BOMBAY HIGH COURT

Pandurang Kashinath

Vs.

Union of India

Appeal No. 531 of 1955 with F. A. No. 532 of 1955. Suit No. 598 of 1953

(S.K. Tendolkar and S.T. Desai, JJ.)

09.09.1957

JUDGMENT

S.T. Desai, J.

1. This appeal raises questions of far reaching consequences and the controversy relates to the true measure of the guarantee of equal opportunity in matters relating to employment or appointment to any office under the State, enjoined by Article 16 of the Constitution. Is the constitutional guarantee confined to what is generally described as permanent employment or does it also embrace temporary employment terminable at short notice or at will ? Simultaneously arises the question: Does this concept of equality in matters of employment ensures (sic) for the benefit of the citizen not merely in case of his initial engagement but also in case of matters relating to the termination of that engagement ? The appeal is brought against a decree of dismissal passed by the learned Judge, City Civil Court in a suit filed by the plaintiff-appellant for a declaration that the order of his suspension and removal from service was void and illegal and that he continued in the services of the Bombay Telephone Workshop owned by the Defendant-Respondent, the Union of India. The plaintiff also claimed arrears of salary till date of suit and thereafter till judgment.

2. The plaintiff was engaged in March 1944 as a Mistry in the Bombay Telephone Workshop by its then Manager. He was granted some promotions and in 1949 his total emolument inclusive of allowances was Rs. 136 per month. There was a strike and he was arrested on 9-7-1949 and detained under the provisions of the Bombay Public Security Measures Act. By an Order dated 21-7-1949 the plaintiff was suspended from duty with effect from the date of his arrest and detention. Thereafter he was served with an order dated 29-3-1950 terminating his services with effect from 9-7-1949 that is from the date of his arrest. He was released from detention on 25-10-1950. Soon after his release he applied to the Manager of the Workshop for his reinstatement which was refused. He applied to the Authority under the Payment of Wages Act for arrears of his dues which application was rejected. In an appeal against that order preferred by him to the Small Cause Court he was awarded his dues on the ground that there could be no retrospective suspension or dismissal. He thereafter brought this suit and the contention set out in his plaint was that he was a civil servant in the employment of the Government of India and he could not

be removed or dismissed from service until he had been given a reasonable opportunity of showing cause against the action proposed to be taken. He also contended that the orders of suspension and removal or dismissal were illegal and void. At a later stage he was permitted to amend his plaint and by the amendment it was pleaded inter alia that "the order of removal was in violation of Articles 14 and 16 of the Constitution inasmuch as the plaintiff was arbitrarily picked up and sacked". The defendant raised various contentions in Written Statement and the principal defense was that the plaintiff was a temporary employee and was, therefore, not entitled to any of the reliefs sought by him. After the amendment of the Plaint the Defendant filed a supplemental Written Statement and in answer to the plea founded on Articles 14 and 16 of the Constitution it was only stated. "The defendant denies that the order of removal is in violation of Articles 14 and 16 of the Constitution". There was no express denial of the allegation of fact that the plaintiff had been arbitrarily picked out and sacked. Of this more hereafter.

3. A number of issues were raised by the learned Judge. In the statutory notice under Section 80 of the Civil Procedure Code given by the Plaintiff to the Defendant he had not expressly asked for arrears of salary and that part of his claim in suit accordingly to the learned Judge necessarily failed. The learned Judge after referring to certain decisions held that Article 311 of the Constitution did not apply to the case of a temporary servant and therefore the Plaintiff was not entitled to protection of the constitutional safeguard afforded by that Article. On the facts of the case the learned Judge held that the plaintiff was not a permanent employee but was a temporary employee working on the temporary staff of the Telephone Workshop. It appears to have been taken for granted by the parties before the learned Judge that if Article 311 was not applicable to the case of the plaintiff Articles 14 and 16 would have no application either. The learned Judge below dismissed the suit and the plaintiff has now come to this Court in this first appeal.

4. It has been contended before us by Mr. Singhvi, learned Counsel appearing for the plaintiff-appellant, that although the plaintiff was originally employed as a temporary Mistry in 1944 he became a permanent employee in 1948 when he was placed in the category "Skilled C' with effect from 1-1-1947. The argument was that on his appointment to the 'Skilled C' category he automatically became a permanent employee or in any event he must be deemed to have been employed as such. Now, it is clear from the evidence on record that the initial letter of appointment dated 2-4-1944 categorically stated that the appointment as Mistry was purely of temporary nature and his services were liable to be terminated without prior notice. The letter dated 20th September 1948, on which Mr. Singhvi principally relies, stated that the plaintiff was placed in the Skilled C category in the scale of 60-3/2E. B. 3-105 as Mistry from 1-1-J947 and his salary was fixed at Rs. 66 per month from that date. In our opinion there is no warrant for the submission that because Skilled C category related to a permanent post the plaintiff must be held to have been appointed to a permanent post. In the first place there is no evidence that only permanent employees are engaged to do work in that particular category. The mere fact that a person who is given temporary employment is asked to serve in a post which is normally held by a permanent employee is not proof of his engagement as a permanent service. The question like any other question of fact has to be determined by examination of the whole evidence in the case. The letter of 20-9-1948 can be regarded as 'prima facie' evidence in support of the plaintiff's case, but that is not the only evidence to which we can turn. There is the evidence afforded by the pay-sheets signed by the plaintiff himself. Those pay-sheets bear the rubber stamp describing the personnel listed on each sheet as "Temporary Staff". A feeble attempt was made by the plaintiff in his cross-examination to get over this difficulty by stating that he did not remember whether

when he had signed the pay-sheets they bore the rubber stamp or not. Later on in his cross-examination he stated that the words "temporary staff" had been put subsequently at the top of the sheets. On his attention being drawn to the writing Exhibit C he agreed that the words "temporary staff" must have been, on one of the pay sheets when he signed it in acknowledgment of the pay for the month of June 1948. The learned Judge has not accepted the evidence of the plaintiff on this aspect of the case. We are satisfied that the finding recorded by him is borne out by the evidence on record and must be held to be correct.

5. It was next contended that even if the plaintiff was in the temporary employment of the defendant he could claim the protection of Article 311 of the Constitution. We agree that Article 311 can apply even in case of a temporary servant of the State in case of an order of dismissal or removal from service or reduction in rank when it is by way of punishment or where a stigma attaches in consequence of the order. This is now accepted as settled law. But the position here is quite distinct and readily distinguishable. This is a case of temporary service being merely terminated by notice and therefore not one which falls within the purview of Article 311. Learned Counsel had little to urge in support of the present contention which must be negatived.

6. Another contention urged on behalf of the plaintiff was that plaintiff's service had not in fact been terminated by the Manager who was the appointing authority and therefore the order terminating his service was invalid. There is no support to be derived for the present argument from R. 5 of the Civil Service Rules to which some reference was made. Moreover the order was signed on behalf of the Manager by one Bhide who was examined in the Court below by the Union. That evidence explains how the order came to be signed by Bhide on behalf of the Manager. The present contention of the appellant must also be negatived.

7. A move serious contention and one that requires careful consideration, was: that the plaintiff even if he be regarded as a temporary employee of the Union was arbitrarily picked out from among other temporary employees in the same grade and his services terminated. It was argued that this plea was expressly taken when amendment was made in the Plaint and the only answer made in the further Written Statement was that the order of removal was not in violation of the Articles 14 and 16. It was said that this is admittedly a case of discrimination because it has not been denied that the termination of the plaintiff's service was arbitrary. The operation of Article 16 it was said was not confined to persons in the permanent employment of the State. The argument proceeded that the language of Article 16 was wide enough to include the case of all persons in the temporary employment of the State and there can be no discrimination in matter of termination of the services of temporary employees just as there can be no discrimination in the matter of the employment of such persons. To put it differently the contention was that an order terminating the services of a person in temporary employment under the State would be wholly void and illegal if it can be established that the order was discriminatory and without any rational basis for the same. The contention in its present form does not appear to have been urged before the learned Judge in the City Civil Court. Learned Counsel for the Respondent applied for time and we adjourned the further hearing of the appeal to enable the Respondent to meet fully this aspect of the case. Although some reference was made by Mr. Singhvi, in passing, to Article 14 the contention as we understand it was founded on Article 16 of the Constitution and it is, therefore, under that Article that we shall examine the case.

8. Mr. R.J. Joshi, learned Counsel for the Union, firstly contended that the fundamental rights

enumerated in Part III of the Constitution have no application when the Constitution itself contains a special article or articles dealing with any specific matter. Article 310(1) expressly dealt with the tenure of office of persons serving the Union or a State and subject to certain exceptional cases mentioned in Section 310(2) all service under the Union is held at the pleasure of the President. Clause 2 of Sub-Section 310 had no application to the present case and therefore, so the argument ran, the only safeguard that the plaintiff could possibly invoke in his favour was that contained in Article 311 but that Article also had no application to the case of the plaintiff because this is not a case of dismissal or removal or reduction in rank. The submission was that the whole matter amounted to no more than termination by notice of the employment of a temporary servant and must be treated like any other contract between master and servant. If the termination was wrongful the plaintiff, would have his remedy if any in damages as in case of any such contract of temporary employment. Now we agree that Article 311 has no application to the case before us and we have already negatived the appellant's contention in that behalf. We are also of the view that when there is a contract of employment between the Union and a citizen you may have to turn to the terms of that contract for certain purposes so long as in doing so you do not disregard the rule that all service under the Union is, in the wide general sense of Article 310, 'durante bene placito'. But we are not aware of any principle or proposition of constitutional law or any canon of interpretation or any authority which requires us to accede to the contention that the fundamental right promulgated in Article 16 of the Constitution does not govern the case of 'any employment or appointment under the Union or a State simply because Articles 310 and 311 deal with tenure of office of a person serving the Union or a State and declare it to be 'durante bene placito' and lay down certain conditions or constitutional safeguards under which that pleasure may be exercised and disciplinary action taken against a person who holds any civil office under the Union or a State. It is, however, urged on behalf of the Union that there is authority in support of the proposition pressed for our acceptance. Before we turn to examine those decisions we shall permit ourselves to make a few general observations and indicate the manner in which we approach this question.

9. In constitutional matters the establishment of the right rule is often a matter of unusual importance and far retching consequences. Our constitution is much more than a statutory crystallization. It is not a fasciculus of ordinary rules which may at times have to be construed by strict adherence to the maxim 'Absomta sententia ex-positore non indiget'. It is living and vital and cannot be read in a manner to engraft frozen rigidity either on the fundamental rights guaranteed under it or any other provision of the Constitution. In expounding any provision like that contained in Article 16 of the Constitution in its relation to the other articles to which reference has been made we are bound to remember that we are dealing with a constituent or an organic law intended not for a span of time or determinate era but designed to endure against vicissitudes of time. It may now be taken as a rule grown to maturity and fulness that any provision of the nature under consideration has to be liberally construed and in a manner most beneficial to the object intended to be achieved. While considering ourselves justified in relying on the doctrine of liberal interpretation we have to note the warning so often struck that the broad and liberal spirit which should inspire those whose duty it is to interpret any provision of the Constitution. does not permit them, to regard themselves as free to stretch or pervert the language of the provision under examination in the interest of any legal or constitutional theory; nor does it permit any latitude on the other hand to accede to any narrow and pedantic interpretation of it. We comprehend that ours is an elaborate and comprehensive Constitution which in parts runs into undue details and aims at striking a mean between rigidity and flexibility. In interpreting it

one has constantly to bear in mind its whole map and all its provisions and the whole of its scheme. While no greater sanctity may be attached to any of the provisions containing fundamental rights enumerated in Part III than to important provisions in the other Chapters of the Constitution, we cannot remove those other provisions from the major guide posts enshrined in Part III of the Constitution when such provisions must legitimately be understood and applied in the collocation of those important landmarks.

10. An argument, rather naive, was sought to be founded on Article 13 when Mr. Joshi urged that the scope and ambit of Part III of the Constitution was by that Article confined only to laws inconsistent with or in derogation of the fundamental rights and that the provisions in that Part had no application to any Government action in respect of any matter dealt with in any other Part of the Constitution. Learned Counsel also relied on the following observations of Kania C.J., in *Gopalan v. State of Madras*[1],

> "In contrast to the American Constitution the Indian Constitution is a very detailed one. The constitution itself provides in minute details the legislative powers of the Parliament and the State Legislatures. The same feature is noticeable in the case of the judiciary, finance, trade, commerce and services. It is thus quite detailed and the whole of it has to be read with the same sanctity without giving undue weight to Part III or Article 246 except to the extent one is legitimately and clearly limited by the other."

It is impossible for us to accede to the argument that the constitutional guarantees enumerated in Part III are, by virtue of Article 13, circumstanced or straitened in the manner suggested. The observations quoted above, far from lending any countenance to this argument, are as we read them destructive of it. Article 13, if we may indulge in an archaism, does not abridge any vital limb of the constitution.

It is inserted 'ex abundanti cautela'. In Gopalan's case the learned Chief Justice pointed out at page' 100 (of SCR) : (at p. 34 of AIR) :

> "The inclusion of Article 13(1) and (2) in the Constitution appears to be a matter of abundant caution. Even in their absence, if any of the fundamental rights was infringed by any legislative-enactment, the Court has always the power to declare the enactment, to the extent it transgresses the limit, invalid. The existence of Article 13(1) and (2) in the Constitution therefore is not material for the decision of the question what fundamental right is given and to what extent it is permitted

[1](1950) SCR 88 at p. 109 : (AIR 1950 SC 27)

> to be abridged by the Constitution itself.'

It is indeed palpable that these basic rights are binding as directly valid law and no legislation and no administration edict or governmental rescript which is in violation of them can have legal force or validity.

11. Part III of the Constitution enumerates a plurality of vital subjects under the heading of

fundamental rights and an examination of the provisions in that Part would immediately show that some of them deal with fundamental freedoms and a large number of them are in the nature of constitutional limitations upon the authority of the State. Decisions of the Supreme Court on the ambit and scope of the various provisions relating to such constitutional limitations enjoined by Part III of the Constitution show that any action of the State whether in the domain of legislation or its executive sphere has been held to be wholly void and ineffective in so far as it is in violation of any of those restrictions.

12. Article 16 of the Constitution with the first clause of which we are really concerned, rules that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". This question of equal opportunity has to be considered substantially and qualitatively and not superficially. This equality it is well understood means that among equals there shall be equality in treatment and that like shall be treated alike, that is, there shall be no discrimination between one citizen and another in any matter relating to employment under the State. It is extremely difficult for us to see how it can be said that this fundamental rule which ensures that every citizen has the right of equal access to public service and guarantees equality or universality in all matters pertaining to such employment automatically ceases to have effect because Article 310 also deals with the subject of employment under the State. The general principle that all such employment is 'durante bene placito' does not in our judgment in the feast militate against the constitutional prohibition that there shall be no arbitrary discrimination between one citizen and another in matters of service under the State. They are both apart. The one relates to tenure and the other imposes the constitutional safeguard of equable treatment. They are both of considerable importance in their different context except that the constitutional guarantee may legitimately restrict and limit the operation of the other if permitting its operation would result in violation of the fundamental right. We do not suggest that fundamental rights are like a straight jacket or a mathematical abstraction. There is no intractability about them nor are they intransigent like all basic principles laid down in broad flexible language they are to be interpreted in the light of recognised canons of construction.

13. To turn to the decisions relied on by Mr. R.J. Joshi where it is said a contrary rule has been laid down. In *Raj Kishore v. State of Uttar Pradesh*[2], the petitioner was compulsorily retired from Government service after he had put in 25 years service. No reason for compulsory retirement of the petitioner was given beyond saying that it was the policy of the Government to retire Government servants after 25 years of qualifying service. It was the petitioner's case that compulsory retirement amounted to removal within Article 311 of the Constitution and he had not been given an opportunity of

[2] AIR 1954 All 343

showing cause against his removal, and, therefore, his removal was 'ultra vires' and unconstitutional. It was also his contention that the R. 465 of his service Rules which dealt with retirement was invalid in so far as it authorized the Government to retire a person compulsorily without assigning any reason, and, therefore, contrary to Articles 14 and 16 of the Constitution, it was held by a Division Bench of the Allahabad High Court that the compulsory retirement of the petitioner did not amount to removal within the meaning of Article 311. It was observed that a part of R. 465 vested arbitrary powers in the hands of the Government to single out from the class of Government servants who had completed 25 years of service for special treatment by compulsorily retiring them without assigning any reason, while the Government was free not to

apply the same rule to other Officers belonging to the same class and that was in violation of Article 14 of the Constitution. It was, however, held that the Rule was not ultra vires because it was consonant with the principle embodied in Article 310 and it was Article 310 which governed the matter and not Article 14. It was then observed :

> "In the matter of termination of the services of a Government servant, the provisions to be considered are Articles 310 and 311. The combined effect of these, two provisions is that except as laid down in Clauses (1) and (2) of Article 311 and except as laid down in clause (2) of Article 310, there is no restrain on the power of the State to terminate the services of a Government servant at pleasure. Clause (2) of Article 310 and clause (1) of Article 311 are admittedly inapplicable to the present case. I have already held that clause (2) of Article 311 also does not apply to the facts of the present case. Therefore, it follows that the services of the applicant could be terminated at the pleasure of the State which means without assigning any reason. Article 14, in my judgment, does not control Article 310. The reason is that Article 14 is a general provision relating to all kinds of laws and all kinds of persons, while Article 310 deals with a special or particular matter, namely : Government servants and termination of their services. The maxim 'generalia specialibus non derogant,' that is, 'Special provisions will control general provisions" applies."

Now with great respect we are unable to agree with the ratio decidendi of this case so far as it relates to the applicability of Articles 14 and 16 of the Constitution to cases which may also fall to be considered under Articles 310 and 311 and for reasons which we have already briefly stated and need not rehearse. In our opinion Article 14 or Article 16 cannot be ignored in any such case and there can be no arbitrary discrimination even in matters to which the provisions of Articles 310 and 311 may apply. Again with great respect we are unable to agree that the maxim generalia specialibus non derogant has any application to the provisions of the Constitution under consideration. As we have already stated Article 310 relates to tenure and Article 16 imposes the constitutional safeguard of equable treatment. This maxim at times a valuable servant is often a dangerous master. A general provision is no doubt to be read as sub-silentio excluding from its operation a special provision but this is where the general provision cannot be said to be intended to embrace any special cases provided for by the particular enactment. The application of this maxim in dealing with provisions of a Constitution and particularly those relating to fundamental rights, even when there is warrant for drawing upon it, must inevitably require careful examination of the subject-matter and there must be the certainty that both the provisions cannot co-exist in respect of the particular matter. Moreover this is not a matter of general words sought to be directed towards a special object and there is here no question of one law abrogating another. The maxim has no application when there is no question of a general provision derogating from a particular intention.

14. In *Balbirsingh v. State of Madhya Pradesh*[3], another decision relied upon by Mr. Joshi it was held that selection of persons for retrenchment was principally a subjective matter for the authorities concerned and it cannot be justiciable unless there was any infringement of any constitutional or legal right. It also appears that on facts the case was not treated as one of discrimination. Another decision cited by learned Counsel was *Ramjilal v. Income-tax Officer, Mohendargarh*[4], We do not see anything in that decision which lends any support to the present

contention of the Respondent.

15. It will be convenient here to refer to a decision of the Supreme Court in which reference was made to Article 16 of the Constitution. The application and purview of Article 311 of the Constitution came up for consideration in *Satish Chandra Anand v. Union of India*[5], In that case a civil servant who had been engaged on the basis of a special contract for a certain term, was, on the expiry of that term re-appointed on a temporary basis and his service was terminated after notice. It was held that Article 311 had no application to his case because there was neither a dismissal nor a removal from service nor was it a case of reduction in rank. In examining his plea under Article 16 the Supreme Court observed that the whole matter rested in contract and rejected that plea. But their Lordships took particular care and were concerned to observe that the Petitioner had not been discriminated against and that his grievance when analysed, was not of a personal differentiation. We have carefully gone through that decision and it does seem clear to us that in the opinion of the Supreme Court Article 16 was not applicable to the facts of that case, not because it laid down any general rule in derogation of any particular intention expressed in Article 310, nor on the ground that it had no bearing because Articles 310 and 311 dealt specifically with services, but as expressly indicated, on the ground that there was no discrimination. It is not possible for us to read those remarks about discrimination and personal differentiation as redundant. We read them as exemplifying the heedfulness of Article 16.

16. The next argument of Mr. R.J. Joshi was composite when it was urged that in case of a temporary servant of the State there can be no question of discrimination since his rights would be solely governed by the contract with him and he cannot complain of the violation of Article 16 because in any event his services may be terminated by short notice or even without notice if the terms of his employment so permitted. It was urged that Article 16 did not apply 40 temporary employment and its operation was confined to persons taken in permanent employment of the State. The argument proceeded that even in case of a permanent servant the Article could apply only at the initial stage that is when he was employed in service and had no bearing on the question of the termination of his service which it was strongly contended was solely to be determined under Articles 310 and 311 of the Constitution. In case of a temporary servant, said Mr. Joshi, the Article had no application even at the initial stage of the employment; much less did it have any application in matters of termination of his service because the contract itself, allowed such termination without any reason being assigned, Learned Counsel agreed that his

[3] AIR 1955 Nag 289 [5] AIR 1953 SC 250

[4](1951) SCR 127 : AIR 1951 SC 97

argument amounted to this that there was no constitutional safeguard whatever in favour of a person who chose to accept temporary service under the State and if there was no constitutional guarantee applicable to-his case there could be discrimination in the matter of his employment as well as in the matter of the termination of that employment. Some discrimination it was said was bound to be there in all matters of selection for service and also in matters of termination of such service.

17. In any selection or grading or ranking for service certain differentiation and element of preference and direction in that matter must of necessity be present. The law indicates a policy and applies it to all within the lines not of mathematical or plumb precision but of the nature of outlines of descriptions of essentials. It recognizes practical difficulties and problems that may

have to be envisaged in matters affecting an infinite variety of relations and permits of all intelligible differentia by treating as unexceptionable any classification which is just and reasonable and has rational relation to the object sought to be achieved. But the differentiation must rest on grounds of reason and not of prejudice or bias. It may not always be possible to distinguish between the qualifications or fitness of a person for any employment or appointment to any office under the State by any single specific and rigid standard; nor may it be possible to apply a yardstick of demonstrable efficacy. There can be a variety of reasons and considerations not everyone of which can be articulate and it may not be easy to reduce them to a set pattern. But when you know the reasons which have been functionally present or it is clear that a particular test or criteria of distinction has been applied, all that requires to be examined and if the distinction is not real or rational that is evidence of discrimination. There can be no differentiation, therefore, on grounds personal or irrelevant. The oft-quoted example is of the red-haired teacher dismissed because she had red hair. As Warrington L.J., observed in *Short v. Poole Corporation*[6], that was unreasonable in one sense and in another sense it was taking into consideration matters which were extraneous. Another example is of an employee of the State who is unable to control his avoirdupois. Can his services be terminated simply on this ground if it has no relation to the nature of his employment ? Illustrations can be multiplied but we may add only one more. Can the shade of political opinion of a citizen if it does not impinge on the discharge of his duties be a matter of differentiation when he seeks employment under the State ?

18. These considerations apply not merely at the initial stage that is when any citizen is engaged in service or appointed to any office by the State. All along during the continuance of the enagagement or office the citizen is assured of that equality of opportunity. Here also there can be no discrimination between one employee and another on any ground of prejudice or bias or one which is extraneous. The discretion is of course there and the Court would be wary and extremely slow in saying that equal opportunity has not been afforded to any individual citizen. and the same fundamental principle of equality and equable treatment must, in our judgment, apply and govern the case when the employment or appointment is sought to be terminated. There are some observations in the judgments of Ahmed, J. and Ramaswamy, J. in *Sukhanandan v. State of Bihar*[7], dealing with this aspect of equality and to which our attention was drawn by Mr. Singhvi.

19. This concept of equality in matters of employment is no more than a corollary of the

[6](1926) 1 Ch. 66, 90, 91

[7] ILR (1958) 35 Pat 1 : (AIR 1957 Pat 617)

fundamental right to equal justice in all matters. Its positive aspect demands equable treatment in equal circumstances. Its negative aspect forbids any impediment or unfair burden being laid upon one than upon others in the same engagement and condition and also forbids any special privilege being conferred in favour of any individual. This equality forbids any class legislation or governmental action based on similar considerations but does not forbid classification or distinction which is reasonable and not an arbitrary selection. What is enjoined is that all citizens in matters of service under the State shall be treated alike under like circumstances and conditions both in the privileges conferred and the liabilities and obligations imposed. The primary aim is to prevent any person or class of persons' from being singled out as a special subject for purposeful or invidious discrimination or hostile treatment. What is insisted upon is not hypothetical equality or equality in matters of minor importance or matters of detail or routine. The purpose is to ensure similarity and equable treatment and not identity of treatment in

matters relating to initial engagement, during continuance of that engagement and at the terminal end of that engagement. The guarantee of equality embraces all matters of employment - the Article in terms clear and ample speaks of all "matters relating to employment" - and it is impossible to accede to the suggestion that what is contemplated by Article 16 is only the initial stage when the citizen is employed to serve the State. Nothing so unfair and startling could have been within the contemplation of the framers of the Constitution. The guarantee, in our judgment, was intended to endure and not to be illusory.

20. But it was stressed that the plaintiff was not employed in any permanent service and was only a temporary employee. This distinction has no relevance and indeed is foreign to the fundamental right of equal opportunity insisted upon in the Constitution. Our Constitution regards equality of status and opportunity as instancing the democratic ideal it seeks to translate. Dignity of the individual, evolution of his personality, social justice and equality would have little meaning unless there is guaranteed to the citizen real equality of opportunity. Obviously that equality would be unreal if every citizen was not eligible to appointment or employment under the State, whether temporary or permanent, according to his qualifications and capacity and without any barriers except those based upon public utility. A constitution, it is well understood, has the greatest claim to be construed ut res magis valeat quain pereat so that the intention of the makers of it may not be treated as vain or left to operate in the air. This maxim requires the Court to see that as far as possible the intention is effectuated to the fullest extent even when there is some obscurity or inexactitude in language. Now Article 16 is in plain general terms and we see no reason or necessity for subtracting temporary services from the operation of an Article, the natural meaning of which is explicit and of which the ultima ratio is equality for all citizens in matters relating to employment under the State. It is a matter of common knowledge that thousands of Government employees are engaged in posts classified as of temporary cadres and a large number of those have been in service for many years. There seems no intelligible reason for accepting the suggestion that the right of equal opportunity recognized by the Constitution should not apply to temporary cadres and should not exist between one temporary servant and another. The guarantee extends to every citizen and every employment or appointment whether permanent or temporary. A termination of the services of a person engaged in temporary work is in the present context no less hit by the mischief sought to be avoided by Article 16 than in case of a person wrongfully discharged from service and who was holding his job on a permanent tenure. It is essentially a question not of the nature or tenure of the engagement but of the basic guarantee of equable treatment assured by the Constitution. If the termination of service was on grounds extraneous the order of termination would be without competence and jurisdiction and the order must be treated as if it had not been made at all.

21. One further ground of defense raised before us by Counsel for the Defendants was that there was no proof of there having been in fact any discrimination when the Plaintiff's services were terminated after giving him one month's notice. Now, of course, the burden of establishing that the order terminating his services was bad because it made personal differentiation and was discriminatory is upon the Plaintiff who assails it as a violation of the guarantee of equal opportunity in matters relating to employment by the Union, We found considerable force in the contention of Mr. Singhvi that the Plaintiff's plea that he was arbitrarily picked out and sacked remained unanswered in the further Written Statement of the Defendant, and, therefore, the allegation must be taken to be admitted. Under the rules of pleading the Defendant was bound to deal specifically with this allegation of fact and as there was no denial of it specific or by

necessary implication we felt that it would have to be regarded as proved that there was personal differentiation in the matter and the plaintiff had been arbitrarily singled out when his services were terminated. We, however, felt that it was possible that the absence of denial in the further Written Statement of the Defendant of that allegation of the plaintiff might have been the result of some inadvertence or error and informed learned Counsel for the Defendant that any application for amendment in that behalf would be granted. We have now been informed that the Defendant does not seek to amend the Written Statement. Since no amendment is sought no question arises of framing an issue or of remanding the matter for trial of such issue. That allegation about personal differentiation and discrimination not having been denied it must, on the pleadings as they stand, be taken as admitted and we must, therefore, hold that the plaintiff had been arbitrarily picked out from among other employees and there was personal differentiation and discrimination in the matter of the termination of his services. For reasons which we have already discussed it must be held that the order of termination was void and illegal and it must be declared that the plaintiff has continued to be in the services of the Bombay Telephone Workshop. It is not for the Court to issue any direction to the Defendant to reinstate the Plaintiff in service and the declaration must suffice.

22. There remains for consideration the plaintiff's claim for Rs. 4,896 by way of arrears of salary from 30-3-1950 till date of the filing of the suit and for the period subsequent till the date of the decree. This claim was added when the plaint was allowed to be amended by an order of the Court. The learned Judge, as we have already pointed out, took the view that this claim was bound to fail in any event since the statutory notice given by the Plaintiff to the Defendant under Section 80 of the Code did not include any relief relating to arrears of pay. It has been argued before us by Counsel for the Plaintiff that this claim should be awarded if the Court is satisfied that the termination was invalid and holds that the plaintiff has continued to be in the services of the Defendant. On behalf of the Union it is argued that there is no compliance with the mandatory requirements of Section 80 and, therefore, the claim must be rejected. Now, it is clear that there must be substantial compliance with this provision of law which requires due and proper notice to the Union. Indubitably it is incumbent on the Court to entertain the defense when there is no adequate notice but at the same time we have to remember as Sir John Beaumont pointed out in *Chandulal v. Government of Bombay*[8], the section is to be applied with some regard to commonsense and the object with which it appears to have been passed. In *Lady Dinbai Petit v. Dominion of India*[9], Chagla, C.J. and Bhagwati, J., (as he then was) observed :

> "It is clear that the object of the section is to give intimation to Government of the grievance that the subject has and to give to Government an opportunity to redress that grievance before it is brought to Court. The section is not intended to be an instrument of oppression against the subject." If the notice under Section 80 of the Code does not definitely state the relief claimed but the allegations in the notice leave no doubt whatever as to the nature of the suit under contemplation, the object in giving the notice is served and the requirements of law in respect of the notice should be considered as satisfied. This last proposition has been repeatedly stressed in numerous decisions. The principal demand of the Plaintiff was that the termination of his employment was in violation of the constitutional safeguards and he had continued to remain in the employment of the defendant. Now we are giving a declaration that the Plaintiff is in service till judgment

and the right to salary in such a case, us was observed by Chagla, C.J. and Dixit, J., in *Dattatraya Mahadeo v. Union of India*[10], incidentally arises from that declaration. We do not think it would be fair or just to the Plaintiff to deny him in this suit his salary which he becomes entitled to receive only incidentally upon the declaration we are giving in his favor. We may add that in this Court we have always been given to understand by learned Counsel appearing for the Union in similar cases that the practice of the Government is to pay all arrears of salary once there is a final and conclusive declaration of the nature we are giving in favor of an employee.

23. In the result the appeal succeeds. The decree of the trial Court will be set aside and there will be a declaration in favor of the plaintiff as already indicated by us and a decree in his favor for Rs. 12,157-0-0 in respect of salary computed till 9th September 1957. Learned Counsel are agreed that if a decree for the amount of salary is to go against the Respondent it must be for this amount. We have heard Counsel on the question of costs. The fair order for costs will be that as to the costs of the suit, the appellant will get half his costs from the Respondent. As to the costs of the appeal, the Respondents will pay the appellant cost of the same. The costs of the appellant's Advocate of the suit and of the appeal will be taxed and he will be at liberty to receive the costs decreed from the Respondent. The decretal amount and costs to be paid within 3 months. There will be interest from date, of suit on Rs. 4,896 till judgment and on judgment at 4 per cent, till payment. After he had filed the suit the Plaintiff was allowed to continue it in forma pauperis and this appeal is in forma pauperis. The appellant has not paid any Court fees. The order for Court fees will be that the Respondent will pay the Court fees relating to the suit and the appeal which would have been payable if the appellant had not been allowed to appear in forma pauperis. The Court fees shall be a first charge on the subject matter of the suit and the appeal.

Order accordingly.

[8]45 Bom LR 197 : (AIR 1943 Bom 138)

[9]53 Bom ILR 229 : (AIR 1951 Bom 72)

[10] First Appeal No. 319 of 1953 (Bom)