

Benjamin (A. G.)

v.

Union of India

(Supreme Court Of India)

HON'BLE JUSTICE K.SUBBA RAO (CJI)

HON'BLE JUSTICE J.C.SHAH

HON'BLE JUSTICE S.M.SIKRI

HON'BLE MR. JUSTICE VAIDYNATHIER RAMASWAMI

HON'BLE JUSTICE C.A.VAIDAILINGAM

Civil Appeal No. 1341 of 1966 | 13-12-1966

Ramaswami, J.

1. This appeal is brought from the judgment of the Punjab High Court, dated 3 November, 1965, in Letters Patent Appeal No. 21-D of 1965.

2. The appellant, A. G. Benjamin, was temporarily employed as a stores officer in the Central Tractor Organization with effect from 14 September, 1949. As he was not a confirmed Government servant his services could be terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, with one month's notice on either side. Under this rule the services of the appellant were terminated on 23 April 1954, the date on which the notice was served upon him. It appears that there were certain complaints made against the appellant while he was employed as stores officer in the Central Tractor Organization. In respect of these complaints Chairman of the Central Tractor Organization sent a notice to the appellant asking him to show cause why disciplinary action should not be taken against him. At first Sri Bhagwan Singh Deputy Chairman of the organization was appointed as enquiry officer, but on his transfer Sri R. N. Mathur was appointed on 13 August 1953 to conduct the enquiry. Before the enquiry could be completed, the Chairman recommended that the services of the appellant should be terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, by granting him one month's salary in lieu of notice. In his note to the Secretary, the Chairman observed that :

"The departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities we will be able to deal with the accused in the way he deserves".

3. The Chairman, therefore, suggested that action should be taken under rule 5 for termination of the services of the appellant after one month's notice or salary in lieu thereof. The recommendation was accepted by the Minister and in consequence the impugned order, dated 23 April, 1954, was passed by the Chairman. The material part of this order reads as follows :

"A. G. Benjamin, Stores Officer, Central Tractor Organization, is informed that his services are no longer required in this organization. His services will accordingly stand terminated with effect from the date on which this notice is served on him. In lieu of the notice for one month due to him under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, Benjamin will be given pay and allowances for that period."

Thereafter, the appellant filed a suit on 28 March 1955 for a declaration that the order of discharge was illegal as it was in violation of the provisions of Art. 311 of the Constitution. The suit was dismissed by the trial Court which held that the order of termination was not tantamount to a dismissal or removal and the provisions of Art. 311 were not attracted. The decree of the trial Court was affirmed in appeal by the Senior Subordinate Judge of Delhi. The appellant preferred a second appeal to the Punjab High Court - R.S.A. No. 249 D-62 which was allowed by Jindra Lal, J., who granted a decree to the appellant that the order of the Union Government, dated 23 April, 1954, terminating the services of the appellant was ultra vires and illegal. The Union of India took the matter in appeal under Letters Patent and the order of Jindra Lal, J., was set aside by the Letters Patent Bench and the suit of the appellant was dismissed.

4. The question to be considered in this appeal is whether the order of the Union Government, dated 23 April 1954, is an order by which punishment has been

inflicted upon the appellant and whether it is consequently an order of dismissal or removal within the meaning of Art. 311 of the Constitution.

5. It is now well established that temporary Government 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 meeting out one of the three punishments, i.e., dismissal, removal or reduction in ranks - see *Parshotam Lal Dhingra v. Union of India* [1958 - I L.L.J. 544]. But this protection is only available where the 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 expression like "terminate" or "discharge" is not conclusive and in spite of the use of such expressions, the Court has to apply the two tests mentioned in *Parshotam Lal Dhingra* case [1958 - I L.L.J. 544] (*vide supra*), namely -

(1) whether the temporary Government 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 there was punishment of the temporary Government servant. It is also necessary to state that even though misconduct, negligence, inefficiency or other disqualification may be the motive or the compelling factor which influenced the Government to take action against the temporary Government servant under the terms of the contract of employment or the specific service rule, nevertheless, if the Government had the right, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. It is in the light of these principles which have been laid down in *Parshotam Lal Dhingra* case [1958 - I L.L.J. 544] (*vide supra*) that we have to decide whether the appellant was entitled to the protection of Art. 311(2) in the present case.

6. It is true that the tenure held by a temporary Government servant is of a precarious character. His services can be terminated by one month's notice without assigning any reason either under the terms of the contract which

expressly provide for such termination or under the relevant statutory rules governing temporary appointments. Such a temporary servant can also be dismissed in a punitive way. In other words, the appropriate authority possesses two powers to terminate the services of a temporary public servant. It can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, the provisions of Art. 311 will not be applicable. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in which case the provisions of Art. 311 will be applicable. But even where it is intended to take action by way of punishment it often happens that something in the nature of a preliminary enquiry is first held in connexion 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 Government servant that a formal departmental enquiry is started into the conduct of the Government servant. In this enquiry both documentary and oral evidence is led against the Government servant 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 it necessary to do so. After the enquiry is over, the enquiry officer makes a report to the Government or the authority empowered to take action against the Government 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. But even where the 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 the temporary employee. When a preliminary enquiry of this nature is held in the case of a temporary Government servant it must not be mistaken for the regular departmental enquiry made by the Government in order to inflict one of the three major punishments already indicated. So far as the preliminary enquiry is concerned there is no question of its being governed by Art. 311(2), for the preliminary 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 the

temporary Government servant concerned. There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary Government servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary Government servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant statutory rule. In such case, it would not be open to the temporary Government servant should be discharged - see the decision of this Court in *Champaklal Chimanlal Shah v. Union of India* [1964 - I L.L.J. 752]. Even in a case where a formal departmental inquiry is entitled against a temporary Government servant it is, we think, open to the authority to drop further proceedings in the departmental enquiry and to make an order or discharge simpliciter against the temporary Government servant. We do not accept the contention of counsel for the appellant that once the formal departmental proceedings have been initiated it is not open to the authority concerned to drop them and to take the alternative course of discharging the temporary Government servant in terms of the contract of services or the relevant statutory rule. It is possible that the authority takes the view that the stigma of the order of dismissal should be avoided in the individual case. As we have already said, the appropriate authority possesses two powers to terminate the services of a temporary Government servant. It can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, the provisions of Art. 311 will not be applicable. Alternatively, the authority can also act under its power to dismiss a temporary servant and make an order of dismissal in which case the provisions of Art. 311 will be applicable. If therefore, the authority decides, for some reason, to drop the formal departmental enquiry even though it had been initiated against the temporary Government servant, it is still open to the authority to make an order of discharge simpliciter in terms of the contract of service or the relevant statutory rule. In such cases the order of termination of services of the temporary Government servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued in service for some alleged inefficiency or misconduct. The point has been clearly stated by Gajendragadkar, J. (as he then was) in *Jagdish Mitter v. Union of India* [1964 - I L.L.J. 418] as follows at pp. 423-424 :

"... Take a case where the authority initiates a formal departmental inquiry against a temporary servant, but whilst the enquiry is pending, it takes the view

that it may not be necessary or expedient to terminate the services of the temporary servant by issuing an order of dismissal against him. In order to avoid imposing any stigma which an order of dismissal necessarily implies, the enquiry is stopped and an order of discharge simpliciter is served on the servant. On the authority of the decision of this Court in the case of Parshotam Lal Dhingra [1958 - I L.L.J. 544] (vide supra) it must be held that the termination of services of the temporary servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct. That is why in dealing with temporary servant against whom formal departmental enquiries may have been commenced but were not pursued to the end, the principle that the motive operating in the mind of the authority is immaterial, has to be borne in mind."

7. Let us now turn to the facts of the present case. There were several complaints made against the appellant and in July 1951 a memorandum was issued to the appellant under the signature of the Chairman of the Central Tractor Organization asking him to reply to the allegations. By the memorandum the appellant was informed that he failed to maintain stores and record properly, that he did not make adequate fire-fighting arrangements and that he also failed to carry out the orders given by superior officers. It was also alleged that the appellant had been handing over, without authority, Government stores to representatives of the supply companies. The appellant was asked to submit his explanation as to why disciplinary action should not be taken against him. Reference was made by Sri Mani on behalf of the appellant to Ex. D. 1. which is the note of the Chairman dated 19 April 1954 wherein it is mentioned that the appellant was found guilty of failing to maintain properly the stores and records and of not exercising sufficient vigilance in performing his duties. It was argued for the appellant that there was a definite finding with regard to the guilt of the appellant. It is, however, not possible for us to accept the contention of the appellant that any formal finding was recorded against him. The note of the Chairman, Ex. D. 1, itself shows that the enquiry was not completed and it was thought that if proper departmental enquiry was to be completed it would take much longer time. In para 5 of the note, Ex. D. 1, the Chairman recommends that "services of the appellant should be terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, by

paying a month's salary in lieu of notice" and that "the departmental proceedings will take much longer time."

8. It is, therefore, manifest that the formal departmental enquiry was dropped against the appellant before it could be completed and the intention of the authority was not to impose a stigma against the appellant by making an order of dismissal but to make a simple order of discharge of the services of the appellant under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. Indeed, the order of discharge, dated 23 April, 1954, Ex D. 2, makes no imputation, whatever, against the appellant and it simply states that "his services are no longer required in the organization."

As we have already stated, the note of the Chairman, Ex. D. 1, dated 19 April, 1954, also shows that departmental proceedings were dropped and it was decided not to take punitive action against the appellant but to make a simple order of discharge under rule 5. In this state of facts the appellant is not entitled to invoke the protection of Art. 311(2) of the Constitution.

9. Strong reliance was placed on behalf of the appellant on the decision of this Court in *Madan Gopal v. State of Punjab* [1964 - I L.L.J. 68]. In that case, Madan Gopal was a temporary Government servant. A chargesheet was served with having taken bribes in two cases. He was also asked to explain why disciplinary action should not be taken against him and he was further asked to state if he wanted to be heard in person and also to put forth any defence. An enquiry was held by the Settlement Officer who submitted his report to the Deputy Commissioner. On the basis of this report the Deputy Commissioner passed an order that it had been established that bribes had been taken by Madan Gopal and, therefore, the services of Madan Gopal were terminated on payment of one month's pay in lieu of notice. In these circumstances, it was held by this Court that the order was really one of dismissal or removal and passed as a punishment after inquiry and, therefore, the provisions of Art. 311(2) should have been complied with. The material facts in the present case are obviously different and the principle of *Madan Gopal* case [1964 - I L.L.J. 68] (*vide supra*) cannot be held applicable.

10. For the reasons already expressed, we hold that this appeal has no merit and that it must be dismissed.

11. There will be no order as to costs in this Court.