is for a fixed term and the tenant holds over, the tenant is a trespasser and that the mere fact that there was a clause in the lease deed providing for damages by way of enhanced rent for use and occupation did not mean that the relationship of landlord and tenant continued in such a case. From the above observations, it is evident that the facts of that case were different. In *Shama Charan's case* (supra), the contention was that the tenant after the expiry of period of lease became a tenant holding over and not a statutory tenant. The contention was repelled by the Bench. The question in that case was also different. Consequently, the observations of the learned Bench in the aforesaid cases are not applicable to this case. In *Firm Sardari Lal Vishwa Nath's case* (supra), it was held that it would not be open to a statutory tenant to urge by way of defence, in a suit for ejectment brought against him under the provisions of the Rent Act, that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit. These observations in our view are not of any assistance to Mr. Mittal. In the present case, as already observed above, the agreed rent between the parties would govern the parties even after the expiry of the period of tenancy. Consequently, the fair rent would be determined on the basis of the said rent. It is not disputed that the agreed rent between the parties was Rs. 400 per mensem. The Courts below have determined Rs. 526 per mensem as the fair rent on the basis of the said agreed rent. Mr. R. S. Mittal has not challenged the calculations for arriving at the said figure by the Appellate Authority. In the circumstances, we affirm the finding of the Authorities below that the fair rent of the property is Rs. 526 per mensem.

(11) For the aforesaid reasons, we do not find any merit in the Revision Petition and dismiss the same, with no order as to costs.

R.N.R.

Before R. N. Mittal, J.

SUMAN LATA AGGARWAL,—*Appellant.*

versus

UNION BANK OF INDIA AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 1711 *of* 1986.

November 20, 1987.

Constitution of India, 1950—*Article* 311—*Termination of employment without inquiry—Order of termination—Nature of such order—Order found stigmatic—Effect of—Employees of bank—Such employees—Whether servants of Union or of State.*

Held, that it is evident from the order that in addition to observing that her performance had not come up to the expected standard, it was also mentioned that her attendence record was not satisfactory. It is not an order of termination of the services of the appellant simpliciter but also contains a stigma regarding attendance. The order on the face of it casts a stigma on the appellant. Thus, the same could not be passed unless an opportunity had been given to her to defend herself.

(Para 6).

Held, that an employee of the bank does not hold a civil post under the Union or the State and, therefore, Article 311 was not applicable to him.

(Para 11)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Jalandhar dated the 5th day of March, 1986 affirming with costs that of the Sub-Judge 1st Class, Jalandhar, dated the 24th December, 1984, dismissing the suit of the plaintiff with costs.

Sudershan Goyal, Advocate, *for the Appellant.*

J. L. Gupta, Senior Advocate with Tejinder Singh, Advocate, *for the Respondents.*

JUDGMENT

R. N. Mittal, J.

This appeal has been filed by the plaintiff against the judgment and decree of the Additional District Judge, Jalandhar, dated March 4, 1986.

(2) Briefly, the facts are that the plaintiff joined the defendant-Union Bank of India (hereinafter referred to as the Bank) in the Junior Management Grade Scale I on August 18, 1980. After completing the training at Bombay, she was posted at Chandigarh and thereafter she was transferred to Jalandhar. The Bank,—*vide* order, dated October 31, 1983 terminated her services after expiry of one month's period. She filed a suit on December 3, 1983 challenging the said order and praying for the declaration that the order of termination was illegal, null and void on the ground that the impugned order was stigmatic, that it was not passed by a competent Authority ; and that the plaintiff ceased to be a Probationer

on August 17, 1983 and thereafter the order of termination could not be passed. The suit was contested by the Bank, who controverted the allegations of the plaintiff.

(3) The trial Court held that the impugned order was not illegal as alleged by the plaintiff. Consequently, it dismissed the suit. In appeal, the Additional District Judge affirmed the judgment of the trial Court and dismissed the same. She has come up in Second Appeal to this Court.

(4) The first contention of Mr. Goyal is that the order of termination is not an innocuous order but is stigmatic. No regular enquiry was held before terminating the services of the appellant which was essential in case such an order was to be passed. Consequently, it was liable to be set aside.

(5) I have heard the learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments. In order to determine the matter, it is necessary to give the circumstances in which the order of termination was passed. The appellant was appointed on probation as Hindi Officer in the Junior Management Grade Scale I,—*vide* letter, dated March 25, 1980 issued by the Joint General Manager of the Bank, Exhibit P.10. The letter provided that she would be on probation for a period of two years and if her work, progress and conduct during the probationary period were found satisfactory she would be confirmed, otherwise her period of probation was liable to be extended by the competent Authority for a further period not exceeding one year and if the competent Authority, during the period of probation including the period of extension, was of the opinion that she was not fit for confirmation, her services would be liable to be terminated by one month's notice. She joined at Bombay on August 18, 1980 for training. She was posted in the Regional Office at Chandigarh after completion of the training. On January 29, 1982, her services were terminated on the ground that her work and performance during the period of her probation were not up to the standard expected of her. She, thereupon submitted a representation dated June 8, 1982 requesting that she should be reinstated. Her request was acceded to by the Bank and she was ordered to be reinstated. She was directed to report for duty to the Regional Manager, Chandigarh, before July 15, 1982. One of the conditions of reinstatement was that she would not be entitled to any salary between the period of her termination and reinstatement, and that

period would be treated as extraordinary leave without pay. It was also provided that her probationary period be extended by as many days as she remained on leave without pay after re-joining the service of the Bank. The period of such leave was admittedly 456 days. The period of probation on re-appointment expired on November 16, 1983. The Regional Manager,—*vide* letter, dated September 20, 1983 Exhibit P.5, informed her that she was in the habit of remaining absent unauthorisedly. She was also accused of not taking interest in day-to-day work and wasting time in gossiping with others and arguing with her superiors. On October 31, 1983 the impugned order, Exhibit P.8, was passed by Deputy General Manager of the Bank. The order reads as follows :—

MEMORANDUM

UNION BANK OF INDIA DEPARTMENT OF PERSONNEL STAFF-NORTH ZONE-BOMBAY.	To Smt. Suman Lata Aggarwal, Official Language Officer (on probation), Regional Office, Jalandhar.
DP : NZ : 7992:83	31st October, 1983 9 Kartika, 1905.

With further reference to our memorandum No. DP; NZ: 4901:82 dated 21st June, 1982, Smt. Suman Lata Aggarwal is informed that since her work, performance has not come upto the expected standards and *also that her attendance record is not satisfactory,* it has been decided to terminate her services during the period of her probation in terms of Clause 5 of Smt. Aggarwal's appointment letter No. DP:RCE:7027:50, dated 25th March, 1980 and under Regulation 16 of the Union Bank of India (Officers') Service Regulations, 1979.

Accordingly Smt. Suman Lata Aggarwal is informed that she is hereby given one month's notice from the date of

receipt of this memorandum on expiry of which she will cease to be in the service of the Bank.

Sd/-

Dy. General Manager (P)."

(emphasis supplied)

(6) It is evident from the order that in addition to observing that her performance had not come up to the expected standard, it was also mentioned that her attendance record was not satisfactory. In view of the earlier history given above, it is clear that it is not an order of termination of the services of the appellant *simpliciter* but also contains a stigma regarding attendance. A similar case came up before a Division Bench of Sikkim High Court in *Wang Tshering Tamang* v. *State of Sikkim and others* (1). In that case, a Bus Conductor was suspended. Later, order of termination was passed stating that the temporary services of the Conductor were no longer required by the Department *with effect from the date of his suspension.* The Conductor challenged the order on the ground that it carried a stigma and, therefore, his services could not be terminated without complying with the provisions of Article 311 of the Constitution of India. It was held that an order of termination *simpliciter* should be such that if shown to a future employer, it should not prejudice him against the employee on the ground that he had been turned out of the earlier service for some mistake or incompetency. The impugned order in the case was likely to prejudice a future employer as it would give rise to an inference that the employee must have been suspended from the service for some blameworthy conduct. It further held that, therefore, the order could not be treated as one of termination simpliciter. I am in respectful agreement with the above observations. The counsel for the appellant also made reference to *Smt. Rajinder Kaur* v. *State of Punjab and another* (2). In that case, the services of the appellant were terminated under Rule 12.21 of the Punjab Police Rules, 1934 stating that she was unlikely to prove an efficient Police Officer. She challenged that order through a civil suit which was dismissed by the trial Court. She filed an appeal wherein that judgment was affirmed. A Regular Second Appeal to the High Court was dismissed. An argument was raised before the Supreme Court that an enquiry had been

(1) 1983 Lab. I.C. 984.

(2) (1986) 4 S.C.C. 141

made by the Deputy Superintendent of Police regarding her character on the allegation that she had stayed for one or two nights with one Constable at a station where she was not posted. She was not associated with the enquiry. The impugned order was passed after the completion of the investigation. It was observed by the Supreme Court that the impugned order of discharge though stated to be in accordance with the provisions of Rule 12.21 *ibid* was really made on the basis of the misconduct as found on enquiry into the allegations behind her back. Though couched in innocuous terms, it was merely a camouflage for an order of dismissal from service on the ground of misconduct. The order had been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined. Consequently, the appeal was accepted and the impugned order was quashed. If the above tests are applied to the impugned order, it would be clear that it was not an innocuous order, but was passed by way of punishment. It has been settled in *Anoop Jaiswal* v. *Government of India and another* (3) that where the form of the order is merely a camouflage for an order of dismissal for misconduct, it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee. From the above observations, it is clear that the Court can go into the circumstances of the case in order to find out as to whether the order of termination is innocuous, or not. In the present case, as already observed above, the order on the face of it casts a stigma on the appellant. Thus, the same could not be passed unless an opportunity had been given to her to defend herself.

(7) Mr. J. L. Gupta, learned counsel for the respondent referred to a decision of the Supreme Court in *Union of India and others* v. *R. S. Dhaba* (4). In that case, the respondent who had been promoted as Income-tax Officer from the post of Inspector on officiating basis, was reverted as Inspector on the ground that he had

(3) A.I.R. 1984 S.C. 636
(4) 1969 (3) S.L.R. 442

been found unsuitable after trial to hold the post of Income-tax Officer. It was held that the order of reversion did not contain any express words of stigma attributed to the conduct of the respondent and, therefore, it could not be held that the order of reversion was made by way of punishment. The resume of the facts show that the case is distinguishable, as in that order no stigma was cast on him. He also referred to a decision of this Court in *Dr. Bhim S. Dahiya* v. *The Maharshi Daya Nand University, Rohtak and others* (5). In that case, it was stated in the order that the Executive Council had decided in its meeting held on June 20, 1979 that the petitioner's services were no longer required. Consequently, he was relieved with effect from the afternoon of the same date, i.e. June 20, 1979. The order was challenged by the petitioner. From the order, it is apparent that it was innocuous and consequently, Mr. Gupta cannot derive any benefit from the said judgment.

(8) The second contention of Mr. Goel is that the appellant was appointed in the Junior Management Grade Scale I by the Joint General Manager and it was he who could terminate her services. He submits that the Deputy General Manager had no authority to do so as she had been appointed by the higher Authority. According to him, the impugned order is liable to be struck down on this ground as well.

(9) I have duly considered the argument, but do not find any substance therein. The Bank has framed Regulations for recruitment to the posts of Officers known as the Union Bank of India (Officers') Service Regulations, 1979. Regulation 3(d) defines "Competent Authority" as the authority designated for the purpose by the Board. The Board of Directors under the aforesaid Regulation designated Competent Authorities, as given in Exhibit D.2. Regulation 16(3) deals with termination of services of an officer. The Regulation reads as follows :—

> "16.(3) Where during the period of probation, including the period of extension, if any, the Competent Authority is of the opinion that the Officer is not fit for confirmation;
>
> (a) in the case of a direct appointee, his services may be terminated by one month's notice or payment of one month's employments in lieu thereof; and
>
> (b) ... ..."

(5) C.W.P. 2136 of 1979 decided on May 9, 1983.

(10) Under the said Regulation, the power of termination had been given with regard to Grade-I employees to Joint General Manager or authority above him. Later, the Board of Directors made certain modification in that order by another order. It was provided therein that wherever the Joint General Manager (P) or authority above him was competent authority, the same be substituted by Officer in Scale VI overseeing the Department of Personnel or authority above him. Deputy General Manager was an Officer in Scale VI. Consequently a Deputy General Manager became a competent Authority for terminating the services of a probationer during the period of probation. The abovesaid decision of the Board was circulated,—*vide* letter, dated March 11, 1981, Exhibit DI. It cannot be disputed that the Board under Regulation 3(d) had the authority to appoint a Competent Authority for terminating the services of a probationer and in pursuance of that, it changed the Competent Authority. There is no provision in the Regulations that the service of an Officer could not be terminated by any authority who was below the Appointing Authority. The provisions of Article 311 of the Constitution of India are not applicable to the employees of the Bank, as they are not the employees of the Union or the State Governments. Consequently the order of termination of the service of the appellant passed by Deputy General Manager cannot be held to be bad on the ground that she was appointed to the service on probation by an Authority higher than him. In the above view, I am fortified by the observations of Gujarat High Court in *G. S. Shambhani* v. *State Bank of India, Ahmedabad* (6) wherein a similar question arose. A contention was raised there that at the time when the petitioner was appointed as Officer Grade II in the State Bank of India, his appointing authority was the Local Board. Later, the Chief General Manager was appointed as the appointing authority. The services of the petitioner had been terminated by the Chief Manager, which could not be done as only the initial appointing authority had the power to remove him from service. The contention was repelled on the ground that the employees of the Banks were not servants of the Union or of the States and, therefore, Article 311 was not applicable to them. I am in respectful agreement with the view expressed therein.

(11) The learned counsel for the appellant placed reliance on *Krishna Kumar* v. *The Divisional Assistant Electrical Engineer,*

(6) 1984 (2) S.L.R. 765.

Central Railway and others (7). In that case, the appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer. He was removed from service by an order passed by the Divisional Assistant Electrical Engineer. It was held by the Supreme Court that the appellant had been removed from service by an order passed by the authority who was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment. Therefore, the order of removal was in violation of the provisions of Article 311(1) of the Constitution. The above case is distinguishable, as there Article 311 was applicable to the employee which provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Thus, according to the said provision, an authority subordinate to the Appointing Authority has no right to remove an employee from service. No law violative of the said provision is a valid law. As observed above, an employee of the Bank does not hold a civil post under the Union or the State and, therefore, the said provision is not applicable to him. Consequently, the observations are not applicable to the facts of the present case.

(12) The last submission of Mr. Goel is that the maximum period of probation is three years. The appellant joined the service as a probationer on August 18, 1980 and after the expiry of a period of three years, i.e. on August 17, 1983, she automatically stood confirmed. In support of his contention, he refers to *Paramjit Singh and others* v. *Ram Rakha and others* (8). I do not agree with this submission of the learned counsel too. Regulations 15 and 16(2) deal with probation and extension to probation respectively. Under Regulation 15, an Officer is appointed on probation for a period of two years. Under Regulation 16(2), the period of probation can be extended for a further period of one year. Adverting to the facts of the present case, the appellant was appointed on probation on August 18, 1980. Her services were terminated before the expiry of period of probation January 29, 1982. She made a representation praying for her reinstatement. Her request was accepted,—*vide* order, dated June 21, 1982, Exhibit P.4, subject to the condition that the Management had the right to terminate

(7) 1979 Lab. I.C. 1314—A.I.R. 1979 S.C. 1912.

(8) A.I.R. 1979 S.C. 1073.

her services if she did not come up to expected standards and that if her attendance record was not satisfactory. It was further stated that she would not be entitled for any salary for the period between her termination and reinstatement; and that her probationary period would be extended by as many days as she had availed leave on loss of pay since joining the service of the Bank. Admittedly, she was considered to be on leave without pay for 456 days. Thus, her period of probation was extended by the said number of days. The extended period expired on September 19, 1983. Her services were termined,—*vide* order, dated October 31, 1983. Taking into consideration the said dates the delay is of 42 days only. It has been held by a Division Bench of this Court in *Hari Singh Mann* v. *The State of Punjab and others,* (9) that some reasonable time must be permitted to the dismissing Authority to pass the necessary order either terminating the services of an employee or confirming him. It would depend upon the facts and the circumstances of each case as to what was the reasonable time. I am in respectful agreement with the above observations. In that case, a period of 2 months and 10 days after expiry of period of probation was considered to be reasonable period to pass an order of termination of services. In the present case, the order of termination was passed within 42 days after expiry of the extended period of probation. The period of notice cannot be taken into consideration for that purpose. Therefore, it cannot be held that an unreasonable period was taken in terminating the services of the appellant after the expiry of the extended period of probation. In the circumstances, I do not feel that the impugned order can be struck down on this ground. In *Paramjit Singh's case* (supra), it was observed that where the rules provide for a fixed period of probation with a power in the Government to extend it up to a specific period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post. However, the facts of that case are distinguishable. In that case, the dispute was with regard to seniority and not for termination of services of the appellant. Therefore on the facts and in the circumstances of this case, the above observations are of no help to the counsel for the appellant.

(9) 1970 S.L.R. 915.

(13) Faced with this situation, Mr. Goel sought to argue that after she was allowed to be reinstated, it would be deemed that she completed the period of probation on August 17, 1983 and as her services were terminated after a long time, i.e. with effect from December 6, 1983, therefore the ratio in *Hari Singh Mann's case* (supra) will not be applicable to the facts of the present case and she would be deemed to have been confirmed in August, 1983. I do not find any substance in this contention too. Her services had already been terminated on January 29, 1982 and on her representation she was reinstated on June 8, 1982 on express condition that the period of probation would be extended by as many days as she availed leave on loss of pay since joining the service of the Bank. She accepted that condition and re-joined service. Now, she is estopped to raise a plea that she completed her probationary period in August, 1983.

(14) For the aforesaid reasons, I accept the appeal, set aside the judgment and decree of the trial Court and decree the suit of the appellant.

In the circumstances of the case, I, however, leave the parties to bear their own costs throughout.

S.C.K.

Before S. P. Goyal and I. S. Tiwana, JJ.

DHARAMPAL AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4000 *of* 1986.

November 27, 1987.

Contract Act (IX of 1872)—*Section* 5—*Offer of appointment—Withdrawal of offer before its acceptance—Effect of such withdrawal.*

Held, that a proposal or an offer can be revoked at any time before the communication of its acceptance is complete as against the proposer. Once an offer of appointment issued in favour of the petitioners had been revoked or withdrawn before their communication or actual acceptance by them, no right came into being in their favour by virtue of the said offers of appointment.

(Para 4)