

JAMMU AND KASHMIR HIGH COURT

Abdul Khalik Renzu

Vs.

State of J. and K

Writ Petn. Nos. 6 to 26 and 29 of 1964

(J.N. Wazir, C.J., S. Murtaza Fazl Ali and Janki Nath Bhat, JJ.)

21.09.1964

JUDGMENT

S. Murtaza Fazl Ali, J.

1. These twenty two petitions involve a common question of law and we propose to decide them by a common judgment.

2. The applications pray for a writ of Certiorari in order to quash an order dated 13-3-1964 passed by the Government by which the organization known as "Special Police Squad" was disbanded and all the employees under that organization were removed from service. By a subsequent order dated 26-3-1964, the Government directed that the order disbanding the organization would take effect from 1-4-1964. The case was heard by a division bench but in view of substantial questions of law involved, it has been placed before us for an authoritative pronouncement.

3. The facts giving rise to the petitions lie within a narrow compass and most of them are admitted. By virtue of Government Order No. 87-C of 1954 dated January 18, 1954, Government created a special police squad of the strength shown in the Annexure to the order and directed that the squad should come into effect from 20th December, 1953, the date on which the squad was organized. It was further stated in the order that in time of need the squad will function as Special Police within the meaning of Sections 18 and 19 of the Jammu and Kashmir Police Act, 1983. The actual order passed by the Government may be quoted thus :

"Sanction is accorded to the creation of Special Police squad of the strength shown in the Statement forming annexure to this order.

The creation of the posts and provisions of the fluctuating grants and indicated in the annexure, is also sanctioned. This sanction will take effect from the 20th December 1953, from which date the squad was actually organized. The squad will function as Special Police within the meaning of Sections 18 and 19 of the Jammu and Kashmir Police Act, 1983, in time of need.

By order of the Cabinet."

4. Annexure to the order shows that by virtue of the creation of the squad there were 800 constables, some Platoon Commanders, Chowkidars, Accountants, Typists, Head Clerks, Officers in charge, Coy. Commanders, and Second Officers and, a provision for fluctuating grant for financing the squad was also made in the budget. The Petitioners were the members of this squad ever since its creation. This fact is not disputed by the respondent. Subsequently by an order No. Police/65/57 dated 11-5-1957 the services of the employees, created under the Special Police Squad were treated to be permanent for all purposes and the order runs thus :

"It is hereby ordered that the Special Police Squad created under Cabinet Order No. 87-C of 1954 be treated permanent for all purposes.

By order of the Government of Jammu and Kashmir."

Thus the Special Police Squad started functioning after coming into existence and since 11-5-1957 the members of the squad have been treated as permanent servants under the State Government. It is alleged that from the year 1956, onwards the services of most of the members of the squad were utilized with the sanction of the District Magistrate under Sections 18 and 19 of the Police Act. Between 1953 to 1956, however, there is no material on the record to show as to whether or not the District Magistrate had passed an order utilizing the services of the petitioners or other members of the squad under Sections 18 and 19 of the Police, Act. This state of affairs existed until the order impugned was passed which disbanded the entire organization with a direction that such of the members of the organization as may be found fit for police service would be absorbed in the police department of the State. Before passing this order, however, it is common ground that no notice as contemplated by Section 126 of the State Constitution was given to the petitioners or for that matter to any member of the squad. It is also not disputed before us that under Government order No. Police/65/57 dated 11-5-1957, referred to above, the petitioners were treated as permanent servants under the State Government. On these facts, the petitioners submit that they being permanent servants could not have been removed from service without complying with the procedure laid down in Section 126 of the State Constitution, The petitioners further contend that as no notice under Section 126 of the State Constitution was given to them the order terminating their services is ultra vires of the provisions of the Constitution and, therefore, be quashed. This is in fact the short point raised by the petitioners in this case.

5. The petition has been resisted by the Advocate General mainly on two grounds. In the first place, the Advocate General contended that the Government had no jurisdiction at all to create a permanent police force because the order passed by the Government is ultra vires of Section 5 of the Police Act and as such the Special Police Squad created by the Government had no legal existence and hence the question of complying with the provisions of Section 126 of the State Constitution would not arise. This very argument was put forward by the Advocate General in another fashion. It was contended that the Government had not created any permanent organization at all but had created a temporary special police under the provisions of Sections 18 and 19 of the Police Act and that is why the term of the organization was extended from year to year after obtaining the sanction of the District Magistrate. In other words, the argument is that the organization itself having come into existence for a transitory period, the Government had no right to declare the organization to be a permanent one. In the eye of law, the petitioners as also

the other members of the organization would be deemed to be the only temporary servants, whose services were terminated according to law. Lastly, it was contended that even if the petitioners were permanent servants, since the organization was abolished, any right which they had acquired to hold the post was automatically extinguished on the abolition of the organization of which the petitioners were members. We would like to dispose of the first two points taken by the Advocate General which have been strenuously argued before us by him. In this connection, reliance was placed by the Advocate General on Sections 5 and 6 of the Police Act which may be quoted thus :

"The entire police establishment under the General police district shall for the purpose of this Act, be and deemed to be one police force and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay as shall from time to time be ordered by the Government. No person, Court, or officer shall have authority to appoint, supersede, or control any police functionary except as authorized by this Act :

Provided that, nothing herein contained shall be deemed to affect in any way the powers of superintendence and control vested in the Government."

An analysis of Section 5 would clearly indicate that the Government has undisputed power to create an establishment for the general police district and can fix such number of officers and men as may be constituted from time to time. The Advocate General contended, that the "general police district" which is defined in Section 4 of the Police Act, as embracing the local area within the State means the entire state and hence the Government had no power to create a special police squad for a particular area. In our opinion, the contention is based on a serious misconception. In the first place, assuming that the general police district means the entire State, it is obvious that the entire state would include any part or any area of the State. Secondly, there is nothing in the order to indicate that the Special Police Squad was created only for a particular area or a district. The order creating the Special Police Squad does not specify that the Special Police Squad created by the Government would operate only in one district and not in the other. It is always open to the Government to post a section of a police force at a particular area from time to time. In these circumstances, therefore, the creation of the Special Police squad was, undoubtedly, within the ambit of Section 5 as referred to above. As we are of the opinion, that the Government was fully competent to create the special police squad under Section 5 of the Police Act, Section 6 would obviously be no bar to such a course being adopted by the Government, The contention of the Advocate General on this score is, therefore, overruled.

6. It was then contended by the Advocate General that the Special Police Squad was in fact created only under Sections 18 and 19 of the Police Act. Sections 18 and 19 of the Police Act run thus :

"When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be

lawful for any police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police officer may require to act as special police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall unless he sees cause to the contrary, comply with the application.

Every special police officer so appointed shall have the same powers, privileges and protection and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of police."

7. This contention also, in our opinion, is wholly untenable. The order merely mentions that the special police squad created by it would be utilized for purposes of Section 18 in case of need. This does not mean by any stretch of imagination that squad was created only for the purpose of Section 18 of the Police Act. Moreover, the order creating the squad runs in two separate parts and it does not specify any of the conditions mentioned under Section 18 which necessitate the employment of special police. Reading the order as a whole, it seems to us that the intention of the Government was that whenever it is necessary to enroll special police officers, instead of taking residents of the neighborhood as police officers, the services of the special police squad may be utilized for the purposes mentioned in Section 18 of the Police Act. Again the fact that the Government by a subsequent order directed that the services of the members of the organization should be treated permanent for all purposes, runs counter to the inference that the special police squad was created only under Section 18 of the Police Act. Lastly, I under Section 18 of the Police Act, the Government does not come into the picture. It is only the District Magistrate who has to grant sanction for enrolment of special police officers. Finally, between 1953-56 there is no order of the District Magistrate by which the services of the special police squad were utilized under Section 18 of the Police Act. This clearly shows that the Special Police Squad was an organization which was created under Section 5 of the Police Act and made permanent later on. For these reasons, therefore, the contention of the learned Advocate General on this point must be negatived.

8. It is conceded by the Advocate General that if the first two contentions raised by him are not accepted, then the petitioners must be treated to be permanent servants under the State as contemplated by Section 126 of the State Constitution. This brings us to the consideration of the last and, in our view, the most important contention raised by the Advocate General. While advancing the third contention, the Advocate General submitted that since the organization itself has been abolished, the removal of the petitioners from their services is totally unconnected with their conduct and, therefore, the provisions of Section 126 of the State Constitution cannot be invoked by the petitioners.

9. The submission when scrutinized in detail comes to this : That even though a permanent servant may have a right to hold the post, yet when the post itself is abolished the right is automatically extinguished. In other words, the permanent servant holds the post according to the pleasure of the appointing authority which is circumscribed by the conditions laid down in Section 126 of the State Constitution only in such cases when it applies but the doctrine of "pleasure" would have to be given a free hand where the provisions of Section 126 of the State Constitution have no application at all. In this connection, the Advocate General's argument finds

some support from a few observations in the authorities of some High Courts in India. In the first place, we may refer to the observations of the Allahabad High Court reported in *Jayanti Prasad v. State of Uttar Pradesh*¹, where a Division Bench of the Allahabad High Court observed as follows :

"Article 311 applies only to a case in which a person is dismissed or removed or reduced in rank. These are technical words used in cases in which a person's services are terminated for misconduct. They do not apply to cases in which a person's services terminates in accordance with the conditions of his service. It is not so much a question of the post being held temporarily or it being of a permanent nature; the real question is whether a person's services are being dispensed with before his normal period of service has terminated by reason of misconduct on his part, or otherwise." In a case of the Rajasthan High Court, reported in *Kewal Mal v. Heta Ram*², a Division Bench of the Rajasthan High Court observed as follows :

"We feel that the word "removal" as used in Article 311(2) applies to a removal which is due to some fault of the civil servant concerned. It seems to us that there would be no point in giving reasonable opportunity of showing cause to a public servant, if the removal is unconnected altogether with his conduct."

* * * *

Therefore, we have no hesitation in coming to the conclusion that the word "removal" in Article 311 applies to those cases of removal which are due to some fault or misconduct of the civil servant and not to removal pure and simple on account of certain Rules framed by the Government in pursuance of a certain policy."

10. The observations of the Rajasthan High Court were further endorsed in a later case reported in *Vijay Shankar Babulalji v. State of Madhya Bharat*³, On the basis of these observations, the Advocate General has contended that since the petitioners were removed from service not for any misconduct on their part, the removal could not be deemed to be a punishment so as to attract the provisions of Section 126 of the State Constitution. We have given our anxious consideration to this contention. There is, no doubt, great force in the observations of their Lordships in the cases quoted above, yet we think that in view of the subsequent pronouncements of the, Supreme

¹ AIR 1951 All 793

³ AIR 1954 Madh-B. 177

² AIR 1952 Raj17

Court, the observations do not hold good. The question of the scope and ambit of Article 311 of the Constitution of India came for a thorough discussion in the case of *Parshotam Lal Dhingra v. Union of India*, reported in⁴ before the Supreme Court. The appellant before the Supreme Court was holding a post under the Railway department in an officiating capacity and was demoted in view of certain remarks made against him by his superior authorities. The contention before the Supreme Court was that Article 311 of the Constitution of India had no application to a person holding a temporary or officiating post and hence the action taken against the employee was justified. The question of the rights and privileges of a permanent servant qua Article 311 of the Constitution of India was not in issue before their Lordships. Nevertheless, their Lordships after an exhaustive examination of the matter, laid down certain important principles even with respect to the rights of permanent servants. In this connection, their Lordships observed as follows :

"An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his services may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service.

* * * *

In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely (i) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to ? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant." This was a case considered by the Supreme Court in, *Moti Ram Deka v. General Manager North East Frontier Rly.*, reported as⁵ where the Chief Justice speaking for the Court observed as follows :

"At the conclusion of his judgment, the learned C.J. has observed that "in every case the Court has to apply the two tests mentioned above namely (1) Whether the servant had a right to the" post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to" (p. 863 of SCR) : (p. 50 of AIR). It would be noticed that the two tests are not cumulative but are alternative so that if the first test is satisfied, termination of a permanent servant's services would amount to removal because his right to the post has been prematurely invaded. The learned C.J. himself makes it clear

⁴ AIR 1958 SC 36: (1958) SCR 828)

⁵ AIR 1964 SC 600

by adding that if the case satisfies either of the two tests, then it must be held that the servant had been punished and the termination of his services must be held to be wrongful and in violation of the constitutional rights of the servant. It would thus be noticed that the first test would be applicable to the cases of permanent servants whereas the second test would be relevant in the cases of temporary servants, probationers and the like. Therefore, we do not think the learned Additional Solicitor General is justified in contending that all the observations made in the course of this judgment in regard to permanent servants considered together support his contention. Besides, if we may say so, with respect, these observations are in the nature of obiter dicta and the learned Addl. Solicitor General cannot rely solely upon them for the purpose of showing that Rule 148(3) or Rule 149(3) should be held to be valid as a result of the said observations." Similarly Subba Rao, J.

who had agreed with the majority judgment but written out a separate judgment, analysing the case, reported in AIR 1958 SC 36, observed as follows :

"This decision, therefore, clearly lays down without any ambiguity, that if a person has a right to hold office under the service rules or under a contract, the termination of his services would attract Article 311 of the Constitution. It also lays down that a person holding a substantive lien on a permanent post has a right to such office. It does not say, expressly or by necessary implication, that even if a person is deprived of such a right, it will not be punishment unless, it is inflicted for misconduct in the manner prescribed by, the service rules."

11. A perusal of these two decisions would make it absolutely clear that so far as a permanent servant is concerned any act terminating his service except by way of compulsory retirement or by way of his having attained the age of superannuation would per se amount to punishment and would, therefore, be removal from service as contemplated by Article 311 of the Constitution of India. In other words, their Lordships clearly indicated that any, termination of service of a permanent servant except by way of superannuation or retirement would be deemed to be punishment and, therefore, removal within the meaning of Article 311 of the Constitution of India irrespective of the fact that such a termination or removal is connected or unconnected with the conduct of the servant concerned. In fact, in Dhingra's case, AIR 1958 SC 36, Chief Justice Das, who wrote the leading judgment had at one place indicated that where a person is compulsorily retired according to the rules framed by the Government, such a compulsory retirement could not be questioned. In the latter case of Moti Ram Deka, AIR 1964 SC 600, however, this part of the observations of Chief Justice Das, was not accepted and Chief Justice Gajendragadkar in Moti Ram's case speaking for the Court clearly pointed out that where the rules sought to remove a person in the garb of retiring him, the rules themselves would be invalid as being hit by the provisions of Article 311 of the Constitution of India. We might further indicate that in Moti Ram Deka's case, AIR 1964 SC 600 the Court was clearly considering the status - and rights of permanent servants qua Article 311 of the Constitution of India. This would appear from the following observations of Chief Justice Gajendragadkar at page 607 :

"The question which arises for our decision in the present appeals is if the service of a permanent civil servant is terminated otherwise than by operation of the rule of superannuation or the rule of compulsory retirement does such termination amount to removal under Article 311(2) or not ? It is on this aspect of the question that the controversy between the parties arises before us."

Whereas in the case of Dhingra, AIR 1958 SC 36, the right of a permanent civil servant was not in issue. Apart from this at page 610, Chief Justice Gajendragadkar speaking for the Court made the following observations regarding the status of a permanent servant.

"A person who substantively holds a permanent post has a right to continue in service, subject of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in

service and as such, it is in the nature of a penalty and amounts to removal. In other words termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement must, per se amount to his removal and so if by Rule 148(3) or Rule 149(3) such termination is brought about, the rule clearly contravenes Article 311(2) and must be held to be invalid."

Furthermore, while determining the validity of the Railway Rules, under which even a permanent servant could have been compulsorily retired after giving six months notice, the Additional Solicitor General had put forward an argument which is quite identical with the one put forward by the Advocate General before us namely that if the post held by a permanent servant as abolished or the whole of the cadre to which the post belongs is brought to an end that could not amount to removal of the servant from the service.

12. This argument was clearly overruled by their Lordships of the Supreme Court in the aforesaid case. In this connection, the Chief Justice observed as follows :

"The argument is that the termination of service permissible under the impugned Rules really proceeds on administrative grounds or considerations of exigencies of service. If, for instance, the post held by a permanent servant is abolished or the whole of the cadre to which the post belonged is brought to an end and the railway servant's services are terminated in consequence, that cannot amount to his removal because the termination of his services is not based on any considerations personal to the servant. In support of this argument, the Addl. Solicitor General want us to test the provision contained in the latter portion of the impugned Rules, We are not impressed by this argument."

Analyzing, therefore, the two decisions of the Supreme Court, referred to above, the position regarding the status of a permanent servant emerges thus : 1. That a permanent servant has a right to hold the post and continue in service until he reaches the age of superannuation or is compulsorily retired under a valid role framed by the Government, or he is punished for misconduct and it removed after, complying with the procedure laid clown in Article 311 of the Constitution of India.

2. That any removal of a permanent servant from service beyond the exigencies indicated above without complying with the procedure laid down in Article 311 of the Constitution of India would be void and inoperative.

13. The Advocate General, however, relied ort the following observations of their Lordships in Dhingra's case, AIR 1958 SC 36 :

"It has already been said that where a person is appointed substantively to a permanent post in government service he normally acquires a right to hold the post until under the rules, he attains the age of superannuation on is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished....."

14. The observations are, no doubt, there but, at page 42 of the same case their Lordships of the Supreme Court have observed thus :

".....Subject to certain safeguards on the abolition of the post or on being found guilty after a proper enquiry on notice to him, of misconduct, negligence, inefficiency or any other disqualification."

Thus even where a post is abolished, the right of a permanent servant is not automatically extinguished but may be extinguished in that post and that too subject to certain safeguards. These safe-guards naturally would be that the permanent servant must be absorbed or provided for in some other department on equally good emoluments, terms and conditions. Even in Dhingra's case, AIR 1958 SC 36 their Lordships have made it very clear that the termination of the services of a permanent servants who has a right to hold the post would per se amount to punishment and would attract the application of Article 311 of the Constitution of India. In this view of the matter, the force of the observations made in Allahabad and Rajasthan rulings in the cases referred to above, relied upon by the Advocate General has been considerably weakened.

15. Moreover, we would like to quote certain, observations of Subba Rao, J. in Moti Ram Deka's case, AIR 1964 SC 600 regarding the point in issue before us :

"There is no justification for placing any limitation on the said expressions such as that the dismissal or removal should have been the result of any enquiry in regard to the Government servant's misconduct. The attempt to imply the said limitation is neither warranted by the expressions used in the Article or by the reason given, namely, that otherwise there would be no point in giving him an opportunity to defend himself. If this argument be correct, it would lead to an extraordinary result, namely that a Government servant who has been guilty of misconduct would be entitled to a "reasonable opportunity" whereas an honest government servant could be dismissed with out any such protection. In one sense the conduct of a party may be relevant to punishment; ordinarily punishment is meted out for misconduct and if there is no misconduct there could not be punishment. Punishment is, therefore, correlated to misconduct, both in its positive and negative aspects. That is to say, punishment could be sustained if there was misconduct and could not be meted out if there was no misconduct. Reasonable opportunity given to a government servant enables him to establish that he does not deserve the punishment because he has not been guilty of misconduct. That, apart, a Government servant may be removed or dismissed for many other reasons such as retrenchment, abolition of post, compulsory retirement, and others. If an opportunity is given to a Government servant to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him."

16. We respectfully agree with these observations and they are sufficient to answer the argument raised by the Advocate General. Moreover, it seems to us that so far as a permanent servant is concerned the moment his service is terminated except by way of compulsory retirement under a

valid rule or by operation of the rule of superannuation, the termination would amount per se to removal from service. The question of his conduct does not come into the picture at all. In fact, the language of Section 126 of the State Constitution, which is the same as in Article 311 of the Constitution of India, does not refer to any conduct of the employee concerned. All that Section 126 of the State Constitution says is that the employee must be given a reasonable opportunity to show cause against any action proposed to be taken against him. Even if the service of a permanent servant is terminated on the abolition of a post, it is certainly an action, and a very serious action which has been taken against the servant, and hence, the provisions of Section 126 of the State Constitution are clearly invoked. Here, in fact lies the essential difference between the status of a temporary servant and that of a permanent servant. In the case of the former Section 126 of the State Constitution or Article 311 of the Indian Constitution would not be attracted, unless his termination is by way of punishment or penalty and in the case of the latter, however, the very removal per se would amount to punishment provided the termination is not by way of retirement or by operation of the rule of superannuation.

17. Article 311 of the Indian Constitution also Section 126 of the State Constitution afford an important protection to government servants by ensuring the fact that they cannot be removed without being given a reasonable opportunity of showing cause against their removal. In the present democratic set up, it is necessary for the State to, ensure the safety and security of its servants and that is why the servants have been guaranteed protection by the Constitution. If it is held that the Government or the authority concerned has an absolute right to abolish the post without complying with the procedure laid down in Article 311 of the Indian Constitution or Section 126 of the State Constitution, it will be giving the government or the authority concerned very wide and uncanalised powers which are capable of being misused at one time or the other. The right of a permanent servant to hold the post is a very valuable right and any forfeiture or extinction of this right must in the very nature of things attract the protection afforded to the servants under Section 126 of the State Constitution. Moreover, we are fortified in our view by a Division Bench decision of the Orissa. High Court reported in *Kunjabehari Mohanty v. State of Orissa*⁶, where their

⁶ AIR 1957 Ori 27

Lordships observed as follows :

"Doubtless, if those employees had been appointed substantively to some posts, Government would be compelled to provide them with alternative employment of an equally remunerative character. But where such employees were not holding substantive appointments, there is no legal obligation on the part of the Government to provide them with alternative jobs when their existing posts are retrenched."

We respectfully agree with the observations made by their Lordships.

18. The position, therefore, in the present case is that the petitioners who are permanent servants have been removed from their services without complying with the provisions of Section 126 of the State Constitution. As permanent servants they had a right to the post which they had held and their posts could not have been terminated, even if the organization of which they were the members was abolished by the Government, without complying with the provisions of Section 126 of the State Constitution. Deka's case, AIR 1964 SC 600 quoted above leaves no room for

doubt that termination of service of a permanent servant amounts to removal from service so as to attract Article 311 of the Indian Constitution and has indicated two and two exceptions only :

1. That the service is terminated by way of compulsory retirement under a valid Rule framed by the Government.
2. That the employee has reached the age of superannuation.

19. The cases of the petitioners before us are not covered by any of these two exceptions and it must, therefore, be held that the termination of the services of the petitioners amounts to removal from service as contemplated by Section 126 of the State Constitution. As it is not disputed by the Advocate General that while terminating the services of the petitioners, the procedure laid down by Section 126 of the State Constitution has not been followed, it is manifest that the Government Order No. Police 45 of 1964 dated 13-3-1964, disbanding the Organization and removing the petitioners from service is ultra vires and inoperative.

20. The applications are, therefore, allowed and a Writ of Certiorari quashing the order of the Government dated 13th March 1964 is issued and the petitioners are placed in the same position as they were before the order impugned was passed.

21. In the special circumstances of the case, we make no order as to costs in any of these petitions.

Wazir, C.J. :

22. I have had the advantage of perusing the judgment prepared by my brother All, J. I agree that a writ of certiorari prayed for by the petitioners should be issued quashing the order dated 13-3-1964 passed by the Government by which the organization known as "Special Police Squad" was disbanded and all the employees under that organization were removed from service.

23. I propose to add a few lines in support of the view taken in this case.

24. The principal question for consideration before us is whether the abolition of the posts held by permanent servants amounts to removal within the meaning of Article 311 of the Constitution of India which corresponds to Section 126 of the Jammu and Kashmir Constitution. The learned Advocate General has argued that even assuming that the petitioners were permanent servants and had a right to the posts, their right has automatically extinguished with the abolition of the posts, and Section 126, of our Constitution has no application. We are unable to agree with this contention. It is not disputed that the petitioners were members of a permanent organization and held permanent posts. As the petitioners held permanent posts, they had a right to continue in service subject of course to the rule of superannuation and the rule as to compulsory retirement. By the impugned order the Government abolished the organization by which the rights of the petitioners have been invaded and their services terminated. In my view abolition of the posts which resulted in the termination of the services of the petitioners amounted to their removal within the meaning of Section 126 of our Constitution and as the formalities required under Section 126 were not complied with the order of the Government abolishing the posts is clearly ultra vires the Constitution. In this view, I am fortified by the observations in AIR 1964 SC 600 which are as follows :

"A person who substantively holds a permanent post has a right to continue in service, subject of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he asked to leave his service, the termination of his service must inevitably mean the defeat of his, right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory-retirement must, per se amount to his removal and so if by Rule 148(3) or Rule 149(3) such termination is brought about, the rule clearly contravenes Article 311(2) and must be held to be invalid."

In the instant case, it is clear that the petitioners were members of a permanent organization and had a right to hold the posts till the date of their superannuation or compulsory retirement. The abolition of their posts clearly amounted to their removal. Moreover, if the abolition of a permanent; post which affects the rights of the holder of that post is not considered to be removal as used in Article 311(2) corresponding to Section 126(2) of the State Constitution, it will defeat the very purpose for which protection is afforded to the civil servant under the Constitution. In the democratic, form of Government, it is not unusual that officers may incur displeasure of the party in power and their services may be dispensed with by simply abolishing their posts which will deprive them of the protection afforded to them by the Constitution, if abolition of the posts is not included within the meaning of the words "removal or dismissal" as used in Article 311(2) of the Constitution. In other words the Government will in that case have uncanalized and unbridled powers to remove a permanent servant from his post by abolishing that post without affording him any constitutional protection, but that could not have been the intention of the framers of Article 311(2) of the Constitution. The order abolishing the posts held by the petitioners which resulted in the termination of their services without complying with the provisions of Section 126(2) of the State Constitution is, therefore, clearly void and merits to be quashed.

Bhat, J.

25. I have gone through the judgment of my brother Ali, J. and that of my Lord the Chief Justice. I entirely agree with my learned brothers and have nothing to add.
Petition allowed.