Champaklal Chimanlal Shah

Vs

The Union of India

Civil Appeal No. 472 of 1962

(K. Subha Rao, P. B. Gajendragadkar, K. N. Wanchoo, N. Raghuvar Dayal, J. R. Mudholkar JJ)

23.10.1963

JUDGMENT

WANCHOO J. –

This is an appeal against the judgment and decree of the Bombay High Court on a certificate granted by that Court. The appellant was in the service of the Union of India. He was appointed on June 11, 1949 as an officiating Assistant Director Grade II in the office of the Textile Commissioner, Bombay and was working as such till September 15, 1954. The appointment was temporary and his services were liable to be terminated on one month's notice on either side. He was posted after the date of his appointment in the Textile Commissioner's office at Ahmedabad and continued to work there till February 1954. He was transferred to Bombay in February 1954 and was informed in August 1954 that his services would be terminated from September 15, 1954. No cause was assigned for the termination of his services and no opportunity was given to him of showing cause against the action taken against him. He therefore brought a suit in the City Civil Court at Bombay, and his contention was that his services had been terminated unjustifiably and maliciously as the Regional Director of Production in the Textile Commissioner's office at Ahmedabad was against him. Because of this on December 29, 1953, the appellant was called upon to explain certain irregularities and was also asked to submit his explanation and to state why disciplinary action should not be taken against him. The appellant went on to state in the plaint that certain enquiries were held against him behind his back but the matter was not pursued and he was transferred to Bombay in February 1954. While he was at Bombay he received the notice terminating his services. He claimed that he was a quasi-permanent employee under the Central Civil Services (Temporary Service) Rules, 1949, (hereinafter referred to as the Rules) and no action under r. 5 of the Rules could be taken against him. He was further entitled to the protection of Art. 311 of the Constitution and as his services were terminated without complying with that provision the order was bad and liable to be set aside. It was further contended that if r. 5 applied to him, it was bad inasmuch as it was hit by Art. 16 of the Constitution and in any case the order passed against him was bad as it was discriminatory. The appellant therefore prayed that the order of August 13, 1954 by which his services were terminated be declared illegal and inoperative and he be declared a quasi permanent employee and reinstated in service. There was also a claim for arrears of salary and costs of the suit and such other consequential reliefs as the court might deem fit to give.

The suit was opposed by the Union of India and its main defence was that the appellant was not a quasi permanent employee and that r. 5 of the Rules applied to him and that action was properly taken under that rule when terminating the appellant's services by order dated August 13, 1954. It was also contended that r. 5 was perfectly valid and that there was no discrimination practised

against the appellant when his services were terminated. It was admitted that the memo. dated December 29, 1953 was issued to the appellant and he was directed to submit his explanation in respect of the irregularities mentioned therein to the Under Secretary, Government of India, New Delhi and to state why disciplinary action should not be taken against him. It was also admitted that from December 1953 onwards some departmental inquiry was conducted against the appellant but it was averred that the said departmental inquiry was not pursued as the evidence against him was not considered to be conclusive. But as the appellant's work was not found satisfactory he was transferred to Bombay in February 1954 to give him a chance of improvement. As his work and conduct were ultimately found to be unsatisfactory, his employment was terminated under r. 5 of the Rules as he was a temporary employee.

On these pleadings three main questions arose for decision before the trial court, namely, (i) whether the appellant was a quasi permanent employee and r. 5 of the Rules did not apply to him; (ii) whether r. 5 was invalid as it was hit by Art. 16 of the Constitution and in any case whether the action taken against the appellant was discriminatory, and therefore hit by Art. 16 of the Constitution, and (iii) even if the appellant was a temporary government servant, whether he was entitle to the protection of Art. 311(2) of the Constitution in the circumstances of this case. The trial court held on all these points against the appellant and dismissed the suit. The appellant then went in appeal to the High Court. The High Court agreed with the trial court and dismissed the appeal. The appellant then applied for a certificate to appeal to this Court, which was granted; and that is how the matter has come up before us.

The first question that falls for consideration is whether the appellant was a quasi permanent employee and r. 5 did not apply to him. If the appellant is held to be a quasi permanent employee, he will be entitled to the protection of Art. 311(2) and as admittedly the provisions of Art. 311(2) were not complied with in the present case, his suit would have to be decreed and no further question would arise for decision. Rule 3 of the Rules, which falls for consideration in this connection, is as follows :-

> "A Government servant shall be deemed to be in quasi-permanent service :-
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> (i) if he has been in continuous Government service for more than three years;
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> (ii) if the appointing authority, being satisfied as to his suitability in respect of age, qualifications, work and character, for employment in a quasi-permanent capacity has issued a declaration to that effect, in accordance with such instructions as the Governor-General may issue from time to time."

The contention on behalf of the appellant is that as there is no conjunction "and" between the two sub-clauses of r. 3, a Government servant must be deemed to be quasi-permanent if he complies with either of the two sub-clauses. It is urged that a temporary government servant will become quasi-permanent if he has been in continuous government service for more than three years or if a declaration is made in his favour as required by sub-cl. (ii). The appellant thus reads the word "or" between the two sub-clauses. On the other hand, the respondent contends that looking at the scheme of the Rules the word "and" should be implied between the two sub-clauses and that both the clauses must be fulfilled before a Government servant can be deemed to be in quasi-permanent service.

In this connection our attention was drawn to two cases of this Court in which this rule was mentioned. In Parshotam Lal Dhingra v. Union of India ([1958] S.C.R. 828.), this Court, when

referring to r. 3 at p. 858, used the conjunction "or" between the two sub-clauses. Learned counsel for the appellant relies on this to show that we should read the word "or" between the two sub-clauses. We are however of opinion that this Court was not specifically dealing with the interpretation of r. 3 in that case and what has been said there about r. 3 was merely for purposes of illustration. The other case of this Court to which reference has been made is K. S. Srinivasan v. Union of India ([1958] S.C.R. 1295.). There while quoting r. 3 at p. 1307, this Court used the word "and" between the two sub-clauses. That is probably due to the fact that the brochure on "Central Civil Services (Temporary Services) Rules 1949" printed by the General Manager, Government of India Press, New Delhi, 1959, contains the word "and" between the two sub-clauses in r. 3. That also in our opinion is not conclusive in favour of the respondent, because it is not disputed before us that in the Government gazette where the Rules were first published, neither the word "and" nor the word "or" appears between the two sub-clauses of r. 3. This respect of the matter was considered by the Bombay High Court in B.M. Pandit v. Union of India (A.I.R. 1962 Bom. 45.) where the learned Judges pointed out at p. 48 that they found from the copy of the gazette of the Government of India in which these Rules were first published that neither the word "and" nor the word "or" appeared between the two sub-clauses and this position is accepted on behalf of the respondent before us. The question therefore arises whether we have to read the two sub-clauses conjunctively or disjunctively. We may add that the Bombay High Court in the case mentioned above read the two sub-clauses conjunctively and we are of opinion that that view is correct.

The object of these Rules obviously was to provide for some security of tenure for a large number of temporary government servants who had to be employed in view of World War II and also to provide for former employees of the Governments of Sind, the North West Frontier Province and Baluchistan who had come to India on account of the Partition. This protection was afforded temporary government servants and the government servants of the other type by the device of creating quasi-permanent service. Rule 3 provided in what circumstances a government servant shall be deemed to be quasi-permanent. Quasi-permanent service is defined in r. 2(2) as meaning "temporary service commencing from the date on which a declaration issued under r. 3 takes effect and consists of periods of duty and leave (other than extraordinary leave) after that date." Rule 3 therefore must be read with r. 2(b) which defines "quasi-permanent service". Under r. 2(b), quasi-permanent service begins from the date on which a declaration is issued under r. 3. It follows therefore that before a government servant can be deemed to be in quasi-permanent service a declaration must be issued under the second sub-clause of r. 3, for that is the sine qua non for the commencement of quasi-permanent service. Without such a declaration quasi-permanent service cannot begin. If therefore the appellant's contention were to be accepted and a temporary government servant can be deemed to be in quasi-permanent service, if only the first sub-clause has been fulfilled, viz., that he has been in continuous government service for more than three years, there will be complete irreconcilability between r. 2(b) and the first clause of r. 3. Therefore, reading these two rules together the conclusion is inevitable that we must read the two sub-clauses conjunctively and hold that both conditions must be fulfilled before a Government servant can be deemed to be in quasi-permanent service, namely, (i) that he has been in continuous government service for more than three years, and (ii) that the appointing authority after satisfying itself as to suitability in various respects for employment in quasi-permanent capacity has issued a declaration to that effect. It is however urged that the definition in r. 2 have to be read subject to there being nothing repugnant in the subject or context and it is contended that in the context of r. 3 the two sub-clauses must be read disjunctively. We are of opinion that there is no force in this argument, and as a matter of fact the context of r. 3 itself requires that that rule must be read in harmony with definition of "quasi-permanent service" in r. 2(b), for it could not possibly be the intention of the rule making

authority to create disharmony between the definition in r. 2(b) and the provision in r. 3. The contention on behalf of the appellants that the two sub-clauses are independent and have to be read disjunctively must be rejected and it must be held that both the conditions in r. 3 must be satisfied before a government servant can be deemed to be in quasi-permanent service.

This will in our opinion also be clear from the scheme of the Rules following r. 3. Rule 4 provides that "a declaration issued under r. 3 shall specify the particular post or the particular grade of posts within a cadre in respect of which it is issued, and the date from which it takes effect." This rule is clearly meant to apply to all quasi-permanent employees and shows that no government servant can be deemed to be in quasi-permanent service until a declaration has been issued. Rule 6 provides that "the service of a Government servant in quasi-permanent service shall be liable to termination in the same circumstances and in the same manner as a government servant in permanent service." Now under the definition of r. 2(b), quasi-permanent service begins with a declaration issued under sub-cl. (ii) of r. 3. Therefore the protection of r. 6 can only be given to a quasi-permanent employee after a declaration has been made. This again shows that a declaration is necessary before a Government servant can claim to be in quasi-permanent service. Rule 7 provides that a government servant in respect of whom the declaration has been issued under r. 3, shall be eligible for permanent appointment on the occurrence of a vacancy in the specified posts which may be reserved for being filled from among persons in quasi-permanent service. This again shows that a quasi-permanent employee can become eligible for permanent appointment only when a declaration has been issued under r. 3. Again r. 8 provides that a government servant in quasi-permanent service shall as from the date on which his service is declared to be quasi-permanent be entitled to the same conditions of service in respect of leave, allowances and disciplinary matters as a government servant in permanent service holding the specified post. Here again the benefit of r. 8 can only be availed of by a quasi-permanent government servant in whose favour a declaration has been made. Then r. 9 provides that a government servant in quasi-permanent service shall be eligible for a gratuity under certain circumstances. This gratuity will be at the rate of half a month's pay for each completed year of quasi-permanent service, such gratuity being payable on the basis of the pay admissible to such government servant in respect of the specified post on the last day of his service. This again contemplates a declaration before the benefit of r. 9 can be claimed by a quasi-permanent employee. Rule 10 provides that where a government servant in quasi-permanent service is appointed substantively to a permanent pensionable post, the entire period of quasi-permanent service rendered by him shall be deemed to be qualifying service for the grant of gratuity and pension. Now under r. 2(b) quasi-permanent service only commences after the declaration and therefore unless a declaration is made, the benefit of r. 10 cannot be taken by a quasi-permanent employee. The scheme of the rules therefore clearly shows that a declaration under r. 3 is necessary before a temporary government servant can claim to be a quasi-permanent employee. Otherwise if the two sub-clauses of r. 3 were to be read disjunctively the result would be that a person may become a quasi-permanent employee under sub-cl. (i) but will get none of the advantages mentioned above. We are therefore satisfied that the scheme of the Rules and the harmony that is essential between r. 2(b) defining "quasi-permanent service" and r. 3 laying down how a government servant can be deemed to be in quasi-permanent service require that the two sub-clauses should be read conjunctively and that two conditions are necessary before a government servant can be deemed to be in quasi-permanent service, namely, (i) continuous service for more than three years, and (ii) declaration as required by sub-cl. (ii) of r. 3. It is not in dispute that though the appellant had been in service for more than three years by 1954, no declaration as required by sub-cl. (ii) of r. 3 has ever been made in his case. He cannot therefore claim to be in quasi-permanent service. It follows therefore that he cannot claim the benefit of r. 6, which lays down that the services of a government

servant in quasi-permanent service shall be liable to termination in the same circumstances and in the same manner as government servants in permanent service. If he could claim the benefit of r. 6, he would have been certainly entitled to the protection of Art. 311. As he is not entitled to the benefit of r. 6, he cannot claim the benefit of Art. 311(2) on the ground that he must be deemed to be in quasi-permanent service.

The appellant therefore must be held to be still in temporary service when his services were dispensed with in August 1954. The rule that applies to a temporary government servant is r. 5 which lays down that -

> "(a) the service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.
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> (b) The period of such notice shall be one month, unless otherwise agreed to by the Government and by the Government servant;
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> Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances, at the same rates at which he was drawing them immediately before the termination of his services, for the period of the notice or, as the case may be, for the period by which such notice falls short of one month or any agreed longer period."

In short r. 5 gives power to the Government to terminate the services of a temporary government servant by giving him one month's notice or on payment of one month's pay in lieu of notice or such shorter or longer notice or payment in lieu thereof as may be agreed to between the Government and the employee concerned. This rule is being attacked on the ground that it is hit by Art. 16, which provides that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". We have not been able to understand how this rule can possibly be hit by Art. 16, which provides for equality of opportunity. These Rules show that there are two classes of employees namely, (i) permanent employees, and (ii) temporary employees, the latter being divided into two sub-clauses (a) quasi-permanent, and (b) temporary. It is well recognised that the Government may have to employ temporary servants to satisfy the needs of a particular contingency and such employment would be perfectly legitimate. There can also be no doubt, if such a class of temporary servants could be recruited that there would be nothing discriminatory or violative of equal opportunity if the conditions of service of such servants are different in some respects from those of permanent employees. Further we see no denial of equal opportunity if out of the class of temporary employees some are made quasi-permanent depending on length of service and their suitability in all other respects for permanent employment eventually and thus assimilated to permanent employees. It has been urged on behalf of the respondent that Art. 16 in any case will not apply to matters relating to termination of service. We do not think it necessary for present purposes to decide whether Art. 16 would apply to rules relating to termination of service. We shall assume for the purposes of this appeal that Art. 16 will apply even in the case of rules relating to termination of service. But we fail to see how the rule which applies to one class of government servants in the matter of termination but does not apply to the other two classes can be said to violate equality of opportunity provided in Art. 16. The classification of government servants into these classes is reasonable and differences in the matter of termination of service between these classes cannot be said to be discriminatory in the circumstances. In particular

the very fact that the service of a government servant is purely temporary makes him a class apart from those in permanent service and such government servant cannot necessarily claim all the advantages which a permanent servant has in the matter of security of service. We are therefore of opinion that considering the nature of the employment of a temporary government servant, a provision like that in r. 5 in respect of termination of service is a reasonable provision which cannot be said to deny equality of opportunity provided in Art. 16. The attack therefore on r. 5 on the ground that it is hit by Art. 16 of the Constitution must fail.

It is next urged that even if r. 5 is good, the order by which the appellant's services were dispensed with was bad, because it was discriminatory. In this connection reference was made in the plaint to a number of Assistant Directors whose services were not dispensed with even though they were junior to the appellant and did not have as good qualifications as he had. We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In those circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was as a result of discrimination. The present however is a case where the appellant's services were terminated because his work was found to be unsatisfactory. We shall deal with the question whether termination in this case is liable to be set aside on the ground that Art. 311(2) was not complied with later; but where termination of the service of a temporary government servant takes place on the ground that his conduct is not satisfactory there can in our opinion be no question of any discrimination. It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is. Therefore even though some of those mentioned in the plaint by the appellant were junior to him and did not have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory for that action was taken on the basis of his unsatisfactory conduct. A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory. We therefore reject the contention that the appellant was denied the protection of Art. 16 and was treated in a discriminatory manner.

We now come to the last question whether the appellant was entitled to the protection of Art. 311(2) of the Constitution, even though he was a temporary government servant. It is well settled that temporary servants are also entitled to the protection of Art. 311(2) in the same manner as permanent government servants, if the government takes action against them by meting out one of the three punishments i.e. dismissal, removal or reduction in rank : (see Parshotam Lal Dhingra v. Union of India ([1958] S.C.R. 828.). But this protection is only available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is also not disputed that the mere use of expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such innocuous expressions, the court has to apply the two tests mentioned in Parshotam Lal Dhingra's case ([1958] S.C.R. 828.), namely - (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the

rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. It is on these principles which have been laid down in Parshotam Lal Dhingra's case ([1958] S.C.R. 28.) that we have to decide whether the appellant was entitled to the protection of Art. 311(2) in this case.

Before however we consider the facts of this case, we should like to make certain general observations in connection with disciplinary proceedings taken against public servants. It is well known that government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held on a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Art. 311(2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. An enquiry officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds enquiry into the charges communicated to the servant concerned after taking his explanation and this inquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant. In this enquiry evidence both documentary and oral may be led against the public servant concerned and he has a right to cross-examine the witnesses tendered against him. He has also the right to give documentary and oral evidence in his defence, if he thinks necessary to do so. After the enquiry is over, the enquiry officer makes a report to the Government or the authority having power to take action against the servant concerned. The government or the authority makes up its mind on the enquiry report as to whether the charges have been proved or not and if it holds that some or all the charges have been proved, it determines tentatively the punishment to be inflicted on the public servant concerned. It then communicates a copy of the enquiry officer's report and its own conclusion thereon and asks him to show cause why the tentative punishment decided upon be not inflicted upon him. This procedure is required by Art. 311(2) of the Constitution in the case of the three major punishments, i.e., dismissal or removal or reduction in rank. The servant concerned has then an opportunity of showing cause by making a representation that the conclusions arrived at at the departmental enquiry are incorrect and in any case the punishment proposed to be inflicted is too harsh.

Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case

for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Art. 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Art. 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government, and it is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of Art. 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Art. 311 that the government servant is entitled to the protection of that Article. That is why this Court emphasised in Parshotam Lal Dhingra's case ([1958] 1 S.C.R. 828.) and in Shyamlal v. The State of Uttar Pradesh ([1955] 1 S.C.R. 26.) that the motive or the including factor which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant.

In Shyamlal's case ([1955] 1 S.C.R. 26.) what happened was that the government servant concerned was called upon to explain certain matters which cast an imputation upon him; but later it was made perfectly clear to him by the government that it was not holding any formal departmental enquiry against him with a view to inflicting any of the three major punishments, although the government desired to give him an opportunity to show cause why he should not be compulsorily retired, and after considering his explanation he was compulsorily retired under the relevant service rule. It was held in that case that this did not amount to punishment within the meaning of Art. 311(2), even though there was some imputation at an earlier stage and even though the servant concerned was asked to explain why he should not be compulsorily retired. As we have said already it is not usual for government to take action against a public servant without rhyme or reason and that is why in the case of temporary servants or servants holding higher ranks to which they have no right some kind of preliminary enquiry is usually held before the government decides to dispense with their service or revert them to their substantive posts. The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service rule (e.g. r. 5 in this case) would not mean that the termination of service amounted to infliction of punishment of dismissal or removal

within the meaning of Art. 311(2). Whether such termination would amount to dismissal or removal within the meaning of Art. 311(2) would depend upon facts of each case and the action taken by government which finally leads to the termination of service.

Let us now turn to the facts of this case. On December 29, 1953, a memorandum was given to the appellant under the signature of the Under Secretary to the Government of India. By that memorandum he was informed about four matters and his explanation was called in that connection. The first matter referred to his punctuality in attending office and his absenting himself from duty without prior intimation and instances in that respect were brought to his notice. The second matter was with respect to irregular claims for mileage allowance in respect of his visits to mills some of which were never made. Instances of these were also brought to his notice. The third matter related to a certain visit to a certain mill on a certain date which was never undertaken. The fourth matter was general relating to his work and conduct being not satisfactory and his not attaching due importance to the performance of his duties in accordance with the instructions of the Regional Director. He was required to submit his explanation by January 6, 1954 and also asked to state why disciplinary action should not be taken against him.

The contention on behalf of the appellant is that this memorandum really amounted to a chargesheet against the appellant and he was asked to give an explanation thereto and also to state why disciplinary action should not be taken against him. Stress is laid out on the last sentence of the memorandum where the appellant was asked why disciplinary action could not be taken against him. It may be conceded that the way in which the memorandum was drafted and the fact that in the last sentence he was asked to state why disciplinary action should not be taken against him might give an impression that the intention was to hold a formal departmental enquiry against him with a view to punishing him. But though this may appear to be so, what is important to see is what actually happened after this memorandum, for the courts are not to go by the particular name given by a party to a certain proceedings but are concerned with the spirit and substance of it in the light of what proceeded and succeeded it. It is true that in the written statement of the respondent it is stated from December 1953 onwards a departmental enquiry was being conducted against the appellant, though the written statement went on to say that that departmental enquiry was not pursued as the evidence was not considered to be conclusive. In actual fact however it is not even the case of the appellant that any enquiry officer was appointed to hold what we have called a formal departmental enquiry in which evidence was tendered from both sides in the presence of the appellant. This is clear from para 8 of the plaint in which it is said that some enquiries appeared to have been held after the memorandum of December 1953 but were not pursued further. It is however clear that no formal departmental enquiry as contemplated under Art. 311(2) read with the relevant Central Services Rules was ever held after the notice of December 29, 1953, as otherwise the appellant would have taken part in such an enquiry and would have been entitled to cross-examine witnesses produced against him and would also have been entitled to lead evidence. It seems therefore clear that though this memorandum was issued and the appellant was asked therein to state why disciplinary action should not be taken against him, no departmental enquiry followed that memorandum and the matter was dropped. That is further borne out by the fact that the appellant was transferred from Ahmedabad to Bombay in February 1954, which would be most unlikely if a departmental enquiry was going on against him in Ahmedabad. The respondent's case in this connection is that it gave up the departmental enquiry even though it was contemplated and transferred the appellant to Bombay in order to give him a chance of improvement. The appellant worked in Bombay for over six months and thereafter the Government finally decided to terminate his services under r. 5 as his work and conduct were found unsatisfactory even after his transfer to Bombay. On these facts there can in our opinion be no doubt that even if a departmental enquiry

was contemplated in December 1953 it was not pursued and no punitive action was taken against him on the basis of the memorandum issued to him on December 29, 1953; what appears to have happened is that after the appellant was transferred to Bombay where he worked for six months more, the government came to the conclusion that his work and conduct were not satisfactory and therefore decided to terminate his services under r. 5. We cannot accept the proposition that once government issues a memorandum like that issued in this case on December 29, 1953, but later decides not to hold a departmental enquiry for taking punitive action, it can never thereafter proceed to take action against a temporary government servant in the terms of r. 5, even though it is satisfied otherwise that his conduct and work are unsatisfactory. The circumstances in this case are in our opinion very similar to the facts in Shyamlal's case ([1955] 1 S.C.R. 26.), the difference being that in that case he was compulsorily retired and in this case the appellant's services have been terminated. In Shyamlal's case ([1955] 1 S.C.R. 26.) also at one stage, the government made imputation against his conduct but later withdrew them and did not follow up the matter by holding a departmental enquiry. This is exactly what happened in the present case and it was more than six months after that the appellant who had in the meantime been transferred to Bombay was discharged in the terms of r. 5 because his work and conduct were found unsatisfactory. The order terminating his services makes no imputation whatsoever against him and in the circumstances it cannot be said that the termination of his service is visited with any evil consequences as explained in Parshotam Lal Dhingra's case ([1958] S.C.R. 828.). We are therefore of opinion that on the facts of this case Art. 311(2) has no application and the appellant was not entitled to the protection of that Article before his services were terminated under r. 5, for the termination of service here does not amount to infliction of the penalty of dismissal or removal.

It remains now to consider certain cases on which reliance was placed on either side. Strong reliance has been placed on behalf of the appellant on Madan Gopal v. The State of Punjab ([1963] 3 S.C.R. 716.). In that case Madan Gopal was a temporary government servant. A charge-sheet was served on him on February 5, 1955 and he was charged with having taken bribes in two cases. He was also asked to explain why disciplinary action should not be taken against him. He was further asked to state if he wanted to be heard in person and also to put forth any defence. It will be clear that charges were served upon Madan Gopal in that case while in the present case no charges were ever served on the appellant and the communication of December 29, 1953 was headed as a memorandum. Further the charge-sheet in Madan Gopal's case ([1963] 3 S.C.R. 716.) besides asking him to state why disciplinary action should not be taken against him also asked him to state in his reply if he wanted to be heard in person and wanted to put forward any defence, which clearly showed that a departmental enquiry was going to be held particularly when the charges were given by the Settlement Officer who had apparently been appointed the enquiry officer for the purpose. Further in Madan Gopal's case ([1963] 3 S.C.R. 716.) an enquiry was held and a report was submitted by the enquiry officer to the Deputy Commissioner. The enquiry officer found Madan Gopal guilty of the charges and recommended that he should be removed from service immediately. On the basis of this report an order was passed by the Deputy Commissioner which stated in so many words that it had been established that bribes had been taken by Madan Gopal and that he accepted the report of the Settlement Officer. The Deputy Commissioner then went on to order that the services of Madan Gopal were terminated on payment of one month's pay in lieu of notice. Obviously in that case a departmental enquiry was held by the enquiry officer, a report was made to the Deputy Commissioner who was apparently the authority to dismiss or remove Madan Gopal and he passed the order terminating his services on the basis of the report, though he did not use the word "dismiss" or "remove" in his order. In those circumstances this Court held in conformity with what had been said in Parshotam Lal Dhingra's case ([1958] S.C.R. 828.) that the mere use of the

word "termination" would not conclude the matter and as the facts showed as they did not in Madan Gopal's case ([1963] 3 S.C.R. 716.) that the order was one of dismissal or removal and was passed as a punishment after enquiry, Art. 311(2) should have been complied with. The facts of that case in our opinion are very different from the facts in the present case. As we have already pointed out no departmental enquiry was really held after the memorandum of December 29, 1953 in this case and no enquiry officer was appointed and no report was made by any enquiry officer. Whatever might have been the intention behind the memorandum dated December 29, 1953, the matter was not pursued and the departmental enquiry if it was ever intended to be held was dropped. The appellant thereafter was transferred to Bombay to give him chance of improvement and it was only six months later when it was found that his work and conduct were still unsatisfactory that government took action under r. 5 and dispensed with his services. On the facts of the present case therefore it cannot be said that the order of dispensing with the services of the appellant which was passed in August 1954 was an order punishing the appellant by imposing upon him the penalty of removal or dismissal.

The next case is The State of Bihar v. Gopi Kishore Prasad (A.I.R. 1960 S.C. 689.). That was a case of a probationer and this Court laid down five propositions therein. It is the third proposition therein on which strong reliance has been placed on behalf of the appellant. It is in these terms :-

> "But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case he is entitled to the protection of Art. 311(2) of the Constitution."

It is urged on behalf of the appellant that this proposition means that as soon as any kind of enquiry is held against a probationer - and the same it is said will apply to a temporary employee as the two stand more or less on the same footing - the protection of Art. 311(2) would be available. We are of opinion that this is reading much more in the proposition then was ever intended by this Court. In that case the Government after some kind of enquiry said in the order terminating the services of the servant concerned that confidential enquiries showed that he had the reputation of being a corrupt officer and that there was ample material to show that the report about his resorting to corrupt practices was justified. The order further said that his work was wholly unsatisfactory and in consideration of those matters, it was provisionally decided to terminate the probation and the government servant was asked to show cause why he should not be discharged. His explanation was then considered and the Government finally decided to discharge him. The facts of that case as they appeared from the copy of the government decision showed that the government was actually proceeding on the basis that Art. 311(2) was applicable in that case and that is why some enquiries were held and a provisional conclusion to terminate the services of the officer concerned was arrived at and he was asked to show cause against that. In those circumstances this Court held that as government had purported to take action under Art. 311, the action was bad as the protection envisaged by that Article was not afforded to the servant concerned. The third proposition therefore in that case does not in our opinion lay down that as soon as any kind of enquiry is held into the conduct of a probationer or a temporary servant he is immediately entitled to the protection of Art. 311. All that the third proposition lays down is that if the government chooses to hold an enquiry purporting to act under Art. 311 as was the case in that case, it must afford to the government servant the protection which that Article envisages.

Gopi Kishore Prasad's case (A.I.R. 1960 S.C. 689.) was considered by this Court in a later case in

State of Orissa v. Ram Narayan Das ([1961] 1 S.C.R. 606.), which was also a case of a probationer. In Ram Narayan Das's case ([1961] 1 S.C.R. 606.), the order was to the effect that the government servant was discharged from service for unsatisfactory work and conduct from the date on which the order was served on him. This Court in Ram Narayan Das's case ([1961] 1 S.C.R. 606.) referred to the rules, which provided that "where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment" and pointed out that action in accordance with the rules would not be hit by Art. 311. Gopi Kishore Prasad's case (A.I.R. 1960 S.C. 689.) was distinguished in that case and it was pointed out that the third proposition in Gopi Kishore Prasad's case (A.I.R. 1960 S.C. 689.) referred to "an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to imposing punishment and not to an enquiry whether a probationer should be confirmed," which means that where the Government purports to hold an inquiry under Art. 311 read with the Rules in order to punish an officer, it must afford him the protection provided therein. The third proposition therefore in Gopi Kishore Prasad's case (A.I.R. 1960 S.C. 689.) must be read in the context of that case and cannot apply to a case where the government holds what we have called a preliminary enquiry to find out whether a temporary servant should be discharged or not in accordance with his contract or a specific service rule in view of his conduct. The third proposition must be restricted only to those cases whether of temporary government servants or others, where government purports to act under Art. 311(2) but ends up with a mere order of termination. In such a case the form of the order is immaterial and the termination of service may amount to dismissal or removal. The same view has been taken in Jagadish Mitter v. Union of India (A.I.R. 1964 S.C. 449.).

We are therefore of opinion that on the facts of this case it cannot be said that the order by which the appellants; services were terminated under r. 5 was an order inflicting the punishment of dismissal or removal to which Art. 311(2) applied. It was in our opinion an order which was justified under r. 5 of the rules and the appellant was not entitled to the protection of Art. 311(2) in the circumstances. The appeal therefore fails and is hereby dismissed. In the circumstances we pass no order as to costs.

Appeal dismissed.

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