2'

,1 7+(+,*+ &2857 $7 &$/&877$

&2167,787,21$/ :5,7 -85,6',&7,21

25,*,1$/ 6,'(

:32

0 V 6$-)22' 352'8&76 397 /7'

9(5686

67$7(2) :(67 %(1*$/ $1' $15

3UHVHQW

7KH +RQ EOH -XVWLFH 6KDPSD 'XWW 3DXO

)RU WKH 3HWLWLRQHUV 0U 6RXP\D 0DMXPGDU /G 6U $G
0V 6DQMXNWD 'XWWD $GY

)RU WKH 6WDWH 0U HEDSUL\D *XSWD $GY
0U %LVZDQDWK &KDWWHUMHH
0U 1 * .KDLWDQ $GY

)RU WKH 5HVSRQGHQW 1R 0U DELQGUD 1DUD\DQ 'XWWD $G
0U 6RKDP %DQHUMHH $GY

-XGJPHQW UHVHUYHG RQ

-XGJPHQW GHOLYHUHG RQ

6+03 '877 3$8/ -

7KH ZULW DSSOLFDWLRQ KDV EHHQ SUHIHUUHG FKDO
SDVVHG E\ WKH HRXU &RXUW :HVW %HQJDO
QR XQGHU 6HFWLRQ % G RI WKH ,QGXVWULDO
DQG SXEOLVKHG E\ WKH *RYHUQPHQW RI :HVW %HQJDO
WKH LPSXJQHG DZDUG WKH ODERXU &RXUW .RONDWD K
IROORZV



7KXV YLHZHG IURP DOO DQJOHV WKLV &RXUW LV RI FRQ\
RSLQLRQ WKDW DV 6ULNDQWD 0DLW\ ZDV WHUPLQDWHG GXULQJ
SHULRG SULRU WR KLV FRQILUPDWLRQ E\ WKH 2 3 0DQDJHPHQW
WKLV &RXUW KDV KHOG LOLHJDO PDOD ILGH XQMXVWLILHG I
DSSOLFDQW 6ULNDQWD 0DLW\ HTXHQWO\ MRLQHG 0 &
,QVWLWXWH RI (QJLQHHULQJ IURP ZKHQ KH LV VXSH
HQWLWOHG WR DOO WKH EDFN ZDJHV IURP WI
WHUPLQDWLRQ IURP 2 3 0DQDJHPHQW RI 0V 6DM
,QGXVWULHV 3YW /WG WLOO WKH GDWH RI KLV MRLQLQJ DW 0 &
RI (QJLQHHULQJ IURP ZKHUH KH ZDV VXSHUDQQXDWHG

7KH PDQDJHPHQW RI 2 3 &RPSDQ\ LV GLUHFWHG WR PDN
SD\PHQW DV SHU 2UGHU RI WKLV &RXUW WR 6UL 6ULNDQWD 0DLW
GD\V IURP WKH GDWH RI SXEOLFDWLRQ RI WKLV $ZDUG DIWHU DGI
RI WKH SD\PHQWV WR KLP LQ WHUPV RI LQWHULP UHOLHI LI DQ
KLP E\ WKH PDQDJHPHQW IDLOLQJ ZKLFK WKH SD\PHQW DPRXQW
DOVR FDUU\LQJ LQWHUHVW RI SHU URP WKH GDWH RI
SXEOLFDWLRQ RI $ZDUG WLOO WKH GDWH RI UHFRYHU\

7KXV WKHVH LVVXHV DUH GHFLGHG LQ IDYRXU RI WKH DSS

,Q UHVXOW RI WKLV DSSOLFDWLRQ 8 6 %G RI
,QGXVWULDO 'LVSXWHV $FW HGV RQ FRQWHVW µ

$IILGDYLWV ZHUH ILOHG DQG SDUWLHV KDYH ILOHG WKH
7KH SHWLWLRQHU·V FDVH LQ WKH ZULW DSSOLFDWL
DSSRLQWHG WKH UHVSRQGHQW 2 DV HDFKHPLVW WKH
PDQDJHULDO UDQN ZLWK WHUPV DQG FRQGLWLRQV GHO
LV DQRWKHU DSSRLQWPHQW OHWWHU RI WKH VDPH GDW
QR DV FKHPLVW LQ WK7KH RIILFH RI WKH DSSRLQWLQJ D FODXVH
DSSRLQWLQJ WKH UHVSRQGHQW SHUPDQHQWO\ \HDU
7KH VHFRQG DSSRLQWPHQW WKH DSSRLQWHG WKH UHVSRQGHQ

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SUREDWLRQHU IRU D SHULRG RI VL[PRQWKV UHVSRQGHQW QR L
FURVV H[DPLQDWLRQ DGPLWWHG WKDW KH ZDV DSSRLQ
SHULRG RI RQH DGPLWWHG GDWH RI MRLQLQJ KH UHVSRQGHQW
ZDV [illegible] 7KH FRPSDQ\ GLG QRW ILQG KLP VXLWDEOH
DV VXFK [illegible] DGYLVHG KLP WR ORRN IRU DOWHUQDV
7KH UHVSRQGHQW QR GHQLHV UHFHLSW RI WKH OHWW
DQG FRQWHQGV WKDW KH YLVLWHG ZRUN SODFH RQ
[illegible] ODVWO\

$GPLWWHGO\ WHUPLQDWLQJ WKH UHVSRQGHQW [illegible] GDWHG [illegible] PRQWK
ZDV LVVXHG E\ WKH FRPSDQ\ WKHUHE\ WHUPLQDWLQJ W
RI WKH UHVSRQGHQW QR 5HIHUHQFH ZDV PDGH WR
ZKLFK PHQWLRQHG WKH UHVSRQGHQW QR WR EH LQ WKH PDQDJHULDO UD
WKDW LV WKH OHWWHU E\ ZKLFK KH ZDV DSSRLQWHG DV SUREDWLRQI
SHULRG RI RQH \HDU

'XULQJ GHSRVLWLRQ EHIRUH WKH /HDUQHG /DERXU &RXU
SURFHHGLQJ RI WKH ,QGXVWULDO 'LVSXWHV $FW
IDOVHO\ GHSRVHG WKDW DIWHU KLV WHUPLQDWLRQ KH
LQ DQRWKHU VHUYLFH)DFW UHPDLQV WKDW KH ZD
,QVWLWXWH IURP WK $SULO

7KH /HDUQHG /DERXU &RXUW LQ LWV DZDUG GDWHG W
WKH WHUPLQDWLRQ OHWWHU ZDV VWLJPDWLF WKHUHIRUH YLRODWLY
SULQFLSOHV RI QDWXUDO MXVWLFH DQG ODZIXO SURF
LQLWLDWHG DJDLQVW KLP EHIRUH LW $SULO WHUPLQDWL

UHOLHI RI SD\PHQW IURP WKH GDWH RI WHUPLQDWLRQ WLOO WKH GDWH

VXEVHTXHQW HPSOR\HU ZDV JUDQWHG ZLWK LQWHUHVW SHU DQQXP

7KH IROORZLQJ MXGJPHQWV KDYH EHHQ UHOLHG XSRQ E\ WKH SHWLWLRQHU

D 7KH GHFLVLRQ UHSRUWHG LQ 6&& 3DYDQHQGUD 1DUD\DQ 9HUPD YV 6DQMD\ *DQGKL 3*, RI 0HGLFDO 6FLHQFH EHHQ UHOLHG XSRQ IRU WKH SURSRVLWLRQ WKDW RQH V VHUYLFH EH WHUPLQDWHG ZLWKRXW KROGLQJ DQ HQTXLU\ 7 ILQGLQJ WKH GLIIHUHQFH EHWZHHQ PRWLYH DQG IRXQGDWLRQ YLV j SUH FRQGLWLRQV IRU KROGLQJ WKH WHUPLQDWLRQ RI VHUYLFH RI D S WR EH ZURQJIXO

E ,Q VXSSRUW RI WKH FRQWHQWLRQ WKDW PHQWLRQLQJ RI FRQGXFW DQ LQ WKH WHUPLQDWLRQ OHWWHU RI D SUREDWLRQHU LV QRQ VWLJPDWL WKH WHUPLQDWLRQ RUGHUV RI SUREDWLRQHUV WKH SHWLWLRQHU KD WKH IROORZLQJ MXGJPHQWV

L 6&& $EKLMLW *XSWD YV 6 1 % 1I &HQWUH %DVLF 6FLHQFHV 2UV

LL 6&& 'LSWL 3UDNDVK %DQHUMH 6DW\HQGUD 1DWK %RVH 1DWLRQDO &HQWU 6FLHQFHV &DOFXWWD 2UV

7KH SHWLWLRQHU KDV IXUWKHU UHOLHG XSRQ WKH IROORZLQJ MXGJPHQWV

x 6&& 8WWDU 3UDGHVK 6WDWH 7H[WLOH /WG YV 6XUHVK .XPDU

x 6&& 'LVWULFW 3URJUDPPH &RRUGLQDW 6DPNK\D $QU 9V $EGXO .DUHHP $QU

x 6&& $ 3 6WDWH)HGHUDWLRQ RI &R 6SLQQLQJ 0LOOV /WG $QU YV 3 9 6ZDPLQDWKD

0U 0DMXPGDU OHDUQHG VHQLRU FRXQVHO DSSHDULQ

VXEPLWWHG WKDW WKH DZDUG RI WKH /HDUQHG /DER

DOORZHG WR VHW DW UHVW

7KH SULYDWH UHVSRQGHQW LQ WKH SUHVHQW FDVH

RSSRVLWLRQ ZKHUHLQ LW KDV EHHQ VWDWHG WKDW

DSSRLQWHG DV D FKHPLVW RQ XQGHU D WHFKQ

SHWLWLRQHU FRPSDQ\

0U 'XWWD OHDUQHG FRXQVHO IRU WKH UHVSRQGHQW

WKH UHVSRQGHQW QR MRLQHG WKH VHUYLFHV LQ W

DQG VWDUWHG ZRUNLQJ XQGHU D WHFKQLFDO

UHSRUW WR KLV VXSHULRU IRU FROOHFWLRQ RI VDPSOH

WKH SULYDWH UHVSRQGHQW QR JRW KLV DSS

IURP WKH SHWLWLRQHU FRPSDQ\ E\ SXWWLQJ V

SDJH +H VXEPLWV WKDW WKH ILUVW OHWWHU ZDV

SHWLWLRQHU DQG WKDW WKH ILVW SDJH DQG WKH ODVW

,W LV IXUWKHU VXEPLWWHG WKDW WKRXJK WKH SHWL

WKDW KH KDV ZRUNHG **ILYH PRQWKV** ERU WKH UHVSRQGHQW QI

ZRUNHG **VL[UXOO PRQWKV** RPSOHWLQJ KLV SUREDWLRQ SH

UHVSRQGHQW QR DOOHJHV WKDW WKH SHWLWLRQHU F

WKH DSSRLQWPHQW OHWWHU E\ UHSODFLQJ VHYHUDO Z

SUDFWLFH RI WKH SHWLWLRQHU WKH UHVSRQGHQW Q

VXEPLWV WKDW KH LV HQWLWOHG WR UHFHLYH DOO E

HPSOR\HH RI WKH RIILFHU UDQN

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□□□ ,Q UHSO\ WKH SHWLWLRQHU KHUHLQ KDV GHQLHG WKH

QR DV VWDWHG LQ WKH DIILGDYLW LQ RSSRVLWLRQ D

WKDW WKH FRQWHQWLRQ RI WKH UHVSRQGHQW QR V

HPSOR\HH MXVW EHFDXVH KH ZDV JHWWLQJ KRXVH U

HQMR\LQJ FDVXDO OHDYH LV ZKROO\ PLVFRQFHLYHG

DJUHHG WR EH DSSRLQWHG DV D SUREDWLRQHU DQG Z

EHQHILWV ZKLFK ZHUH H[KLELWLQJ WKH ZHOIDUH DQG

PDQDJHPHQW ,W LV WKH UHVSRQGHQW QR □□□ ZDV □ D □ SUREDWLRQHU □

DQG □ FRXOG □ QRW □ KDYH □ UHFHLYHG □ DQ \ □ UHOLHI □ EH \RQG □ KLV □ SUREDWLRQDU \ □ S

RI □ VHUYLFH □ DW □ WKH □ PD[LPXP □□

□□□ 7KH UHVSRQGHQW QR RQ ILOLQJ KLV ZULWWHQ QRWH\

VWDWHG LQ WKH DIILGDYLW LQ RSSRVLWLRQ DQG KDV

DZDUG LV LQ DFFRUGDQFH ZLWK ODZ DQG UHTXLU

DV WKH OHDUQHG -XGJH KDV FRQVLGHUHG DOO WKH PD\

WKH HYLGHQFH DGGXFHG

□□□ 7KH SULYDWH UHVSRQGHQW KDV UHOLHG XSRQ WKH IRO

L 6&5 'LSDOL .XQGX 6XUZDVH YV .UDQWI

$GK\DSDN 0DKDYLG\DOD\D ' (G 2UV

LL 6&& 1,&.6 ,QGLD 7RROV YV 5DP 6XUDW

LLL 6&& 2Q/LQH 6& 6WDWH RI 3XQMDE $QU YV

%DKDGXU

LY 6&& 'LSWL 3UDNDVK %DQHUMHH YV 6DW\

%RVH 1DWLRQDO &HQWUH IRU %DVLF 6FLHQFHV &D

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Y□ □□□□□□□□ □□ 6&&□ □□□□□ □3URJUHVVLYH□(GXFDWLRQ□6RFLHW\□□□$QU□□YV□□
5DMHQGUD□□□$QU□□□□

YL□ □□□□□□□□ □□ 6&&□ □□□□□ □,QGUD□3DO□*XSWD□YV□□0DQDJLQJ□&RPPLWWHH□□
0RGHO□,QWHU□&ROOHJH□□7KRUD□□□

YLL□ □□□□□□□□□□□□)/5□□□□□□□'□□.□□<DGDY□YV□□0□V□□-□0□$□□,QGXVWULHV□/WG□□□

YLLL□&LYLO□$SSHDO□1R□□□□□□□RI□□□□□□□7KH□0DQDJHU□□6□0□8□3□□6FKRRO□
□□2UV□□9V□□0□□1RXVKDG□□□2UV□□□

L[□ □□□□□□ /$%□ ,□&□□ □□□□□ □6XGKLU□ .XPDU□ YV□□ 0□V□□)HUR□ $OR\V□
&RUSRUDWLRQ□/WG□□□

[□ □□□□□□□□□□□)/5□□□□□□□9HG□3UDNDVK□*XSWD□YV□□0□V□□'HOWRQ□&DEOH□
,QGLD□□3□□/WG□□□

[L□ □□□□□□□□□□6&&□□□□□□□5DQMHHW□6LQJK□YV□□5DYL□3UDNDVK□□

[LL□ :3$□&□□ 1R□□□□□□□□□□□□□□□ □8QLRQ□ RI□ ,QGLD□ □□ 2UV□□ YV□□ $QLO□
7KRPDV□□

[LLL□)0$□1R□□□□□□□RI□□□□□□□□7KH□%RDUG□RI□*RYHUQRUV□□*KDQL□.KDQ□
&KRXGKXU\□,QVWLWXWH□RI□(QJLQHHULQJ□□□7HFKQRORJ\□□□2UV□□YV□□
'HE□+DOGHU□□□2UV□□□

)URP WKH PDWHULDOV RQ UHFRUG LW DSSHDUV

L 7KH DSSRLQWPHQW OHWWHU GDWHG LVVXHG

KHUHLQ QRWHV DV IROORZV

´:H DUH SOHDVHG WR RIIHU \RX DSSRLQWPHQW
&RPSDQ\ DW &DOFXWWD EUDQFK &DOFXWWD R(
DQG FRQGLWLRQV

´ <RXU DSSRLQWPHQW LV LQ RXU 0DQDJHULD(
HIIHFWLYH IURP WKH GDWH RI 2FW

<RXU DSSRLQWPHQW LV LQLWLDOO\ RQ SUREDW
RI RQH \HDU 7KH SHULRG RI SUREDWLRQ PD\
RQH \HDU DW WKH GLVFUHWLRQ RI WKH PDQDJH **'XULQJ WKH**

SHULRG RI SUREDWLRQ \RXU VHUYLFHV PD\ EH WHUPLQDWHG
&RPSDQ\ DW DQ\ WLPH ZLWKRXW DQ\ QRWLFH DQG ZLWKRXW DV
DQ\ UHDVRQ ZKDWVRHYHU RU DQ\ FRPSHQVDWLRQ LQ OLHX W
7KH VDPH FRQGLWLRQ ZLOO DSSO\ LQ FDVH \RX OHDYH WKH &R
VHUYLFHV GXULQJ WKH SUREDWLRQ SHULRG ,Q FDVH KRZHY
VHUYLFHV DUH WHUPLQDWHG RQ RU DIWHU H[SLU\ RI WKUHH PR
GDWH RI \RXU UHSRUWLQJ IRU GXW\ RQ SUREDWLRQ RQH PRQWK
RU SD\PHQW RQH PRQWK V JURVV VDODU\ LQ OLHX WKHUHRI ZL
JLYHQ E\ XV EULQJLQJ DERXW VXFK WHUPLQDWLRQ 1R QRW
SD\PHQW RI JURVV VDODU\ LQ OLHX WKHUHRI ZLOO EH GXH LI
DUH GLVSHQVHG ZLWK IRU DQ\ PLVFRQGXFW <RX VKDOO
GHHPHG WR KDYH EHFRPH SHUPDQHQW XQOHVV \RXU DUH FRQI
LQ ZULWLQJ

7KH UHVSRQGHQW·V VHUYLFHV ZHUH WHUPLQDWHG E\ W

SHUIRUPDQFH 2QH PRQWK VHYHUDQFH ZDV JLYHQ

$GPLWWHGO\ WKH UHVSRQGHQW HPSOR\HH ZDV DSSRL

SUREDWLRQ IRU HLWKHU VL[PRQWKV RU RQH \HDU G

WHUPLQDWHG RQ +H MRLQHG RQ

WHUPLQDWLRQ OHWWHU LQ ZULWLQJ LV GDWHG

7KRXJK LW LV LQ GLVSXWH WKDW WKH UHVSRQGHQW

SHULRG RI VL[PRQWKV RU RQH \HDU LW LV QRW GHQL

SUREDWLRQ GXULQJ WKH SHULRG KH ZDV WHUPLQDWHG

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,W DSSHDUV WKDW WKH /DERXU &RXUW KDV UHOLHG XSI
WHUPLQDWLRQ RI D UHJXODU HPSOR\HH ORVLQJ WUDFV
UHFRUG WKDW WKH UHVSRQGHQW ZDV WHUPLQDWHG ZKL
7KRXJK WKH UHVSRQGHQW ZDV UHIXVHG WR DV LQ WH
DOORWWHG ZDV WKDW RI D ¶ZRUNPDQ· EHLQJ WHFKQL
VXSHUYLVRU\ DQG WKLV LVVXH KDV EHHQ ULJKWO\ GHFL
5HJDUGLQJ KLV WHUPLQDWLRQ DV SUREDWLRQHU Z
VWLJPDWLF WKH ILQDO OHWWHU RI WHUPLQDWLRQ GDW
D +LV VHUYLFHV ZHUH IRXQG WR EH PXFK EHORZ WKH
XV HYHQ DIWHU WKUHH PRQWKV RI VHUYLFH LQ DO
WR KLP
E 7KH UHVSRQGHQW·V OHWWHU WR WKH SHWLWLRQHU
EDG PHQWDO DWWLWXGH DQG WKDW KH KDG GH
¶ZRUNHU· E\ GHJUDGLQJ KLPVHOI
$GPLWWHGO\ WKH UHVSRQGHQW ZDV DVNHG WR OHDYH
ZKHQ ZDV JLYHQ RQH PRQWK·V VDODU\ DORQJ ZLWK VDO
VDPH
,Q 8WWDUDGHVK 6WDWH 7H[WLOH &RUSRUDWLRQ /WG Y
UHSRUWHG LQ 6&& WKH +RQ·EOH 6XSUHPH &RXUW
IROORZV
´ ,Q WKH IDFWV RI WKH FDVH ZH QHHG QRW H[D
RUGHU GDWHG ZKHUHE\ WKH VHUYLFHV RI WKH
WHUPLQDWHG DV EHLQJ VWLJPDWLF RU QRW DV ZH DU
OLJKW RI WKH IDFW WKDW DSSRLQWPHQW LWVHOI ZD
\HDUV ZKLFK ZRXOG KDYH FRPH WR DQ HQG RQ

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WKDW SHULRG FRXOG KDYH EHHQ JLYHQ WR WKH UHVSRQGHQW E\ WKH WKH +LJK &RXUW :H DFFRUGLQJO\ IHHO WKDW WKHVH RUGHUV QH PRGLILHG WR WKH H[WHQW WKDW WKH DSSHOODQW VKDOO EH GHHPHG XS WR DQG QRW WKHUHDIWHU

7KH RWKHU TXHVWLRQ UHODWHV WR WKH EDFN ZDJHV IRU D SH \HDU F DQG ILYH PRQWKV :H DUH RI WKH RSLQLRQ WKDW WKH JUD ZDJHV LV D PDWWHU RI GLVFUHWLRQ YHVWHG LQ WKH &RXUW DQG WKH HPSOR\HH LV DQ H[WUHPHO\ UHOHYDQW IDFWRU RQ WKLV DSSHFW 7 VWDWXV RI WKH HPSOR\HU PXVW DOVR EH NHSW LQ PLQG :H DUH WKH RSLQLRQ WKDW WKH FRQGXFW RI WKH UHVSRQGHQW DQG WKH ILQDQ WKH DSSHOODQW GRHV QRW MXVWLI\ WKH SD\PHQW RI DQ\ EDFN ZDJHV

,Q 'LVWULFW 3URJUDPPH &R RUGLQDWRU 0DKLOD 6DPN

$EGXO .DUHHP UHSRUWHG LQ 6&& WKH +RQ·EOH

6XSUHPH &RXUW KDV REVHUYHG

:H IHHO WKDW WKH +LJK &RXUW KDV VHULRXVO\ HUUHG LQ L ZLWK D ZHOO PHULWHG FRQYLFWLRQ SDVVHG E\ WKH WULDO FRX UHVSRQGHQW :H WKHUHIRUH VHW DVLGH WKH RUGHU RI DFTXLWWDO +LJK &RXUW DQG UHVWRUH WKH FRQYLFWLRQ SDVVHG RQ WKH UHVSR WULDO FRXUW IRU WKH RIIHQFH XQGHU 6HFWLRQ RI WKH ,QGLDQ 3H

1RZ ZH KDYH WR GHFLGH WKH TXDQWXP RI VHQWHQFH WR EH RQ WKH UHVSRQGHQW :H PXVW SRLQW RXW LQ WKLV FRQWH[RFFXUUHQFH KDSSHQHG RQ ZKHQ WKHUH ZDV QR OHJLVO FRPSXOVLRQ RQ WKH FRXUW WR LPSRVH DQ\ PLQLPXP SXQLVKPHQW RIIHQFH RI UDSH $ TXDUWHU RI D FHQWXU\ KDG HODSVHG VLQFH WKH DQG WKH UHVSRQGHQW ZDV LQ MDLO IRU D ORQJ SHULRG :H WKHUHI KLP WR ULJRURXV LPSULVRQPHQW IRU D SHULRG RI WZR\HDUV 2Q FRPS WKH VHQWHQFH WKH MDLO DXWKRULWLHV VKDOO UHOHDVH KLP IU FRQWLQXHV WR EH LQ MDLO HYHQ QRZ



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[illegible] ,Q$ 3 6WDWH)HGHUDWLRQ RI &RRS 6SLQQLQJ 0LOOV /

6ZDPLQDWKUDHQ SRUW[illegible]LQ [illegible]6&& [illegible]WKH IROORZLQJ YLHZ

H[SUHVVHG

7KH OHJDO SRVLWLRQ LV IDLUO\ ZHOO VHW\
WHUPLQDWLRQ RI D WHPSRUDU\ HPSOR\HH RU D SUR
HPSOR\HH VLPSOLFLWHU ZLWKRXW FDVWLQJ DQ\ VWL
ZLWK E\ WKH FRXUW %XW WKH FRXUW LV QRW GHE
DWWHQGDQW FLUFXPVWDQFHV QDPHO\ WKH FLUF
LVVXDQFH RI RUGHU RI WHUPLQDWLRQ WR ILQG R
LQHIILFLHQF\ UHDOO\ ZDV WKH PRWLYH IRU WKH RUG
WKH IRXQGDWLRQ IRU WKH VDPH RUGHU ,I WKH FRXU
WKH RUGHU ZDV LQ IDFW WKH PRWLYH WKHQ REYLR
LQWHUIHUHG ZLWK EXW LI WKH FRXUW FRPHV WR D
LQHIILFLHQF\ ZDV WKH UHDO IRXQGDWLRQ IRU SDVVL
WKHQ REYLRXVO\ VXFK DQ RUGHU ZRXOG EH KHOG W
PXVW EH LQWHUIHUHG ZLWK VLQFH WKH DSSURSULD
IROORZHG 7KH GHFLVLRQV RI WKLV &RXUW UHOLHG
DOVR VWLSXODWH WKDW LI DQ DOOHJDWLRQ RI DUEL
DQ RUGHU RI WHUPLQDWLRQ LW ZLOO EH RSHQ IRU
DQG ZKDW ZDV WKH PRWLYH IRU SDVVLQJ WKH RUGH
LQ WKDW VHQVH LQ WKH FRXQWHU DIILGDYLW LW
XQVXLWDELOLW\ RI WKH SHUVRQ ZDV WKH UHDVRQ IR
LQ DFFRUGDQFH ZLWK WKH WHUPV RI HPSOR\PHQW
SXQLVK WKH HPSOR\HH %XW RQ H[DPLQLQJ WKH DVVH
DQG RI WKH FRXQWHU DIILGDYLW LQ WKH SUHVHQ
IRU XV WR KROG WKDW LQ WKH FDVH LQ KDQG WKH
WHUPLQDWHG WKH VHUYLFHV LQ DFFRUGDQFH ZLWK W
DQG QRW E\ ZD\ RI LPSRVLQJ WKH SHQDOW\ LQ TXHVW

7KH SHULRG RI DSSRLQWPHQW RI WKH UHVSRQ
RI \HDUV LW VWRRG H[SLUHG RQ 7KH RUGH

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SDVVHG RQ 1RWZLWKVWDQGLQJ WKH FRQFOX
WHUPLQDWLRQ LV YLWLDWHG WKH UHVSRQGHQW F
UHLQVWDWHPHQW E\ ZD\ RI D PDQGDPXV EXW DOO V
HQWLWOHG WR DOO KLV EHQHILWV IORZLQJ IURP WKH
SHULRG WR 7KH DSSHOODQW)HGHUD
GLUHFWHG WR SD\ WKH QHFHVVDU\ SHFXQLDU\ EHQ
GLUHFWLRQ RI RXUV WR WKH UHVSRQGHQW ZLWKLQ
WRGD\ DIWHU GHGXFWLQJ WKH ZDJHV IRU PRQWKV
KLP ZKLOH SDVVLQJ WKH RUGHU RI WHUPLQDWLRQ LQ
LV GLVSRVHG RI DFFRUGLQJO\ µ

The Hon'ble Supreme Court in its judgment and order dated 29th May, 2026 passed in Civil Appeal No.4714 of 2017 (***General Manager, Bank of Baroda & Ors. vs. Ashok Kumar Singh & Ors.)*** held as follows:

40. 1HYHUWKHOHVV IROORZLQJ WKH DGYLFH WKH
WHUPLQDWHG IURP WKH VHUYLFH RQ WKH YHU\ VDP
XQGHU 5HJXODWLRQ D RI 5HJXODWLRQV 7KH
UHOHYDQW DQG KHQFH UHSURGXFHG EHORZ DV WKXV

<RX ZHUH DSSRLQWHG DV 3UREDWLRQDU\ $VVW
1HWZRUNLQJ LQ DFFRUGDQFH ZLWK WKH WH
FRQWDLQHG LQ WKH RIIHU RI DSSRLQWPHQW GDW
WKH WHUPV DQG FRQGLWLRQV FRQWDLQHG LQ
DSSRLQWPHQW \RX KDYH UHSRUWHG IRU ZRU
ZKHUHXSRQ \RX ZHUH DVVLJQHG WR ZRUN DV $*
'HSDUWPHQW RI ,QIRUPDWLRQ 7HFKQRORJ\
$FFRUGLQJO\ \RX ZHUH LQLWLDOO\ SODFHG RQ
RQH \HDU IURP 6LQFH \RXU SHUIRUPDQ
SHULRG RI SUREDWLRQ ZDV QRW IRXQG VDWLVIDF
SUREDWLRQ ZDV H[WHQGHG IRU D IXUWKHU SHULR
IURP ,Q WHUPV RI &ODXVH UHDG ZLWK &

> *of the Offer of Appointment dated 17 12.2003 Once again your performance was reviewed as at the end of extended period of probation and as it was not found satisfactory the period of probation was further extended for a period of six months effective from 05.07.2005 vide order dated 04.07.2005.*

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

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

42. *This Court, relying on Dipti Prakash Banerjee (supra), in Mathew P Thomas v. Kerala State Civil Supply Corpn. Ltd. & Others10, further observed as thus:*

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

termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation.

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has 10 (2003) 3 SCC 263 ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so-called order of termination simpliciter of a probationer elearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person

to continue in service or he is in reality removed from service on the foundation of his misconduct."

28. In the present case, there are materials on record to show that the petitioner employer tried to accommodate the respondent in service by posting him in other departments but the respondent failed to perform and the statement as to misconduct has been made considering the contents of letters written by the respondent to the petitioner/company and his claim that he is 'workman'.

29. The statements appear to be general in nature and were not a ground for termination (thus not founded on it) which being solely for the reason of unsatisfactory performance, and, thus not 'punitive' in nature.

30. In the case of ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr. r***eported in ***(2002) 1 SCC 520*** the Supreme Court observed that:

> ***"19.*** *Thus some courts have upheld an order of termination of a probationer's services on the ground that the enquiry held prior to the termination was preliminary and yet other courts have struck down as illegal a similarly worded termination order because an inquiry had been held. Courts continue to struggle with semantically indistinguishable concepts like "motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.*
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> * * * * * * * * *
>
> ***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) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

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28. *Therefore, whenever a probationer challenges his termination the court's first task will be to apply the test of stigma or the "form" test. If the order survives this examination the "substance" of the termination will have to be found out.*

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

30. *As was noted in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences [12]: (SCC p. 73, para 28)*

> *"28. At the outset, we may state that in several cases and in particular in State of Orissa v. Ram Narayan Das it has been held that use of the word 'unsatisfactory work and conduct' in the termination order will not amount to a stigma."*

31. *Returning now to the facts of the case before us. The language used in the order of termination is that the appellant's "work and*

conduct has not been found to be satisfactory". These words are almost exactly those which have been quoted in Dipti Prakash Banerjee case12 as clearly falling within the class of non-stigmatic orders of termination. It is, therefore safe to conclude that the impugned order is not ex facie stigmatic.

31. In the matter of ***Dipti Prakash Banerjee vs. S. N. Bose National Centre for Basic Sciences, Calcutta & Ors.*** reported in **(1999) 3 SCC 60,** the Hon'ble Supreme Court has held as follows:

> ***29.*** *We may advert to a few cases on the question of stigma. We shall refer initially to cases where a special rule relating to termination of a probationer required a particular condition to be satisfied and where the said condition was referred to in the order of termination. In Hari Singh Mann v. State of Punjab the probationer was governed by Rule 8(b) of the Punjab Service Rules, 1959 and the fact that the word "unfit" as required by the Rules was used, was held not to be a ground for quashing the order on the ground of "stigma", for to hold that it amounted to a "stigma" would amount to robbing the authority of the right under the Rule. Similarly, where a rule required a show-cause notice to be issued and an enquiry to be conducted before terminating probation, such as Rule 55-B of the Central Civil Services (CCA) Rules, there would be no question of characterizing the simple order of termination as one founded on the allegations which were the subject of the enquiry. That was because, in such a case, the purpose of the enquiry was to find out if the officer was to be continued in service and not to find out if he was guilty (State of Orissa v. Ram Narayan Das, Ranendra Chandra Banerjee v. Union of India. In State of Gujarat v. Akhilesh C. Bhargave the termination order merely referred to Rule 12 (bb) of the Indian Police Service (Probationer) Rules, 1959. It was contended that the*

reference to the said Rule 12(bb) itself amounted to a stigma but this was rejected following Ram Narayan Das cases.

30. *We shall next advert to some more cases and to particular words employed while passing orders of termination of probationers. In State of Bihar v. Gopi Kishore Prasadas a show-cause notice was given seeking a reply to the allegation regarding the officer's bad reputation and in regard to certain perverse decisions given by him in his judicial functions during the period of probation. The termination order stated that certain facts were brought to the notice of the Government about his unsatisfactory work and conduct and that grave doubts had arisen about his integrity which indicated that he was a corrupt and an unreliable officer. It was also said that confidential enquiries revealed that he was a corrupt officer and that annual confidential reports of his superior officer referred to his bad reputation and therefore his work during the period of probation was not satisfactory. The Constitution Bench of this Court held that it was a clear case of stigma and the matter indeed required a full-fledged departmental enquiry under Rule 55 of the CCS (CCA) Rules. In Jagdish Mitter v. Union of India the use of the words "undesirable to be continued" in service was held by the Constitution Bench to amount to a stigma. This case was followed in State of U.P. v. Madan Mohan Nagar where the order said that the officer had "outlived his utility" and such an order was held to amount to a stigma. Jagdish Mittere was approved by the seven-Judge Bench in Samsher Singh cases on this point. But in Kunwar Arun Kumar v. U.P. Hill Electronics Corpn. Ltd. the termination order used the word "unsatisfactory" and the same was upheld as it did not amount to a stigma. In two cases arising under industrial law, one in Chandu Lal v. Pan American World Airways and Kamal Kishore Lakshman v. Pan American World Airways Inc. where the termination order used the word "loss of confidence", the said*

orders were held to contain a stigma and therefore punitive. In Jagdish Parsad v. Sachiv, Zila Ganna Committee the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on the charge of corruption and therefore not suitable for appointment. This was held to amount to a stigma. But in Union of India v. R.S. Dhaba where the order merely said "found unsuitable", it was held not to amount to a stigma. In Allahabad Bank Officers' Assn. v. Allahabad Bank the order was one of compulsory retirement and said that a Special Committee had unanimously recommended for the officer's compulsory retirement, that the Chairman and Managing Director agreed with the Committee's views regarding "want of application to the Bank's work and lack of potential" and that the officer was also found to be not "dependable". This Court after referring to a number of the facts of the case and not as an aspersion on his reputation but in relation to his work and were to be understood in that sense in the setting of the words "want of application" and/or "lack of potential". It was observed:

> *"Any person reading the letter or the order of compulsory retirement would not be led to believe that there was something wrong with Appellant 2 as regards his conduct or character. They would only indicate that he had ceased to be useful to the Bank in his capacity as a Manager."*

Again in High Court of Judicature at Patna v. Pandey Madan Mohan Prasad Sinha it was held that termination of a probationer on the basis of uncommunicated adverse remarks was valid.

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41. *We shall next take up the second aspect relating to stigma. We shall assume that the words used in the impugned order do not contain any stigma. We shall then refer to the three other letters to which the order makes a reference. In the first letter dated 30-4-1996, we do not find anything objectionable. Coming*

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to the next letter, we however find that para (iii) refers to the scuffle between the appellant and one P.Chakraborty regarding which the appellant made a complaint on 28-5-1996. An Enquiry Committee is said to have been appointed and it gave a report. The extract from the report of the Committee dated 15-7 -1996 is found in the counter of the respondents. The Enquiry 1 Committee found the appellant's "behaviour reprehensible" and it confirmed that the appellant was "involved in a scuffle and did misdeeds like obtaining false signatures", and said that the appellant was "guilty of inefficient performance or duty, irregular attendance without permission, rude and disorderly behaviour and wilful insubordination". Whatever may be said about the other words, the words used in connection with the finding of the Enquiry Committee about the scuffle and about the appellant obtaining false signatures, are, in our opinion, clearly in the nature of a stigma. Further, the Enquiry Committee said he must be "punished". It did not say that proceedings for disciplinary action were to be initiated. Thus on the ground of "stigma" also, the impugned order is liable to be set aside.

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43. *As pointed out in Bishan Lal Gupta v. State of Haryana an ordinary enquiry by a show-cause might be sufficient for the purpose of deciding whether the probationer could be continued, but where the findings regarding misconduct are arrived at without conducting a regular departmental enquiry, then the termination order will be vitiated. The learned Senior Counsel for the respondent relied upon Hindustan Paper Corpn. v. Purnendu Chakrobarty where it was held that for termination of a "lien", no detailed enquiry was necessary and that if that be the position, termination of probation stands on a lesser footing. But the case turned upon a special rule in that case which specifically provided that for "termination of a lien", a regular enquiry was not*

necessary. That case cannot therefore be of any assistance to the respondents."

32. The judgments relied upon by the respondent/employee principally apply to termination of **regular** employees.

33. Thus the finding of the 1st Labour Court, West Bengal in the award dated 28.06.2024 passed in case No.02/2002 under Section 10(1B)(d) of the Industrial Disputes Act, 1947, published by the Government of West Bengal on 27.08.2024 being not based on proper appreciation of evidence and materials on record, is perverse and thus, **quashed and set aside.**

34. WPO/82/2025 is allowed.

35. Connected applications, if any, also stands disposed of.

36. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)

A.Sadhukhan