CHAPTER V

Temporary Service

It is competent for the State to employ temporary servants to satisfy the needs of a particular contingency and such employment would be perfectly legitimate. If the State can have a class of temporary servants it is also competent for the State to regulate their conditions of service which may be different in some respects from those of permanent employees. The very fact that the service of a class of Government servants is temporary makes the said class apart from those in permanent service and such Government servants cannot necessarily claim all the advantages which a permanent servant has in the matter of security of service. Therefore, it is open for the State to frame rules regulating conditions of service of temporary employees including a rule providing for termination of service of temporary Government servants.[1]

1. Temporary Appointments

(1) *Appointment made to temporary post :* When an appointment is made to a temporary post under the State even though the appointment order does not disclose that the appointment is of a temporary character, the fact that such an appointment is made to a temporary post indicates that the appointment is also temporary, as there can be no permanent appointment to a temporary post. Therefore, notwithstanding the non-mentioning of the nature of appointment, a person appointed to a temporary post must be deemed to have been in temporary service only.[2] Even the fact that in the appointment order a period of probation is prescribed does not change the position so long the appointment made is to a temporary post.[2-b]

(2) *Temporary appointment considered as substantive for certain purposes does not make the appointment substantive :* The fact that under the rules dealing with leave, increment etc., appointment in a temporary capacity is treated as substantive for those specific purposes it does not mean that the

1 (*a*) Champaklal *V.* Union of India—AIR 1964 SC 1854—1964(5) SCR 190. (CCS) (Temp. Service) Rules validity upheld.
(*b*) Nanakchand *V.* State of U.P—SLR 1971 All. 661. Power to create temporary posts under Section 2 of Police Act 1861 upheld.

2 (*a*) Sureshchand *V.* Principal, Government Girls College, Khandwa—SLR 1972 (M. P.) 564.
(*b*) M. K. Lakshmipathi *V.* Board of Mineral Development—W. P. No. 86/1966 DD 22-6-67 Mysore.

appointment made in a temporary capacity has to be treated as substantive for all other purposes. Such rules conferring certain benefits on temporary employees similar to persons in permanent service do not change the nature of a temporary appointment. Except for the specified purposes, the appointment continues to be temporary.[3]

(3) *Temporary post made permanent—employment does not become permanent :* A person appointed in a temporary capacity continues to be a temporary employee until a declaration is made under the relevant rules that he should be deemed to be in a quasi-permanent service or thereafter he is absorbed permanently in Government service. The mere fact that the post held by a temporary employee is made permanent does not convert the appointment of a temporary Government servant into that of a permanent appointment. So long he is not made permanent, he continues to be a temporary employee and his services are terminable by issue of a notice as required by rules.[4]

2. Declaration of Quasi Permanency

(1) *Conditions for acquiring quasi permanency :* The rules regulating conditions of service of temporary employees provide that after the temporary employee puts in more than 3 years of service, the appointing authority may declare that a temporary employee be treated as in quasi-permanent service if the appointing authority is satisfied having regard to the quality of his work, conduct and character that he is suitable for employment in quasi-permanent capacity under the Government. Both the conditions prescribed should be satisfied before a temporary Government servant can be deemed to be in quasi-permanent service *viz.* (1) continuous service for more than 3 years and (2) declaration by the appointing authority as required by the rules. Therefore, the mere fact that an employee has been in continuous service for more than 3 years does not give him the quasi-permanent status unless it is also followed by a declaration by the appointing authority to that effect. Notwithstanding the length of service of the temporary employee, in the absence of a declaration, the Government servant concerned continues to be in temporary service.[5]

(2) *Declaration of quasi-permanency—no mandamus can be issued :* When under the rules regulating temporary service a temporary Government servant is not given an absolute right for a declaration that he has to be treated as in quasi-permanent service and it is for the appointing authority on being

3 Director of Panchayatraj *V.* Babu Singh—SLR 1972 SC 106.
Fundamental Rule 26(*d*) of Financial Hand Book Vol. II Part II, interpreted.

4 State of Nagaland *V.* G. Vasantha—AIR 1970 SC 537.

5 (*a*) Champaklal *V.* Union of India—AIR 1964 SC 1854—1964(5) SCR 190.

satisfied about the suitability of the concerned Government servant for employment in a quasi-permanent capacity to make a declaration to that effect, no mandamus can be issued at the instance of a temporary Government servant, directing the appointing authority to make a declaration that he is fit for employment in quasi-permanent service, though in a suitable case, a mandamus may be issued directing the appointing authority to consider the case for purposes of such declaration.[5-b]

(3) *Quasi-permanency condition precedent for permanent absorption :* The rules regulating conditions of service of temporary employees provide that a person in temporary service after completing 3 years of service is required to be considered by the appointing authority for employment of the said Government servant in a quasi-permanent service. The rules further provide that the Government servants in quasi-permanent service shall be eligible for permanent appointment on the occurrence of vacancies in the specified posts which may be reserved for being filled up from among Government servants in quasi-permanent service. The rules require that every appointing authority should after consultation with the appropriate Departmental Promotion Committee prepare from time to time a list in the order of precedence of Government servants in quasi-permanent service who are eligible for permanent appointment and in preparing such a list, the appointing authority should consider both the seniority and the merit of the Government servants concerned, and that all permanent appointments to posts which are reserved for appointment of Government servants in quasi-permanent service should be made in accordance with such a list. Therefore, the condition precedent for permanent absorption as provided in the rules is that a Government servant must have acquired quasi-permanent status. It is not open for the appointing authority to consider the cases of persons in temporary service straightaway for permanent absorption and to order permanent absorption of some of the temporary employees and to declare persons who are not considered fit for permanent absorption be treated as in quasi-permanent service. The rules regulating declaration of temporary Government servants as quasi-permanent employees and Government servants in quasi-permanent service as permanent employees are unambiguous and mandatory. Unless temporary Government servants have been declared as being in quasi-permanent service it is not open for the appointing authority to consider their cases for permanent absorption.[6]

3. Termination

(1) *Temporary service can be terminated in accordance with the rules at any time :* The service of a person in temporary service is liable to be

5 (*b*) Appanna *V.* Accountant General—1962 *Mys. L. J.* Suppl. 132.
CCS (Temp. Service) Rules, 1949 Rules 3 and 4 interpreted.

6 V. Ramaprasad *V.* Director of Atomic Minerals Division—1972(1) *Mys. L. J.* 1. CCS (Temp. Service) Rules, 1965 SLR 1972 M.P. 564.—Sureshchand *V.* Principal, Government Girls College, (Mysore).

terminated at any time by giving the prescribed notice or prescribed pay in lieu of notice. Therefore, when the rules regulating the condition of service of temporary employees provide that the service of a temporary employee is liable to be terminated at any time by giving one month's notice or one month's salary in lieu of notice, it is always competent for the appointing authority to terminate the services of a temporary employee by either giving notice as required by the rules or salary in lieu of such notice as provided. For such termination of service of a temporary employee made in exercise of the powers under the rules regulating condition of service of temporary employees, the provisions of Article 311(2) are not attracted.[7]

(2) *Termination should be by competent authority :* When a person is continued in service on a temporary basis until another person is appointed in accordance with the rules, the termination of such a Government servant continued on temporary basis can be brought about only by the order of the authority competent to make appointment and termination to the post concerned. Any order of termination made by a subordinate authority who is not competent to make the appointment would be illegal and such an order does not bring about the termination of a temporary employee.[8]

(3) *Termination of temporary service in disobedience of rules regulating termination :* (a) When rules regulating termination of service of a temporary Government servant provide that the service of a temporary Government servant is liable for termination at any time, by one month's notice given in writing by the appointing authority or forthwith by payment to him the sum equivalent to one month's salary and allowances or by payment of such salary or allowances for the period by which such notice falls short of one month, the only interpretation that is possible is that the termination of service becomes effective only by either giving one month's notice or if the termination is intended to take effect forthwith by the payment to the employee whatever sum is due to him under the rules simultaneous to the termination. When by an order the service of a temporary employee is terminated without giving a month's notice or one month's salary, before termination, such an order of termination is illegal and does not bring about a valid termi-

7 (*a*) Gopalakrishna *V.* Union of India—AIR 1954 SC 632.
(*b*) Satischandra Anand *V.* Union of India—AIR 1953 SC 250—1953 SCR 655.
(*c*) K. S. Srinivasan *V.* Union of India—AIR 1958 SC 419—1958 SCR 1295.
(*d*) Champaklal *V.* Union of India—AIR 1964 SC 1854.
(*e*) State of Nagaland *V.* G. Vasantha—AIR 1970 SC 537.
(*f*) Ramgopal *V.* State of M.P.—AIR 1970 SC 158—M.P. Government (Temporary and quasi-Government Service) Rules, 1960 Rule 12 interpreted.
(*g*) Appanna *V.* Accountant General—1962 *Mys. L. J.* Suppl. 132.
(*h*) Rangarao *V.* State of Mysore—1962 *Mys. L. J.* Suppl. 487.
(*j*) Narayandas *V.* State of Mysore—1964 *Mys. L. J.* SN. P. 39–40.

8 (*a*) Krishnamurthy *V.* State of Mysore—1969 *Mys. L. J.* SN. P. 83.
(*b*) A. M. Viswanatha Rao *V.* Assistant Commissioner—1969 *Mys. L. J.* SN. P. 172.

nation of the service of a temporary employee.[9] Where the rules prescribe that one month's notice should be given before terminating the services of a temporary Government servant, a condition contained in the order of appointment that the appointment is terminable without notice is illegal and cannot be relied on to sustain an order of termination made in contravention of the rules.[9-d]

(b) *Effect of continuance in service after notice period :* Where a temporary civil servant to whom notice of termination had been issued is continued in service after the period specified in the notice the continuance must be regarded as continuance in service in a temporary capacity. His service can be terminated once again only by the issue of a valid notice.[9-e]

(4) *Termination of, or revision from, temporary service on irrelevant ground is illegal :* (a) The service of a person appointed on temporary basis to a post under the State is always liable to be terminated at any time in the exigencies of public service. If the Government servant appointed on temporary basis to a post is holding a lower post substantively, he is similarly liable for reversion at any time in the exigencies of public service. But the termination or the reversion of a Government servant cannot be made on grounds which are clearly untenable.[10] Therefore when a person appointed to a post temporarily was reverted on the ground that he did not possess the eligibility for appointment for the reason that he did not possess a diploma qualification and there was no prescription of such a qualification for the post in question, the order of reversion made on the ground that he did not possess the prescribed qualification for the higher post is illegal and liable to be quashed. The termination or reversion so made on an irrelevant or unsustainable ground cannot be defended on the mere ground that the appointment was only temporary.[10-a]

(b) Similarly where the services of a person appointed to a temporary post was terminated solely on the ground that the post had been abolished, without noticing that the post had been made permanent, the order of termination which was based solely on the ground that the post had been abolished, is liable to be set aside as the ground on which the termination was made did not exist.[11]

9 (*a*) Sr. Supdt. R.M.S. Cochin *V.* K. V. Gopinath—AIR 1972 SC 1487—Decision in State of Uttar Pradesh *V.* Dinanath Rai—reported in SLR 1969 SC 647 distinguished —Rule 5 of CCS (Temporary Servce) Rules interpreted.
(*b*) K. V. Gopinath *V.* Sr. Supdt. R.M.S.—SLR 1969 Kerala 494.
(*c*) Vasantha *V.* State of Mysore—1972 *Mys. L. J.* SN. P. 104—Mysore State Civil Services Temporary Services Rules, 1967—Rule 5, interpreted.
(*d*) B. Devappa Shetty *V.* State of Mysore—1972 *Mys. L. J.* SN. P. 135.
Note: The rules have since been amended and the requirement of one month's notice or one month's salary in lieu of notice as a condition precedent for termination is removed.
(*e*) Sanjeeva Murthy *V.* Commissioner of Commercial Taxes—1973(2)*Mys.L.J.* SN. P. 50.

10 (*a*) Amaraiah *V.* Divisional Commissioner—SLR 1970 Mys. 159.
(*b*) State of Mysore *V.* P. R. Kulkarni—AIR 1972 SC 2170.

11 D. R. Saroja *V.* Director of Public Instruction—W.P. No. 1874/67 DD 15-1-69 (Mys).

(5) *Quasi-permanent status—Government servant is entitled to the protection of Article* 311(2) : A person in quasi-permanent service under the rules regulating conditions of service is given the same protection regarding termination of his service as is given to a permanent Government servant. Therefore, once a temporary Government servant has been declared to be in quasi-permanent service, termination of his service except by way of retirement or on account of abolition of post, has to be made in conformity with Article 311(2) of the Constitution and after following the procedure prescribed for the termination of service of a permanent Government servant.[12]

(6) *Abolition of post or reduction of establishment—no right to continue* : A person in quasi-permanent service like a permanent Government servant has a right to continue in the post so long the post exists. When the termination becomes necessary either on account of abolition of the post or posts, or reduction of establishment, there is no right for a person in quasi-permanent service to continue. Therefore, in the case of a person in quasi-permanent service instead of terminating his service consequent on the reduction of establishment, if he was given a temporary appointment, he no longer retained the quasi-permanent status. Termination of his service from the temporary post which was given to him consequent on the reduction of establishment, by giving the requisite notice as prescribed in the rules for the termination of service of a temporary employee, is valid.[12—a]

12 (*a*) *K. S Srinivasan V. Union of India—AIR 1958 SCR 1295.*
(*b*) CCS (Temp. Service) Rules, 1965—Rules 7 and 9.
(*c*) MCS (Temp. Service) Rules, 1967—Rules 7 and 9.