoint any specific instances when Respondent and Petitioner's husband were at logger heads. There is no nexus between non-renewal of employment contract of the Petitioner and Union activities of her husband. In fact, Petitioner's husband M. Vengadesaperoumal joined Respondent's Institution on 02-04-2022 and continues to be employed as on date with all perks and benefits. There are as many as 10 Unions in Respondent's Institution and each Union has at least a dozen officer bearers who are active trade Union activists. It is impish for Petitioner to claim that she has been handpicked by Respondent to victimize her for her husband's trade Union activities, without there bing any further substantiation. It is gain said that allegation of manner. Petitioner is required to plead and prove specific instance that makes her believe that she was victimized and place strong and unimpeachable evidence to prove the same. Thus, the claim of victimization and colourable exercise of power by Respondent is baseless.

(xi) The claim of Petitioner that after issuing a letter of non-renewal of contract, dated 19-01-2015, Respondent showed petitioner as an on-roll employee in the application submitted by it to Pondicherry University for extension of provisional affiliation for Under Graduate and Postg Praduate courses for Academic Year 2015 and 2016. In fact Petitioner lodged multiple complaints to various authorities such as, The Vice Chancellor of Pondicherry University, The Inspector General of Police, The Senior Superintendent of Police (Law and Order), Superintendent of Police (North), Superintendent of Police (CID) and Kalapet University, calling for multiple action against Respondent. The Pondicherry University had also sought for an explanation from Respondent by forwarding complaint of Petitioner, dated 23-10-2015. Respondent gave a befitting reply to Pondicherry University on 09-11-2015 explaining in clear terms that it submitted application to Pondicherry University on 06-01-2015 and the contract of employment with Petitioner expired on 20-01-2015. Therefore, as on the date of application submitted to the University on 06-01-2015, Petitioner was very much in employment with Respondent and hence, there was no false information given to the University. The University was fully satisfied with the response of Respondent and closed the complaint of the Petitioner.

(xii) Respondent reiterates that it was legally and morally right in offering fixed term contract of employment to Petitioner which was accepted by her without any demur and her services were discontinued and not terminated on completion of the fixed term contract. It was neither stigmatic termination nor retrenchment as is being projected by the Petitioner.

(xiii) There is absolutely no industrial dispute worth adjudication between Petitioner and Respondent as there was only cessation of employer-employee relationship between the Petitioner and Respondent as on 21-01-2015 when contract of employment, dated 21-01-2013 with Petitioner expired by efflux of time. Hence prayed for dismissal of the claim petition.

4. Point for determination:

Whether the Petitioner is entitled for an order of reinstatement and other attendant charges, perks and allowances as claimed in the claim petition?

5. On Point:

Petitioner herself examined as PW1 and Ex.Pl to P10 were marked. Ex.Rl is marked during cross examination of PW1. On the Respondent side Mr. Madhusudhanan, Senior Manager (Personnel & Administration) of the Respondent Institution is examined as RW1. Ex.R2 to R4 were marked.

6. On the point:

Industrial Dispute raised by the Petitioner herein against the Respondent Management challenging an order, dated 19-01-2015 (Ex.P3) whereby, her services have been terminated by discontinuance of her Contract (Ex.P1) on the ground of unsatisfactory performance upto the level required during probation period from the post of Secretary in the Respondent Hospital. Thus, the Reference has been made by the Government of Puducherry over her non-employment.

7. According to the Petitioner, she was appointed as Ward Secretary in Department of Pediatrics (OPD) in the Respondent Institution *vide* Appointment Order, dated 21-01-2013 for a period of two years with probationary status and subsequently with the entitlement for confirmation as provided under the Appointment Order (Ex.Pl). The said post is of permanent nature and still in-existence and appointment of such posts on contract basis instead of appointed on *ad hoc* and regular basis is not legal. There was no adverse remarks in the Petitioner's service records. But, the Respondent Management discontinued Petitioner's service by an Order, dated 19-01-2015 (Ex.P3) w.e.f. 20-01-2015 on the ground of non-satisfactory performance of her service.

8. Further, it is contended that though as per clause 6 of the Appointment Order (Ex.Pl), the Petitioner is not entitled for continuation of employment after the two years contract period *suo moto* but, in case of requirement her service for probation will be consider. The post held by the Petitioner is permanent in nature and in spite of requirement she was not considered for probation.

9. It is also added on the Petitioner side after passing the Termination Order (Ex.P3), dated 19-01-2015, this Petitioner was shown by the Respondent Institution as an employee on the roll in the application submitted to the Pondicherry University for extension of Provisional affiliation for the UG and PG Courses for the Academic Year 2015-2016. Further, as per clause 10 of the Appointment Order Ex.Pl, the Petitioner will be governed by the Institute's service rules relating to attendance, leave, conduct and other conditions of employment by which the terms and conditions in the Appointment Order have been superseded by the service rules of the Respondent Institution. Therefore, the Appointment of the Petitioner on contract in a Permanent post and subsequent termination are in gross violation of service rules.

10. The serious and strong contentions raised by the Petitioner are that the nature of the job was perennial, the Petitioner's appointment was against a permanent post, fixed term employment was a colourable exercise of power to escape the beneficial labour legislation, the contractual appointment for short term was employed by the Management with malafied intentions, an unfair labour practice in employing the Petitioner on a fixed term contract, Management by adopting the methodology of fixed term employment as a conductor mechanism to frustrate the Petitioner's rights so on and so forth. Also claimed that there was necessity of complying with section 25-F of ID Act since the Petitioner has completed 240 days of employment.

11. On the other hand, it is urged on the side of the Respondent Institution that Appointment of Secretaries in Institution like hospitals is very crucial and such appointment can be done only after the candidate is throughly appraised. Respondent was and is statutorily entitled to engage Secretaries on probation or on fixed term contract basis to assess their skill levels and appraise their performance during the contract period or probation period and based on their performance, take a considered decision regarding convenience of their service. Therefore, though the post of Office Secretary is not necessarily peripheral or temporary in nature, their engagement on contract basis for limited period is legally justified and such appointment cannot be challenged by claiming the such jobs are perennial in nature.

12. It is also strongly objected on the side of the Respondent that when the statute under section 2(oo) (bb) of ID Act specifically permits such contracts without laying any conditions, Petitioner cannot rewrite the statute and introduce non-existent terms and conditions in such statute governing contract for specific term employment. No necessity for compliance of section 25 F of ID Act as the non-extension of the contract of employment after expiry of the tenure of contract does not amount to retrenchment as per section 2(oo) (bb) of ID Act. The employment on contract for fixed period is very much legal and the Petitioner admitted specifically in unconditional terms that she was employed only for a fixed term of two years and her contract was not renewed after the expiry of the period of contract. In this Connection, following case-laws referred and relied upon on Respondent side;

1. CDJ 2002 S 402

Para 12: Therefore, that if the case of termination of the workman comes within any of the exceptions enumerated in the section then the said termination will not to be a case of 'retrenchment' within the meaning section 2(oo).

Para 13: If such contract of employment contained a stipulation for termination of service and the services of the workman are terminated in accordance with that stipulation, such termination, according to clause (bb) would also not amount to 'retrenchment'.

Para l4: The position was reiterated in Harmohinder Singh *v.* Kharga Canteen, Ambala Cantt, (2001) 5 SCC 540.

Para 15: In such a case the question of complying with the conditions precedent to retrenchment of workman provided in section 25(f) of the Act will not arise.

Since, there exists a contract of service with the terms and conditions as noted earlier, the position is inescapable that the case of disengagement/termination of the workman concerned did not amount to retrenchment.

2. CDJ 2016 HC 717

Para 11. The question as to whether Chapter VA of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of section 2 (oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

Para 28. It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status.

Para 19. It could be seen from the aforesaid observations that once the services of the employee engaged on a contractual basis for a fixed period come to an end on account of completion of the period of contract, the same would come within the purview of section 2 (oo)(bb) of the ID act. It has been further held that once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant was actuated by any malice. It has been further held that merely on completion of 240 days of continuous service in a year, the employee concerned does not become entitled for regularisation of his services and/or permanent status. Their Lordships have held that under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in section 25F of the ID Act, before he is retrenched from services and not for any other purpose. It has been further held that in the extent of violation of the said provision takes place, termination of services of the employee may be found to be illegal, but, only on that account, his services cannot be directed to be regularised.

Para 21. It could thus be seen that while construing the provisions of section 2(oo) (bb) read with Chapter V-A of the ID Act, Their Lordships have consistently held that if the contract of employment is for a fixed period and the appointment is terminable at the end of the period of contract, then in view of provisions of section 2(oo) (bb) of the ID Act are applicable, the provisions of Chapter V-A of the ID Act would not be applicable. It has been further held that what is important is substance of the contract and not the form.

13. I heard the learned Counsel for the parties at a considerable length and given my thoughtful consideration to the arguments advanced by them.

14. The said Ex.Pl offer of appointment letter, dated 21-01-2013 clearly envisaged the probation period of two years on contract and clause 6 of Ex.P1 further provides for the condition that petitioner is *suo moto* not be entitled for continuation of employment after the two year contract period and only in case of requirement the case for probation will be considered. It is further in clause 5 mentioned that the services of the Petitioner were liable to be terminated during the probationary period by giving one month's notice or one month's pay *in lieu* of notice by either side.

15. After traversing the entire gamut of facts and hearing the learned Counsels for the parties, in my view, at the heart of the dispute is the applicability of above stated clause 6 of the offer letter of appointment, dated 21-01-2013. Reading the contents of the aforesaid clauses in Ex.P1 make it palpably clear that it prescribed a probation period of two years and confirmation will be subject to Petitioner's proficiency in the mentioned fields and not *suo moto* entitled for continuance of employment beyond two years and only in case of requirement the case for probation will be considered.

16. The prime contention of the Petitioner that the clause 6 itself was invalid and not applicable. The contention is premised on the ground that the post for which the Petitioner was appointed in of permanent nature and the said post is still in existence and an appointment on contract basis instead of appointing on *ad hoc* and regular basis is illegal. The service recruitment rules and service rules of the Respondent Institution not prescribed probation and thus it is invalid.

17. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If, his or her services are not satisfactory which means that he is not suitable for the job than the employer has a right to terminate the services as a reason thereof. Therefore, normally services of an employee on probation would be terminated, when he/she is found not to be suitable for the job for which he was engaged, without assigning any reason. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

18. The Hon'ble Supreme Court of India in A.P. Public Service Commission *vs.* B. Sarat Chandra, (1990) 2 SCC 669 and K. Manjusree *vs.* State of A.P., (2008) 3 SCC 512 laid the proposition that rules of the game cannot be changed in the midst of the game.

19. The Respondent Institution has offered appointment to the Petitioner enumerating the service conditions in terms of Pay Scale, tenure of service, place of posting, *etc.*, including clauses 3, 5, 6 and 8 specifying the condition with respect to probationary period. Petitioner was required to acknowledge the receipt of the letter and acceptance of all the terms mentioned in the letter. Thus, it cannot be said that the terms specified in the letter were imposed on the Petitioner as a weaker party amongst the two contracting parties and being an offer, it was open to the Petitioner to accept or not to accept appointment on such terms. Petitioner admittedly accepted the offer, on the terms and conditions specified in the offer letter, without any demur, protest or reservation. In fact as pointed out by Respondent, in Ex.P1. at page 2 the last two lines run thus, "please signify your acceptance of the above terms and conditions by signing on duplicate copy of this letter and returning it to the Personal Manager".

20. The Petitioner *suo moto* not entitled for continuation of employment after two years period and only in case of requirement petitioner case of probation will be considered was in the terms of clause 6 of the offer of appointment letter Ex.P1, dated 21-03-2013, which was accepted by the Petitioner without any protest. The letter was never challenged in any Court of law prior to the order of termination impugned herein and only because his services have been terminated, Petitioner is laying a challenge to its validity, as an after-thought.

21. In this view of the matter, it is not open to the Petitioner to even contend that Clauses of the offer of appointment letter would not govern the terms and conditions of his service or the appointment of the Petitioner on contract in a permanent post and subsequent termination are in gross violation of the Service Rules.

22. Even otherwise, this contention cannot be sustained. The Recruitment Rules are admittedly silent on the probation period. As far as the offer of appointment Ex.P1 is concerned, while it did mention that period of probation would be two years but, it was conspicuously silent on the issue of extension of the period and did not provide that two years would be the maximum period of probation and that the probationer would stand automatically confirmed on expiry of the probation period of two years. Thus, the stipulation in the appointment letter is neither contrary to nor in conflict with the Recruitment Rules and at the cost of repetition, once the appointment letter was accepted by the Petitioner without a demur and not challenged until her services were terminated, this Court is unable to uphold this contention of the Petitioner.

23. Next point urges on the side of the Petitioner is that there was necessity of complying with section 25-F of ID Act since the Petitioner has completed 240 days of employment. For which it is necessary to reproduce the relevant provisions hereunder for better understanding;

> "Section 2 (oo) of Industrial Disputes Act - 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but, does not include.
>
> (bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein".

24. As per section 2(oo)(bb) of the Industrial Disputes Act provides for an exception that the termination of the service of the workman will not be a retrenchment as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, the said section squarely applicable to this situation. In this case in hand the Termination of the service of the workman as a result of the Non-renewal of the contract of employment between the Respondent herein and the Petitioner on its expiry would come within the purview of Section 2 (oo)(bb) of the ID Act. The learned Counsel for the Respondent also has referred during his arguments the following case law reported in CDJ 1992 SC 118.

> Constitution of India, Article 16 - Regularisation of services - *Ad hoc* appointment on a consolidated compensation on contract basis for a limited period- By expiry of contractual period, the right to remain in post comes to an end- Services of respondent being continued from time to time on '*ad hoc*' basis for more than a year, does not entitle her to regularisation.

25. Based on Ex.Pl Contract on Probation, the petitioner was engaged in the Respondent Hospital in the post of Secretary. On expiry of the contract on probation Ex.Pl, the Petitioner was relieved from her services from the Respondent Institution. She clearly admitted the same during her cross examination as PW1 before this Court as, PW1 deposed during cross-examination that "Ex.P1-ன்படி எனது பதவி காலம் 2 ஆண்டுகள், ஒப்பந்தத்தின் அடிப்படையில்தான் கொடுக்கப்பட்டது என்றால் ஆமாம்......... Clause 6-ல் 2 வருடங்கள் கழித்து பணி தொடர்ச்சியே கோர முடியாது என்று கொடுக்கப்படுள்ளது. ஆனால் என்னை வேலைக்கு எடுக்கும்போது, 2 வருடங்கள் கழித்து 4 நாட்கள் break அளித்து, மீண்டும் பணியில் அமர்த்திக்கொள்கிறோம் என்று வாய்மொழியாக சென்னார் என்று சாட்சி பதிலளிக்கிறார். எனது Claim Statement மற்றும் பிரமாண பத்திரிக்கையில் மேற்படி அம்சத்தை சொல்லவில்லை. முதன்முதலாக தற்போதுதான் சொல்கிறேன் என்றால் ஆமாம்........ நான் பணியில் சேர்ந்து 2 ஆண்டுகள் பூர்த்தியானவுடன்தான் எனக்கு பணி விடுப்பு அளிக்கப்பட்டது என்றால் ஆமாம்........ Ex.P1-பணி நியமன உத்தரவை ஏற்றுக்கொண்டு, அதன் அடிப்படையில்தான் நான் 2 ஆண்டுகள் பணி செய்தேன் என்றால் ஆமாம்".

26. In Purshotam Lal Dhingra *vs.* Union of India AIR 1958 SC 36, it was held by the Hon'ble Apex Court as follows:

> "The period of probation may in some cases be for a fixed period, *e.g.,* for six months or for one year or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. It is, therefore, quite clear that appointment to a permanent post in Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time".

27. Thus, it is amply clear that during the period of probation, an employee may be removed without holding any disciplinary proceeding. The period of probation is, truly speaking, a period of one's trial. During this period

the employee does not acquire any substantive right to the post and consequently cannot complain anymore than an employed on probation.

28. The next issue that arises for determination before this Court is whether the services of an employee on probation can be terminated without holding any disciplinary proceeding and whether the termination of services of an employee on probation on the ground of non-satisfaction would *ipso facto* amount to termination by way of punishment or whether the same can be held to be termination 'simpliciter', with no *stigma* attached to it.

29. It is the case of the Petitioner that though the Respondent Institution was fully satisfied about her work and conduct, it has chosen to terminate her services on account of active participation of Petitioner's husband in lawful association activities.

30. Further it is contended on the side of the Petitioner that the Order of Termination was admittedly not made on non-renewal of contract but based on the alleged non-satisfactory performance of the Petitioner without hearing her and therefore, the said order passed in violation of Principles of Natural Justice and thus, not sustainable.

31. Per contra, the learned counsel for the respondent, contended that services of the petitioner were terminated on expiry of the period of her probation on account of her unsatisfactory performance and such a termination cannot be held to be stigmatic. By way of reply, the learned counsel for the Respondent argued that as per clause 3 of the Appointment Order (Ex.P1), Petitioner's performance was assessed during the period of contract and she was periodically advised by the Respondent to include her performance. But, her performance was found to be below par by the immediate superiors of the Petitioner, giving her only average score of 51.21% of first appraisal and 47.57%. The Superior of the Petitioner has clearly observed Petitioner's Secretarial skills were found to be wanting, though she was found to be Co-operative. There was no allegations of misconduct against the Petitioner. But, her performance of Secretary was not appreciable hence, the Respondent has every right to decide against renewing the contract on expiry of her fixed term contract, dated 20-01-2015.

32. Further, it is argued that negative appraisal of Petitioner cannot be termed as allegations of misconduct or stigmatic. Therefore, there is no scope for her to seek hearing before the decision on non-renewal of her fixed term contract is taken.

33. Further, it is contended that the claim of victimization and colourable excise of power by the Respondent Institution against the Petitioner is baseless. Petitioner's husband joined Respondent's Institution on 02-04-2002 and continues to be employed as on date with all perks and benefits. There are 10 Unions in the Respondent's Institution and allegation that Respondent Institution chosen her to victimize for her husband's Trade Union activities, is not acceptable without any further substantial pleadings and proofs.

34. Further, he added with regard to the application submitted by the Respondent Institution before the Pondicherry University that, on 06-01-2015, the Petitioner was very much in employment with Respondent. She was terminated only on expiry of the contract on 20-01-2015. Hence there was no false information given to the University. Having accepted the fixed term contract of employment when it was offered by the Respondent Institution, the Petitioner has no right to challenge her termination subsequently. It was neither stigmatic termination nor retrenchment.

35. The learned Counsel for Respondent at the outset, argues that the present petition cannot be entertained as it is a settled law that an assessment of an employee based on his performance during probation cannot be reviewed in judicial proceedings and only procedural violations or decision-making process is subject to judicial scrutiny. An independent Evaluation of the respondent Management has assessed the performance of the Petitioner during probation on various parameters and found her unsuitable for continuation of contract nor for confirmation and this assessment cannot be questioned and/or reassessed in Industrial Dispute, which is what the Petitioner is calling upon this Court to do.

36. On this point, Respondent side has relied upon the some case laws mentioned hereunder in support of his contentions:

(i) CDJ 2020 SC 381

Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority, if found unsuitable. Its only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are 'removed' in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of 'stigmatic' removal only that a reasonable opportunity of hearing is *sine qua non*.

In Parshotam Lal Dhingra *vs.* Union of India (AIR 1958 SC 36, a Constitution Bench opined that in short, if, the termination of services is founded on the right

flowing from contract or the service rules, then, *prima facie*, the termination is not a punishment and carried with it no evil consequences and so Article 311 is not attracted.

(ii) CDJ 2010 SC 058

PARA 16. It is no longer res Integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In this connection, we make a reference to the decision of the Supreme Court in Abhijit Gupta *vs.* S.N.B. National Centre, Basic Sciences (supra), wherein, also a similar letter was issued to the concerned employee intimating him that his performance was unsatisfactory and therefore, he is not suitable for confirmation.

PARA 17. In Mathew P. Thomas *vs.* Kerala State Civil Supply Corporation Limited (supra) also the concerned employee was kept on probation for a period of two years. During the course of his employment, he was also informed that despite being told to improve his performance time and again there is no such improvement. His shortfalls were brought to his notice and consequently by order, dated 16-01-1997 his services were terminated, wherein, also a reference was made to his unsatisfactory service. In the said decision, the Supreme Court has held that on the basis of long line of decisions it appears that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case.

PARA 18. In Pavanendra Narayan Verma *vs.* Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520; this Court had the occasion to determine as to whether the impugned order therein was a letter of termination of services simpliciter or stigmatic termination. After considering various earlier decisions of this Court in paragraph 21 of the aforesaid decision it was stated by this Court thus:

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 which (c) culminate in a finding a guilty. 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'.

(iii) CDJ 1998 SC 178

It, however, held that it was necessary for the appellant to produce material to show that respondent's performance was not satisfactory and as no such material was produced the order of termination was bad. We find, as disclosed by the Award of the Labour Court, that the appellant had examined two witnesses, Satish Dudeja and Om Prakash to prove that his work was not satisfactory. It was, therefore, no correct to say that no evidence as led by the appellant to prove that the work of the respondent was not satisfactory. Both the witnesses had clearly stated that he was found negligent in his work and because of his negligence he had met with an accident in the factory premises. It was not the case of the respondent that the action of the employer was *mala fide*. The Labour Court had also not held that the satisfactory of the Management was vitiated by *mala fides*. It had struck down the order of termination on the ground that it was stigmatic and, therefore, it could not have been passed without holding a domestic inquiry. The High Court rightly did not accept that finding. What the High Court failed to appreciate was that it was not open to sit in appeal over the assessment made by the employer of the performance of the employee. Once it was found that the assessment made by the employer. The High Court was also wrong in holding that in order to support its satisfaction it was necessary for the appellant to produce some reports or communication or other evidence to show that performance of the respondent was below the expected norms. We find that the whole approach of the High Court was wrong and, therefore, the order passed by it will have to set aside.

37. I may reproduce the contents of the appointment letter, dated 20-01-2013 for better appreciation of the controversy, as under:

"With reference to your application and subsequent discussion we had with you, we are pleased to offer you the post of Secretary in Pondicherry Institute of Medical Sciences for two years on contract on the following terms and conditions".

38. On the expiry of the contract of the said probation period of two years, her services were terminated by an order, dated 19-01-2015 passed by the respondents and the relevant portion of the said letter, dated 19-01-2015 is reproduced hereby in verbatim: "On assessment of her performance during the period of contract, it has been found that her performance rating has not been satisfactory up to the level required and hence, it has been decided by the Management to discontinue her

contract of service on completion with effort from 20-01-2015 as per the terms and conditions of her contract".

39. In the said termination of Probationary order, the respondents did not attribute any specific misconduct, negligence, inefficiency or dereliction of duty, on the part of the petitioner, before taking the said decision of terminating his probation period. The only reason given by the respondent in the termination order is that the services of the petitioner have not been found to be satisfactory by the Respondent Management.

40. As per the learned Counsel for the petitioner, the termination of the petitioner was not termination 'simpliciter' but, was 'stigmatic' in nature. Order Ex.P3 discontinuance of the contract issued without hearing her and therefore, the said order passed in violation of principles of natural justice and thus, not sustainable.

41. Before going into this above point for discussion, it is important for us to understand when and how, the concept of probation was devised. In the matter of Ajit Singh *vs.* State of Punjab (1983) 2 SCC 21, the Hon'ble Supreme Court while explaining this position held that "With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If, a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any, against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof this developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because, the charge of incompetence or inefficiency is easy to make but, difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit is put on test for a period before he is absorbed in service or acquires a right to the post. Period of probation gave a sort of *locus poenitentiae* to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if, he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. This judgment has also been reiterated in the matter of State Bank of India and Ors. *vs.* Palak Modi and Anr. *etc.,* (2013) 3 SCC 607".

42. Thus, it may well be seen that the concept of probation has been devised only to give an opportunity to the employer to observe the work and efficiency of the employee for the job. In light of this, let us examine the first issue *i.e.,* whether an employee on probation can be terminated without holding any disciplinary proceeding. The position of law in this context has been eloquently explained in the matter of Samsher Singh *vs.* State of Punjab (1975) 1 SCR 814, wherein, the Hon'ble Supreme Court held that, "before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect, the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude, the probationer is unsuitable for the job and hence, must be discharged. No punishment is involved, in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But, in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation". Thus, it is amply clear that during the period of probation, an employee may be removed without holding any disciplinary proceeding.

43. Coming to the second issue, whether the termination of services of an employee on probation, on the ground of non-satisfaction would *ipso facto* amount to termination by way of punishment.

> In Krishnadevaraya Education Trust *vs.* L.A. Balakrishna (2001) 9 SCC 319, the Hon'ble Supreme Court observed that, "There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If, his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If, the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If, the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a

contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated. If, such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge, the employer states that the services were not satisfactory would not *ipso facto* mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if, the services are found not to be satisfactory, the employer has in terms of the letter of appointment, the right to terminate the services. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if, we take into consideration, the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not up to the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment".

44. Similarly, in the decision of the Hon'ble Supreme Court in the case of Abhijit Gupta *v.* S.N.B. National Centre, Basic Sciences, (2006) 4 SCC 469, the Hon'ble Supreme Court held as follows:

> The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master and it is not obligatory on the master to prescribe a period of probation, it is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer. Further, the Hon'ble Supreme Court held that the order of termination due to unsatisfactory performance is a termination 'simpliciter' and not 'punitive' in nature.

45. Also, in Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences (2002) 1 SCC 520, the Hon'ble Apex Court held that, " in order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job".

46. Again in Progressive Education Society *vs.* Rajendra (2008) 3 SCC 310, the Hon'ble Apex Court upheld that, "The law with regard to termination of the services of a probationer is well established and it has been repeatedly held that such a power lies with the appointing authority which is at liberty to terminate the services of a probationer if, it finds the performance of the probationer to be unsatisfactory during the period of probation. The assessment has to be made by the appointing authority itself and the satisfaction is that of the appointing authority as well. Unless a stigma is attached to the termination or the probationer is called upon to show cause for any shortcoming which may subsequently be the cause for termination of the probationer's service, the management or the appointing authority is not required to give any explanation or reason for terminating the services except informing him that his services have been found to be unsatisfactory".

47. Thus, in the light of the aforesaid legal position, it can be concluded that this issue is no more *res integra* that an order of termination due to unsatisfactory performance of the probationer, cannot be *ipso facto* termed as 'stigmatic' or 'punitive' in nature. During the probation period, an employee has to be extra careful and diligent while discharging his assigned duties, so that he can successfully complete his/her probation period to get confirmation against the post he/she has been selected for and he/she does not give any chance or reason to his/her superiors to terminate his services. Any kind of insufficiency, negligence, indiscipline or misconduct can prove fatal to an employee on probation. Before the probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If, during the period of probation, the performance of a probationer is not found satisfactory or suitable for a particular job, as per the assessment of the employer, he may be terminated from the service and such termination would be termed as termination 'simpliciter' and cannot be held to be 'punitive' in nature.

48. The Hon'ble Supreme Court of India in Oswal Pressure Die Casting Industry, Faridabad vs. Presiding Officer and Anr. (1998) 3 SCC 225, while allowing an appeal against the judgement of the High Court, against an Award of the Labour Court, held that, "it was not open to the High Court to sit in appeal over the assessment made by employer of the performance of the employee. It was further held that once it was found that the assessment made by the employer was supported by some material and was not *mala fide*, it was not proper for the High Court to interfere and substitute its satisfaction with the satisfaction of the employer".

49. Adverting back to the facts of present case. In the case in hand, two evaluation points have been mentioned in the counter statement at paragraph 10, which reflect that the Petitioner was neither diligent nor was performing her duties satisfactorily. The same has been deposed by the Management Witness as RW1 before this Court. On careful perusal of the cross-examination made by the petitioner Counsel on RW1, I could not able to find a single question or even a suggestion made on behalf of the petitioner that there were no such evaluation of performance or the evaluation points mentioned in the counter as 51.21% on 1st appraisal and 47.57% as not correct.

50. Moreover, PW1 has admitted in her cross-examination about the evaluation process on the performance made by the Respondent Institution that, "PW1 deposed during cross-examination that "பொதுவாகவே எங்கள் நிறுவனத்தில் வேலை செய்பவர்களுக்கு, எங்களுடைய Performance-ஐ மதிப்பீடு செய்து Internal appraisal report தயார் செய்வார்கள் என்றால் ஆமாம். நான் report செய்யும் HOD-யும் இது சம்மந்தமான தன் கருத்தை பதிவு செய்து, அதன் அடிப்படையிலும் Appraisal report தயார் செய்யப்பட்டது என்றால் ஆமாம். இவ்வாறாக 6 மாதத்திற்கு ஒரு முறை Appraisal செய்வார்கள் என்றால் எனக்கு தெரியாது. Internal appraisal report என்பது confidential-லன report என்றால் ஆமாம்".

51. Rw1 deposed during cross-examination that "ஒவ்வொரு ஊழியரையும் நியமிக்கும்போதே குறிப்பிட்ட காலம் அவர்களுக்கு பணிக்காலமாக காண்பிக்கப்படும், அந்த பணிக்காலம் இறுதியில் அந்த ஊழியரின் Performance Evaluate செய்யப்பட்டு, அது திருப்திகரமாக இல்லாதபட்சத்தில், அவரை பணியிலிருந்து விடுவித்துவிடுவோம். பணி திருப்திகரமாக இருக்கும் பட்சத்தில், அவர்களுக்கு பணி மேற்கொண்டு தொடர அனுமதிக்கப்பட்டு, அதற்கேற்ற பணி நியமன உத்தரவு வழங்கப்படும் என்று சாட்சி பதிலளிக்கிறார். பணி காலம் இறுதியில்தான், அவரின் Performance மதிப்பீடு செய்யப்படும். பணி காலம் முழுவதும், Performance-ஐ பொறுத்து Monitor செய்யப்படும். Ex.P1-னில் ஒவ்வொரு 6 மாதத்திற்கு, Performance மதிப்பீடு செய்யப்படும் என்று உள்ளது என்றால் ஆமாம். அதுதான் Monitor செய்யப்படும் என்று சொன்னேன். பணி திருப்தி அளிக்காதபட்சத்தில், மேற்படி சம்மந்தப்பட்ட ஊழியருக்கு வாய்மொழியாக பணி திருப்தி அளிக்கவில்லை என்றும் improve செய்ய வேண்டும் என்றும் அறிவுறுத்தப்படும்".

52. It amply demonstrates that the Respondent Institution has a system of performance monitoring periodically and on such monitoring process, the Petitioner's secretarial skill were found to be unsatisfactory. It is also mentioned in the counter that Petitioner's secretarial skills were found to be wanting, though she was found to be co-operative. The same fact has also been elucidated during cross-examinations of PW1 and RW1, the Management side witness, which are as follows;

PW1 deposed during cross-examination that "Ex.P2-என்னுடைய பணி விடுப்பு உத்தரவு. Ex.P2-வில் என் மீது எந்தவித குறைகளோ, அவதூரோ குறிப்பிட்டு, பணியிலிந்து விடுவிக்கவில்லை என்றால் ஆமாம். Ex.P2-வில் என்னுடைய பணி நிர்வாகத்திற்கு திருப்திகரமாக இல்லை என்று குறிப்பிடப்பட்டுள்ளது என்றால் ஆமாம். மேற்படி Ex.P2-வில் என்னுடைய பணி நிர்வாகத்திற்கு திருப்திகரமாக இல்லை என்று சொல்லியுள்ளது, என் மீது குறையாகவோ, என் மீது குற்றச்சாட்டாகவோ அல்லது அவதூராகவோ எடுத்துக்கொள்ள முடியாது என்று சொன்னால் ஆமாம்".

RW1 deposed during the cross-examination that "Probation and Confirmation Clause காணப்பட்டாலும், அவருடைய நிர்ணயம் செய்யப்பட்ட பணிக்கால முடிவில் மதிப்பீடு செய்யும்போது அவருடைய Performance திருப்திகரமாக இல்லாததால், அவரை மீண்டும் பணியை தொடர அனுமதிக்க முடியவில்லை என்று சாட்சி பதிலளிக்கிறார்".

53. Hence, there was no allegations of misconduct against the Petitioner, it is only her performance as Secretary was not appreciable and had failed to improve despite many periodical advise. The reasons disclosed in the speaking order Ex.P3 were sufficient for the respondent to have taken a decision to discontinue the services of the Petitioner. If, the contentions raised by the learned Counsel for the Petitioner are accepted, then in every case of unsatisfactory performance or lack of interest in the discharge of duties by a probationer, setting up of an enquiry would be required, which will defeat the very purpose and the concept of probation as the period of probation furnishes a valuable opportunity to the employer to closely observe and monitor the work and efficiency of the probationer for the job.

54. In the light of the legal position and factual matrix discussed above, I do not find any merit in the contentions raised by the learned Counsel for the petitioner that without hearing the petitioner, the order of termination Ex.P3 passed and there was a violation of principles of natural justice. The services of an employee on probation can be terminated without holding any disciplinary proceeding when there is no allegation of misconduct mentioned in the said termination order. When there is no formal enquiry prior to the termination, when there is no allegations attributed against the petitioner involving moral turpitude or misconduct and

which culminate in a finding a guilty. In the present case admittedly, the termination of services of an employee on probation was on the ground of non satisfaction, which is not amount to termination by way of punishment. The same can be held to be termination 'simpliciter', with no stigma attached to it. Therefore, the point for determination is decided accordingly to the effect that Petitioner is not entitled for any relief as claimed in the claim petition.

55. In the result, the reference is decided as unjustified and the industrial dispute is dismissed. No costs.

Dictated to the Stenographer, directly typed by him, corrected and pronounced by me in open Court on this the 20th day of December, 2022.

V. Sofana Devi,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.

List of petitioner's witness:

PW1 — 20-12-2021 Tmt. Rathika

List of petitioner's exhibits:

Ex.Pl	—	21-01-2013	Photocopy of the Appointment Order issued to the Petitioner.
Ex.P2	—	21-01-2013	Photocopy of the Order issued by the Respondent Institution.
Ex.P3	—	19-01-2015	Photocopy of the Order issued by the Respondent Institution to discontinue Petitioner's service.
Ex.P4	—	15-07-2015	Photocopy of the information provided to the petitioner by the Affiliation Wing, Pondicherry University under the RTI Act.
Ex.P5	—	—	Photocopy of the Dispatch Register issued by the Affiliation Wing, Pondicherry University under the RTI Act.
Ex.P6	—	—	Photocopy of the Minutes of the Inspection Committee (Medical Colleges) issued by the Affiliation Wing, Pondicherry University under the RTI Act.
Ex.P7	—	—	Photocopy of the Non-Teaching Staff particulars of the Respondent Institute issued by the Affiliation Wing, Pondicherry University under the RTI Act.
Ex.P8	—	19-10-2015	Photocopy of the Complaint sent by the Petitioner to the Inspector-General of Police, Puducherry.
Ex.P9	—	20-10-2015	Photocopy of the Acknowledgment made by the Office of the Inspector-General of Police, Puducherry.
Ex.P10	—	23-10-2015	Photocopy of the Complaint submitted by the Petitioner to the Vice-Chancellor, Pondicherry University.

List of respondent's witness:

RW1 — 25-08-2022 R. Madhusudhanan, Senior Manager (Personal and Administration)

List of Respondents's Exhibits:

Ex.R1	—	—	Photocopy of the Curriculum Vitae of the Petitioner.
Ex.R2	—	29-10-2015	Photocopy of the letter forwarded by Pondicherry University, Affiliation Wing College Development Council to Respondent.
Ex.R3	—	09-11-2015	Photocopy of the reply given by the Respondent to the Dean, College Development Council.
Ex.R4	—	09-03-2017	Photocopy of the reply given by the Respondent Institution to Labour Officer (Conciliation).

V. Sofana Devi,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.