CHAPTER V

Termination of Temporary Service

Article 311(2) of the Constitution does not in terms say that the protection of that Article applies only to persons who are permanent members of the service or who hold permanent civil posts. To limit the operation of the protective provision of this Article to the permanent Government servants only would amount to the adding of qualifying words to the Article. In terms of Article 311(2) the protection afforded by that Article applies equally to persons in permanent appointment as well as those appointed on temporary basis.[1] It is well settled that the service of a person appointed on a temporary basis in the service of the State is liable to be terminated in the exigencies of public service by ordering termination in accordance with rules regulating temporary Government servants and to such termination provisions of Article 311(2) does not apply because such termination is neither dismissal nor removal within the meaning of Article 311(2). But if instead of terminating the service of a temporary Government servant in that manner if the concerned authority chooses to terminate the service of temporary Government servant on the basis of alleged misconduct, it is mandatory for the authority to comply with the provisions of Article 311(2) before issuing such an order of termination. Termination for misconduct of a temporary employee falls within the expression of 'removal' or 'dismissal' contained in Article 311(2). A Temporary Government servant, in such circumstances is entitled to the protection guaranteed in Article 311(2). Therefore, any order of termination of service of a temporary Government servant for misconduct without holding an enquiry and without giving a reasonable opportunity against such termination is void as offending Article 311(2) of the Constitution.[2] Similarly a person who is appointed as extra-departmental postal delivery agent is a civil servant entitled to the protection of Article 311(2). The services of a person appointed to such a post could be terminated in accordance with the terms of employment. But if his termination is made as a measure of punishment, the provision of Article 311(2) of the Constitution is attracted and non-compliance with the said Article renders the order of termination illegal.[3]

1 (*a*) Purushothamlal Dhingra *V.* Union of India—AIR 1958 SC 36.
(*b*) Union of India *V.* P. K. More—AIR 1962 SC 630.

2 (*a*) Nagaraja Rao *V.* State of Mysore—1957 *Mys. L. J.* 347.
(*b*) Madan Gopal *V.* State of Punjab—AIR 1963 SC 531—1963(3) SCR 716.
(*c*) State of Mysore *V.* Padmavati—1964 *Mys. L. J.* Suppl. 138.
(*d*) Union Territory of Tripura *V.* Gopalachandra—AIR 1963 SC 601.

3 T. C. Govindan *V.* Inspector of Post Offices—SLR 1967 Kerala 515.

As in the case of reversion of a civil servant from an officiating higher post to a lower post, amounting to "reduction in rank" in cases of termination of service of persons in temporary service or appointed under special terms and conditions, it is the duty of the court in a given case to find out by applying the relevant tests as to whether the termination of service of a temporary Government servant is termination simpliciter under the rules regulating termination or a penalty for misconduct, when such an order is challenged as violative of Article 311(2).[2–1] The principles governing the cases of termination of temporary civil servants attracting the provisions of Article 311(2) are set out hereinafter.

1. Motive for Passing the Order Not Relevant

In a case where the order of termination of service of a temporary civil servant in form and substance is nothing more than the discharge effected under the terms of contract or the relevant rule, it cannot in law be regarded as his dismissal because the appointing authority was actuated by the motive that the servant does not deserve to be continued in service for some alleged inefficiency or misconduct.

The motive behind the discharge is wholly irrelevant. 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 the Government as to whether there is reason to dispense with the service of the temporary employee. When a preliminary enquiry of this nature is held in the case of a 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 penalties. So far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311(2). Such an enquiry is rather for the satisfaction of the Government to decide whether punitive action should be taken or action should be taken under the contract or the rules. 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 enquiry, the authority comes to the conclusion that the temporary Government servant is not suitable to be continued it may pass simple order of discharge under the rules. In such a case, it is not open to the temporary Government servant to invoke the protection of Article 311(2) of the Constitution.[4]

2. Termination When Becomes Punitive

(a) Whether the order of termination of the services of a temporary Government servant is discharge simpliciter or punishment has got to be found out

4 A. G. Benjamin V. Union of India—SLR 1967 SC 185.

with reference to each individual case. In doing so, the consideration of motive operating on the mind of the authority in terminating the services of a temporary employee should be eliminated but at the same time in determining the character of termination of the service of a temporary servant, the mere form of the order terminating the service is not decisive. If a formal departmental enquiry has been held in which findings have been recorded against a temporary Government servant and as a result of the said findings, his services are terminated, the mere fact that the order by which his services are terminated ostensibly purports to be a mere order of discharge would not disguise the fact that in substance and in law the discharge in question amounts to dismissal. The court has therefore, to examine in each case having regard to the material facts existing at the time of discharge and to find out whether the order of discharge is really an order of discharge or one of dismissal. When an authority wants to terminate the services of a civil servant in temporary service it can pass a simple order of discharge without casting any aspersions against the temporary servant or attaching any stigma to his character. But if the order casts an aspersion on the temporary servant, such an order cannot be considered as a simple order of discharge. The test in such a case is, does or does not the order of termination attach stigma to the officer concerned when he is purported to be discharged from service. If the answer is in the affirmative, then notwithstanding the form of the order, the termination must be held as amounting to dismissal.[5]

(b) Where the services of a temporary employee is terminated on the ground that he has been found undesirable to be retained in Government service, such an order clearly imposes a stigma on the civil servant and therefore amounts to a penalty and the provisions of Article 311 (2) of the Constitution is attracted. An order so passed without complying with Article 311(2) is invalid.[5]

(c) Whether an order of termination made against a temporary Government servant attaches a stigma or not is a question of fact to be decided having regard to all the facts and circumstances of the case. In a case where the Government intended to serve a show cause notice to a civil servant and a public statement was made on the floor of Legislature and thereby publicity was given, an order of termination made thereafter by giving one month's notice amounts to imposition of penalty. In these circumstances though the order appears to be an order of termination simpliciter, the effect would be that it is punitive. The Government servant concerned is entitled to claim the protection of Article 311.[6]

(d) *Temporary employee has to prove that termination is a penalty :* It is well settled that Article 311(2) of the Constitution applies even to a temporary

5 Jagadish Mitter *V.* Union of India—AIR 1964 SC 449.

6 Madan Mohan *V.* State of Bihar—SLR 1973(1) SC 630.

employee. But a temporary employee claiming its protection has to prove that the termination in his case amounts to removal or dismissal within the meaning of Article 311 of the Constitution. Where on the face of it, the termination of employment of a temporary employee is in accordance with rules or contract the onus of proving that such an order of termination really amounts to dismissal is on the employee concerned. If he proves that it is a penalty and that Article 311(2) is not complied with, then the order is liable to be set aside.[7] If he fails to prove that it is a penalty then the termination has to be upheld.[8]

3. Other Aspects Relating to Terminations

The termination of service of a temporary civil servant cannot be made either in contravention of Articles 14 and 16 or the rules governing terminations. Such cases are dealt with in the Chapter relating to Articles 14 and 16 in Part II and the Chapter relating to termination of temporary service in Part VII of this book.

7 (*a*) Nagaraja Rao *V.* State of Mysore—1957 *Mys. L. J.* 347.
(*b*) Madanagopal *V.* State of Punjab—AIR 1963 SC 531—1963(3) SCR 716.

8 Union Territory of Tripura *V.* Gopalachandra—AIR 1963 SC 601.