

MYSORE HIGH COURT

D.P. Raghunath

Vs

State of Coorg

Writ Petn. No. 48 of 1954

(Venkataramaiya, C.J. and Padmanabiah, J.)

20.93.1956

JUDGMENT

Venkataramaiya, C.J.

1. The petitioner who was in the service of Coorg Government as a teacher was dismissed by an order of the District Educational Officer on 8-12-53. Thereupon he petitioned to the Government of Coorg for setting aside that order but was unsuccessful. He has applied to this Court for the order being quashed on the ground that no opportunity was afforded to him to explain why the order should not have been passed. It is admitted, however, that the appointment he held was temporary, that prior to his dismissal he was involved in an assault against a colleague, and that as a punishment for this a penalty was imposed upon him and paid up.

2. There is no doubt that Article 311 of the Constitution requires that a person should be notified to show cause why disciplinary action should not be taken against him before he is removed from service, or otherwise dealt with. The fact that the petitioner was employed temporarily does not justify the course prescribed by the said Article being dispensed with. The loss of the petition is no doubt the result of dismissal, or of the service being terminated either because the vacancy in which the appointment was made has ceased to exist, or the appointment itself is abolished. There is, however, a stigma, disqualification or taint of being unfit or unworthy for service attaching to an order of dismissal, and this may render the person concerned ineligible to be employed elsewhere. This is a factor which cannot be ignored in applying Article 311; and for the purpose of the said Article it makes no difference whether the dismissal relates to a person who is a permanent or temporary incumbent.

3. The question whether temporary employees can claim benefit of Article 311 arose in a case in the Calcutta High Court and it was held in *Balai Chand Basak v. N. Roy Choudhury*¹ that it operates equally in favour of both classes of employees. Sri Chandrasekhar on behalf of the learned Advocate-General concedes that no notice was issued to the petitioner to show cause why he should not be dismissed, and that being so, the order is illegal and is accordingly set aside. It is open to the Government to deal with the petitioner in a proper manner as prescribed by law and take such

158, Cal WN 239 : AIR 1954 Cal 495
action as it may deem fit.

4. Having regard to the circumstances in which the order apparently was passed, we do not think the petitioner is entitled to costs. We, therefore, direct the parties to bear their own costs.

Application allowed.