THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.66 of 2017
CNR No. ODHC010225702017

(Arising out of the WP(C) No. 23250/2014 disposed of on 17.02.2017 by the learned Single Judge)

Dr. Uttam Kumar Samanta ……. ***Appellant***

-Versus-

KIIT University and others ……. ***Respondents***

For the Appellant	:	Appellant-in-person Mr. Samir Kumar Mishra, Sr. Advocate (Amicus Curiae)
For Respondent Nos.1 to 4	:	Ms. Pami Rath, Senior Advocate along with Mr. J.S. Mishra, Advocate Mr. H. Mishra, Advocate Ms. S. Mohanty, Advocate
For Respondent No.6	:	Ms. Biswabara Dash, ASC

CORAM:

HON' BLE THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 15.10.2026 : Date of Judgment: 05.11.2026

S.S. Mishra, J. The present Writ Appeal is directed against the judgment dated 17.02.2017 passed by the learned Single Judge in W.P.(C) No. 23250 of 2014, whereby the writ petition challenging the termination of the employment of the appellant under KIIT University was dismissed on the ground that appellant has been terminated from service during his probation period as such no preceding disciplinary enquiry was required.

2. Heard Mr. Samir Kumar Mishra, learned Senior Advocate, appointed as Amicus Curiae, appearing for the appellant, Ms. Pami Rath, learned Senior Advocate, appearing for respondent Nos.1 to 4 and Ms. Biswabara Dash, learned Additional Standing Counsel for the State.

3. The prosecution case, as revealed from the materials placed on record, is that the appellant was appointed as an Assistant Professor in the School of Biotechnology of KIIT University pursuant to an offer letter dated 12.05.2010 and an appointment letter dated 29.05.2010. He joined the University. Clause-2 of the appointment letter stipulated a probationary period of one year and provided that his services would be

regularised upon satisfactory performance and successful completion of probation. According to the appellant, after joining, he raised concerns regarding certain practices in the institution which, according to him, were inconsistent with the applicable rules and standards governing higher education.

4. The appellant's first termination took place on 20.06.2011, before the expiry of the stipulated period of probation. The termination was challenged by him in W.P.(C) No. 17171 of 2011. By judgment dated 29.09.2014, the learned Single Judge of this Court set aside the impugned termination, holding the University's action to be arbitrary and illegal and finding that the manner in which the termination had been effected was stigmatic and punitive. At the same time, the Court expressly left it open to the University to pursue the allegations of misconduct, if so advised, in accordance with law. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"26. Now coming to answer on point no.iii, I find that the services of the petitioner was terminated by order dated 20.06.2011 as appearing at Annexure-4. Though the said order did not attach any stigma but, while answering to the pleadings of the petitioner the opposite party nos.1 to 4 in their counter affidavit submitted that before the order of termination vide Annexure-1 was passed the case of the*

petitioner was being examined by an in-house Enquiry Committee, who have an unanimous opinion that the conduct of Dr. Uttam Kumar Samanta, the petitioner has not been satisfactory and is highly unbecoming of a responsible faculty member of the university as clearly appearing at Annexure-C/1. It is based on such report his service was terminated vide Annexure-4. Thus, in my considered opinion even though the order of termination did not attach any stigma yet in view of finding of the Enquiry Committee as appearing at Annexure-C/1 with the strengthening of Right to Information Act and transparency in the actions the future of the petitioner is very much likely to be jeopardized. As such after coming to the above finding which finding was arrived at by an internal enquiry committee held behind the back of the petitioner, law minimum requires compliance of natural justice by at least affording an opportunity to the petitioner before issuing the terminal order vide Annexure-4 for this the termination order vide Annexure-4 cannot be sustained in the eye of law. My such view also gets the support of Hon'ble Apex Court decision vide AIR 2000 S.C. 1080 where in para-7 the Hon'ble Apex Court held that order of termination attaching stigma needs compulsory compliance of principle of Natural Justice. Under the circumstances, I answer point no.iii also in favour of the petitioner and against the opposite parties.

27. In view of my findings on point no.i vide paragraphs 22, 23 and 24, my findings on point no.ii at para-25 and my findings on point no.iii at para-26 while allowing the writ petition, I set aside the impugned orders at Annexure-4 of the writ petition as well as the consequential order as appearing at Annexure-6 of the writ petition, ***I further declare that the petitioner whose services has been taken away by order under Annexure-4 be deemed to be continuing in service for the entire period but, since he has not worked for all these period he may be paid 60% back wages.*** *So far petitioner's prayer for direction to the opposite party no.4 for supply of documents mentioned in Annexure-2, documents at internal page-25 filed vide Annexure-12 series in the Supplementary Affidavit at the instance of the petitioner it appears KIIT University has already brought it under the Fold of Rights to Information Act as Orissa Information Rules, 2005 and the petitioner is at liberty to press into service the provisions of the Right to Information Act, 2005 for the said purpose.*

However, this judgment shall not preclude opposite party no.1 University to restart the proceeding against the petitioner but to conclude lawfully. *I also make it clear that this Court has not expressed any opinion on the merit on allegations against the petitioner."*

5. It is further relevant to note that, following the judgment dated 29.09.2014 passed in W.P.(C) No. 17171 of 2011, the appellant pursued Review Petition No. 172 of 2014 and W.A. No. 405 of 2014, and also approached the Hon'ble Supreme Court by filing Special Leave Petition (Civil) Diary No. 919 of 2021, seeking, inter alia, relief relating to regularization and confirmation of his service besides claiming 100% back wages. The said proceedings were dismissed affirming the 60% back wages. The ancillary prayers made in the Review Petition as well as Writ Appeal remained unadjudicated obviously because in the original writ petition those issues were not raised by the appellant.

6. Following the aforesaid judgment, the appellant submitted his rejoining report on 09.10.2014. The University accepted the report by office order dated 16.10.2014, but stipulated that the probationary period had been interrupted by the intervening period between 20.06.2011 and the date of acceptance of his rejoining report. It consequently directed him to complete the remaining period of one month and seven days of

probation, scheduled to expire on 23.11.2014, while reserving its right to initiate disciplinary proceedings in respect of the earlier allegations. The appellant objected to the imposition of the remaining period of probation, contending that the earlier judgment had restored continuity of service and that the University could not place him again in the position of a probationer after the lapse of several years.

7. By Office order dated 03.11.2014, the University alleged that the appellant had not been attending the School of Biotechnology or reporting to its Director for instructions and duties after submitting his rejoining report. The University characterized the alleged absence as abandonment of employment, gross dereliction of duty and indiscipline, and called upon him to explain his conduct. The appellant disputes the University's allegations and maintains that he was present in the University but was not provided with the requisite assignment of duties, facilities or a proper opportunity to resume his academic work. On 08.11.2014, an Appraisal Committee considered his case and, according to the University's counter-affidavit, examined the brief of facts, papers and records supplied by the Registrar. The Committee reportedly

concluded that his case was not fit for regularization. A further office order dated 15.11.2014 was also issued in the course of these proceedings.

8. Ultimately, by office order dated 22.11.2014, the University informed the appellant that his probation was due to expire on 23.11.2014 and that, upon assessment by an independent Appraisal Committee, it had decided not to continue his employment beyond the probationary period. His employment was accordingly brought to an end with effect from 23.11.2014. Challenging the aforesaid action and the connected office orders, the appellant instituted W.P.(C) No. 23250 of 2014. The learned Single Judge, by judgment dated 17.02.2017, dismissed the writ petition. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"The above order appears to have been passed in relation to and keeping confined to the satisfactory completion of service of the petitioner as probationer which is said to have been assessed by the Independent Appraisal Committee as ultimately also coming to be accepted by the opposite party no.1 without setting any different tone. There remains no such hint to the objectionable or blameworthy conduct. Undoubtedly, no enquiry at any given point of time has been conducted, specifically with regard to the facts stated under Annexures 16 and 21, i.e. the office orders dated 03.11.2014 and 15.11.2014 respectively. The narrations in those office*

orders touching the duty of the petitioner are said to be having their foundation and facts as available on official record coming to be maintained in regular course. The tone and tenor of lengthy response of the petitioner to the above office orders, being cumulatively viewed go to indicate that it is the petitioner who instead of keeping the matter confined to the very subject has rather stated such other matters also in raising issues unrelated to those narrations in the orders. The opposite party no.1 having sought for the explanation has not further proceeded in those matters by initiating any proceeding and in causing enquiry for recording any finding on those scores. So, here the ground for the termination now is found to have been based on the performance of the petitioner during the period having no such punitive flavour in cause or consequence. Thus the present case falls short of the tests as laid down with approval in Radhashyam Gupta's case (supra). There remains no material to indicate that the same is based on satisfaction of any such misconduct. The opposite party no.1 in any event has not adopted the course of holding an enquiry and has also not proceeded to terminate by recording the ground from any other proceeding. It thus does not appear to be a case based on misconduct being attached to the petitioner having live nexus with the termination. Merely because this order of termination under Annexure-25 has come out sometime after rejoining of the petitioner being successful in the writ application filed by him and by virtue of the order of this Court which in the facts and circumstances and earlier finding is obvious and not avoidable in view of order of appointment stating for confirmation and regularization, no such inference can be drawn that the present order of termination is founded upon those allegations which rather have been left at that stage without further investigation touching the question of guilt or otherwise of the petitioner. Further, this order of termination is found to have recorded no such injurious reasons, so as to say that the petitioner has consequentially been visited with any stigma getting so attached to the rest of his career so as to lead this Court to hold the order to be punitive.

In view of above discussion and reasons, the submission of the learned Senior Counsel for the petitioner that the impugned order being based on those allegations and

relating to the misconduct on the part of the petitioner squarely portraying him as blameworthy and as such stigmatic is not acceptable.

27. In the wake of aforesaid, the writ application stands dismissed. However, in the facts and circumstances, there shall be no order as to cost."

Aggrieved thereby, the appellant has approached this Court in the present writ appeal.

9. Assailing the judgment under appeal, Mr. Mishra, learned Senior Advocate appointed as Amicus Curiae to represent the appellant, submitted that the learned Single Judge failed to appreciate the legal effect of the earlier judgment dated 29.09.2014. He argued that the direction that the appellant be deemed to be continuing in service for the entire period could not be construed as a mere formal reinstatement without consequences for his service status. According to the appellant, once the termination dated 20.06.2011 had been set aside and continuity of service had been directed, the intervening period could not be treated as a fresh break in employment so as to revive an uncompleted period of probation. The appellant relied upon Clause 2 of the appointment letter and Regulation 11 of the UGC Regulations, 2010, particularly the provisions concerning the period of probation, its extension and

confirmation. It is contended that the University neither extended the probation within the prescribed period nor issued any lawful order which could sustain the imposition of a further period of probation in October 2014.

10. Learned Amicus Curiae further submitted that the learned Single Judge failed to distinguish between a termination simpliciter and an order which, though couched in terms of unsatisfactory performance during probation, is founded upon allegations of misconduct. He argued that the office orders dated 03.11.2014 and 15.11.2014 expressly referred to abandonment of employment, gross dereliction of duty and indiscipline. These allegations, according to the appellant, are not merely expressions of dissatisfaction with academic performance but imputations of misconduct capable of attaching stigma to his professional reputation. The subsequent termination, when read together with the allegations and the decision of the Appraisal Committee, is therefore stated to be punitive in substance. It is contended that the University could not rely upon an appraisal process as a substitute for a

disciplinary enquiry if the allegations of misconduct constituted the foundation of the decision to terminate his employment.

11. It is also urged on behalf of the appellant that the Appraisal Committee acted behind his back and that he was neither informed of the material relied upon by it nor afforded an opportunity to explain his position before the decision was taken. The appellant emphasizes that the counter-affidavit filed by the University acknowledges that the Committee considered a brief of facts, papers and records supplied by the Registrar, but the materials forming the basis of its conclusion were not adequately disclosed or examined in the proceedings before the learned Single Judge. He placed reliance on the principles governing judicial review of punitive termination, including the distinction between the motive and the foundation of an order, and the requirement that an employer cannot avoid the safeguards of a disciplinary proceeding merely by describing an action as non-continuation of a probationer. It is further contended that the earlier judgment of this Court was not complied with in its true spirit and that the subsequent action was

arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

12. Per contra, Ms. Rath, learned Senior Advocate appearing for respondents, submitted that the expression "deemed to be continuing in service", as used in paragraph 27 of the judgment dated 29.09.2014 passed in W.P.(C) No. 17171 of 2011, must be understood in the context of the controversy adjudicated therein. It was contended that the earlier writ proceeding concerned the legality of the appellant's initial termination and did not involve any determination as to confirmation or regularization of his service. Neither the pleadings nor the grounds or reliefs sought by the appellant in that proceeding required the Court to decide whether he had successfully completed his probation or acquired the status of a confirmed employee. The Court had also not interpreted the probation clause in the appointment letter or the relevant provisions of the UGC Regulations. Therefore, the direction regarding continuity of service could not be construed as conferring deemed confirmation upon the appellant. She placed reliance upon ***The State of Orissa v. Sudhansu Sekhar Misra and Ors.***, reported in ***1968 AIR 647***, where it was held

that a judgment is an authority for what it actually decides and not for every inference that may be drawn from it. Learned Senior Counsel submitted that the earlier judgment merely restored the appellant's service status subject to the applicable terms and conditions.

13. Ms. Rath further submitted that neither the probation clause contained in the appellant's appointment letter nor Clauses-11.2 and 11.3 of the UGC Regulations contemplated automatic confirmation merely upon the passage of time. According to her, the relevant provisions envisaged an affirmative assessment of the probationer's performance by the University and the passing of an appropriate order of confirmation. Since the appellant's initial termination had intervened before completion of the stipulated probationary period, the question of assessment and confirmation had not arisen in the ordinary course at that stage. She argued that the earlier judgment did not deprive the University of its authority to assess the appellant's suitability for confirmation after his rejoining, nor did it direct the University to regularise or confirm him. Learned Senior Counsel also submitted that the appellant's subsequent challenge seeking such relief, including the proceedings



referred to in the respondent's note, did not result in an order granting him confirmation.

14. With regard to the impugned office order dated 22.11.2014, learned Senior Counsel contended that the same was a non-stigmatic order of termination passed upon assessment of the appellant's suitability during the probationary period. She submitted that the order did not record any finding of misconduct or guilt against the appellant and was not founded upon any concluded determination of the allegations referred to in the correspondence exchanged between the parties. The respondents maintained that the University had acted within its authority in deciding not to continue the appellant beyond the stipulated period of probation, and that the mere existence of allegations or prior disputes between the parties would not, by itself, transform an otherwise innocuous order of termination into a punitive one. She placed reliance on the decisions reported in ***(1999) 3 SCC 60, (2001) 3 SCC 117*** and ***(2013) 3 SCC 607***, in support of the distinction between termination simpliciter during probation and an order of termination founded upon misconduct.

15. It was accordingly urged that the earlier judgment dated 29.09.2014 could not be read as conferring confirmed status upon the appellant or as restricting the University's power to assess his suitability in accordance with the applicable service conditions. Ms. Rath submitted that the impugned order was neither contrary to the earlier judgment nor vitiated on the ground that it constituted a punitive termination. She therefore prayed that the appeal be dismissed and that the order of the learned Single Judge dismissing W.P.(C) No.23250 of 2014 be affirmed.

16. The issue highlighted by learned counsel appearing for the parties in their rival submissions, if tested on the anvil of the facts canvassed in the present case, would call upon this Court to determine whether the probation period of service of the appellant was still continuing by the time the impugned order of termination dated 22.11.2014 was passed by respondent No.3 against the appellant. If the probation period had already lapsed by the time the termination order was passed, it was undoubtedly obligatory on the part of the respondents to undertake the rigors of a departmental enquiry preceding the order of termination. That is precisely the issue which this Court is called upon to decide while

testing the legal sustainability of the impugned judgment passed by the learned Single Judge of this Court on 17.02.2017 in W.P.(C) No.23250 of 2014.

17. To decide the issue in lis, this Court has perspicuously evaluated the facts and circumstances of the case. The essential facts relevant for the purpose of deciding the issue have been culled out from the voluminous documents placed before this Court. The following relevant dates and events are, therefore, required to be set out for the purpose of deciding the issue.

12.05.2010	The Selection Committee of KIIT University conducted an online interview through Skype and, considering the appellant's bright career, assured him of appointment as a Professor, but subsequently offered him the position of Assistant Professor in the School of Biotechnology.
29.05.2010	The appellant was appointed as Assistant Professor in the School of Biotechnology.

28.07.2010	Vide Office Order No. KIIT/HR/438/10 dated 28.07.2010, the appellant joined the post to which he was appointed.
03.06.2011	An Enquiry Committee was constituted to go into the allegation against the appellant and report was submitted by the Committee inter alia stating that the conduct of the appellant as an Assistant Professor in the School of Biotechnology has not been satisfactory and is highly unbecoming of a responsible faculty member of the University. Hence, it is recommended that the probation period of the appellant shall not be extended. On the same day, a separate order was passed intimating the appellant that his services have been terminated. In the said letter, it is specifically indicated that "*Please note that your probation period is not yet completed".*

It hardly needs to be stated that, since the appellant was terminated from service before the expiry of the stipulated one-year probationary period, the respondents neither conducted any departmental enquiry nor afforded him an opportunity of being heard.

24.06.2011	The appellant filed writ petition being W.P.(C) No.17171 of 2011 challenging the termination.
29.09.2014	The learned Single Judge of this Court allowed the writ petition, declaring that the entire period from the date of termination till the date of the judgment shall be treated as deemed continuation of the appellant's service. However, considering that the appellant had not actually worked during the said period, the learned Single Judge awarded 60% of the back wages. The relevant portion of the said judgment reads as under:-

> *"27. In view of my findings on point no.i vide paragraphs 22, 23 and 24, my findings on point no.ii at para-25 and my findings on point no.iii at para-26 while allowing the writ petition, I set aside the impugned orders at Annexure-*

4 of the writ petition as well as the consequential order as appearing at Annexure-6 of the writ petition, I further declare that the petitioner whose services has been taken away by order under Annexure-4 be ***deemed to be continuing in service for the entire period*** *but, since he has not worked for all these period he may be paid 60% back wages. So far petitioner's prayer for direction to the opposite party no.4 for supply of documents mentioned in Annexure-2, documents at internal page-25 filed vide Annexure-12 series in the Supplementary Affidavit at the instance of the petitioner it appears KIIT University has already brought it under the Fold of Rights to Information Act as Orissa Information Rules, 2005 and the petitioner is at liberty to press into service the provisions of the Right to Information Act, 2005 for the said purpose. However, this judgment shall not preclude opposite party no.1 University to restart the proceeding against the petitioner but to conclude lawfully. I also make it clear that this Court has not expressed any opinion on the merit on allegations against the petitioner."*

28.10.2014 The respondent-University calculated 60% of the back wages for the period from 20.06.2011 (the date of termination) to 29.09.2014 (the date of the judgment passed by the learned Single Judge) and paid the same to the appellant.

19.04.2017 Being dissatisfied with the award of only 60% of the back wages, the appellant assailed the order of the learned Single Judge dated 29.09.2014 by filing Writ Appeal No. 405 of 2014. However, the

Division Bench of this Court, vide a detailed judgment dated 19.04.2017, dismissed the writ appeal, observing that by the time the judgment was delivered, the appellant had already received the back wages pursuant to the judgment of the learned Single Judge. The Division Bench was, therefore, of the view that the appellant could not, having already received the back wages, turn around and challenge the same by filing an appeal as a fence-sitter.

In regard to the observation made by the learned Single Judge concerning the continuity of the appellant's service, the Division Bench of this Court, in its judgment dated 19.04.2017, observed as follows:-

> "*From the aforesaid observations, it is clear that the order of termination was illegal because of violation of the principles of natural justice and* ***the appellant is deemed to be continued in service for the entire period****. While awarding 60% of back wages for the entire period, the appellant was terminated from service but no reasons has been assigned in the impugned judgment as to why the full back wages has not been granted."*

18. The appellant has unsuccessfully taken the matter to the Hon'ble Supreme Court. The filing of the Review Petition, Contempt Petition and other allied proceedings by the appellant before different judicial forums is not elaborately discussed herein for the sake of brevity, but suffice it to say that the appellant's attempt to challenge the findings of the learned Single Judge regarding the grant of 60% back wages did not find favour with any judicial forum. It is further relevant to mention that, at different stages, the appellant has made additional prayer of regularisation of his services besides the claim for 100% back wages.

19. When the matter stood thus, the appellant sought to join the University in accordance with the judgment of learned Single Judge; however, the University allegedly declined to assign him the post to which he had been appointed. This gave rise to allegations and counter-allegations between the appellant and the University, followed by an exchange of several communications. Since those communications are not germane to the controversy involved in the present appeal, it is unnecessary to advert to them in detail.

20. From the record, the genesis of the second round of litigation can be traced to the letter dated 22.11.2014 issued by the respondent-University, intimating the appellant that his probationary period would expire on 23.11.2014 and that his services would stand terminated with effect from the afternoon of that date. Thus, the appellant was subjected to a second order of termination of his services just one day before the completion of the probation period.

It is the case of the respondent-University that the conduct of the appellant during the period of probation was not found satisfactory by the competent authority. Accordingly, without initiating any regular departmental enquiry, the University proceeded to terminate his services on the premise that the appellant was continuing as a probationer and that his period of probation had not been extended.

21. Being aggrieved by the aforesaid action of the respondent-University, the appellant approached this Court by filing W.P.(C) No. 23250 of 2014. The learned Single Judge, however, vide order dated 17.02.2017 dismissed the writ petition, inter alia, holding that the appellant continued to remain on probation and that, in view of the employer's dissatisfaction with

his performance, his probation was not extended and his services were consequently brought to an end.

The reasoning adopted by the learned Single Judge is substantially reflected in the following paragraphs of the impugned judgment, which are extracted herein below:-

> *"So the question now arises that when by this order the petitioner has been declared as deemed to be continuing in service, whether the period of probation would get covered therein or the service of the petitioner would relegate back to the same stage where he was prior to the passing of earlier order of dismissal or termination. In other words to be more specific, if the balance period of probation has to be reckoned from the date of his joining pursuant to the order of this Court or the order of deemed continuance of this Court would go to mean that the petitioner has to be deemed to have completed the period of probation during this intervening period despite the condition in the order of appointment that there shall be probation period of one year and the services would stand to be regularized based on performance and successful completion of the probationary period. (emphasis supplied) The direction is undoubtedly to deem the petitioner to be continuing in service which obviously means that the petitioner is reinstated in service as he was enjoining on the date of termination/dismissal which had been held to be bad in law.*
>
> *When we look at the factum satisfactory performance during the probation period as mandated in the order of appointment, it undeniably goes to say that there has to be actual performance and discharge of duty as ordained and those cannot thus also be deemed to have been so done or performed which certainly requires some assessment so as to arrive at a satisfaction. Thus in my considered view, the petitioner would go back to the same stage where he was*



prior to the order of termination and the balance period is to commence and run from that rejoining after the order."

The aforementioned judgment of the learned Single Judge is called in question in the present proceeding by the appellant.

22. In the backdrop of the foregoing discussion, the central issue that falls for determination in the present proceeding is whether, on the date of issuance of the order of termination, the appellant continued to be on probation. Resolution of this issue necessarily calls for an examination of the relevant provisions of the UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for Maintenance of Standards in Higher Education) Regulations, 2010 (for short, the "UGC Regulations, 2010"), which govern the conditions relating to probation. The relevant provisions are extracted hereinbelow:-

"11.0- PERIOD OF PROBATION AND CONFIRMATION

11.1 The minimum period of probation shall be one year extendable by a maximum period of one more year in case of unsatisfactory performance.

11.2 The confirmation at the end of one year shall be automatic, unless extended for another year by a specific order, before expiry of the first year.

11.3 Subject to this Clause 11, it is obligatory on the part of the university/the concerned institution to issue an order of confirmation to the incumbents within 45 days of completion of probationary period after due process of verification of satisfactory performance.

11.4 Probation and confirmation rules are applicable only at the initial stage of recruitment, issued from time to time by Central Government.

11.5 All other Central Government rules on probation and confirmation shall be applicable mutatis mutandis."

Clause 11.1 prescribes the minimum period of probation as one year, which is extendable by a further period not exceeding one year. Thus, the maximum permissible period of probation of an academic staff member is two years. Such extension of the initial period of probation is permissible only where the competent authority is not satisfied with the performance of the incumbent.

Clause 11.2 envisages automatic confirmation of service upon completion of the initial period of probation of one year, unless an express order extending the probation for a further period of one year is issued before the expiry of the initial probationary period.

Clause 11.3, in turn, casts a positive obligation upon the employer to issue an order of confirmation at least forty-five days prior to the

completion of the probationary period, upon due verification of the satisfactory performance of the incumbent.

23. A conjoint reading of the aforesaid provisions of the UGC Regulations makes it abundantly clear that the period of probation cannot extend beyond two years. The power to extend the initial period of probation by a further year is not unfettered but is contingent upon the competent authority arriving at a conclusion that the performance of the incumbent is unsatisfactory. In other words, the Regulations do not envisage an indefinite continuation of an employee on probation. The respondent-University conspicuously have not invoked any of the aforementioned Regulation in the present case.

24. Examination of the sequence of event unfolded in the present case reveals that the appellant was initially visited with an order of termination on 20.06.2011, evidently on account of the respondent-University's dissatisfaction with his performance. However, the learned Single Judge, upon judicial scrutiny, set aside the said order of termination, holding that the same had been passed in violation of the principles of natural justice, particularly in view of the stigmatic nature

of the allegations leveled against the appellant. Consequently, the learned Single Judge directed that the appellant's service be treated as continuous up to the date of pronouncement of the judgment.

The continuity of service was understood by the respondent-University to mean continuity in service from the date of termination, i.e., 20.06.2011, till the date of judgment, i.e., 29.09.2014, passed by the learned Single Judge. Accordingly, 60% of the back wages was calculated and paid to the appellant for that entire period. Therefore, there is no ambiguity in understanding the expression "***deemed to be continuing in service for the entire period***". The aforesaid position was further clarified by the Division Bench of this Court, which categorically held that the appellant was deemed to have continued in service throughout the intervening period, for which he was held entitled to 60% of the back wages. This finding of the learned Single Judge was subsequently affirmed by the Hon'ble Supreme Court as well.

25. The submission of Ms. Rath, learned Senior Counsel for the University, that the Regulations entitle the employer to assess the performance of an incumbent before confirmation of his service, may not

hold any water, because the maximum period of probation provided under the UGC Regulations, 2010, is only two years. After the judgment of the learned Single Judge in the first round, continuity of service having been directed by a judicial determination and upheld by the Hon'ble Supreme Court, the University cannot turn around and contend that, even after paying 60% of the back wages for the period from 20.06.2011 to 29.09.2014, the said period would not be counted towards the appellant's service and that he would still be treated as continuing on probation. In the light of the foregoing discussion, the subsequent order of termination dated 22.11.2014, predicated on the alleged unsatisfactory performance of the appellant, does not withstand the scrutiny of law. The learned Single Judge, while adjudicating the writ petition, proceeded on the premise that the appellant continued to remain on probation as on the date of issuance of the said order of termination. Such an assumption, however, is contrary to the legal position emerging from the preceding discussion, particularly in the backdrop of the judicial determination rendered in the earlier round of litigation. The impugned judgment, to

the extent it proceeds on such an assumption, is, therefore, unsustainable in law.

26. Adverting to the allegations levelled against the appellant at various stages, as highlighted by Ms. Rath, learned Senior Counsel, it is necessary to observe that the respondent-University is not precluded from taking appropriate action against the appellant, provided the same is undertaken in accordance with the due process of law. It appears that several allegations were levelled against the appellant from time to time, pursuant to which the respondents also constituted a Committee, which submitted its findings against the appellant. It further emerges from the record that, following the judgment dated 29.09.2014, whereby the learned Single Judge allowed the writ petition, the appellant, though submitted his joining report, does not appear to have acted in conformity with the directions issued by the employer. On the contrary, he appears to have questioned and resisted such directions by submitting various representations and raising a series of claims and counter-claims. In the backdrop of such developments, the employer issued an Office Order

dated 03.11.2014, calling upon the appellant to explain his conduct. The appellant, in response thereto, submitted a detailed explanation.

27. We are not inclined to embark upon an examination of the allegations and counter-allegations levelled against the appellant, as the same are matters which can appropriately be gone into in proceedings instituted in accordance with law. Our consideration is confined to the legality and validity of the order of termination passed by the respondent-University. On an examination of the relevant provisions of the UGC Regulations, we are of the considered view that the impugned order of termination is contrary to the statutory framework governing the appellant's service conditions and also against judgment of the Learned Single judge in the first round of litigation, therefore, cannot be sustained the scrutiny of law.

28. We, accordingly, hold that the appellant's probationary period had already come to an end after the expiry of maximum period of two years in view of Regulation 11.2 of UGC Regulation and his services are deemed to be confirmed particularly in the absence of expressly communicating the extension of probation after one year. Accordingly,

the appellant had acquired the status of confirmed employment, particularly in the backdrop of the specific direction issued by the learned Single Judge on 29.09.2014, whereby continuity of his service had been directed.

Insofar as the allegations and counter-allegations levelled against the appellant are concerned, which appear to be serious in nature and raise issues touching upon his conduct and performance as an Assistant Professor, we leave it open to the respondent-University to initiate appropriate departmental proceedings against him, if so advised, strictly in accordance with law. Needless to observe, any such proceedings shall be considered independently on their own merits, uninfluenced by any observation made herein. Insofar as entitlement to back wages is concerned, we are persuaded to pass an order for grant of 60% of the back wages as the appellant has not worked during that entire period. In the earlier proceeding, this Court, by judgment dated 29.09.2014 passed in W.P.(C) No. 17171 of 2011, had awarded 60% of the back wages to the appellant. The grant of 60% back wages was thus not disturbed in the subsequent appellate proceedings. In the facts and

circumstances of the present case, we find no justification to adopt a different measure while determining the appellant's entitlement to back wages for the subsequent period. Hence, the appellant shall be entitled to 60% of the back wages.

29. Accordingly, the Writ Appeal is allowed by setting aside the judgment dated 17.02.2017 passed by the learned Single Judge in W.P.(C) No. 23250 of 2014.

I agree.

(Harish Tandon)
Chief Justice

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 5th November, 2026/ Swarna

Signature Not Verified
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