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 services or those who hold permanent civil posts. To limit the operation of the protective provision of this article to the permanent government servants alone would amount to adding of qualifying words to the article. The protection afforded by that article applies equally to persons in permanent appointment as well as to those appointed on temporary basis.[1] It is a well settled law that the service of a persons 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 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).[2] Similarly, a person appointed as extra-departmental postal delivery agent is a civil servant entitled to the protection of article 311(2) if his termination is made as a measure of punishment.[3]

An order of termination of service of a temporary employee *simpliciter* is not invalid. But, if disciplinary grounds or other reasons are set out in the termination order, the same attaches stigma to the employee and, therefore,

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1 *Purushothamlal Dhingra* v. *Union of India*, AIR 1958 SC 36; *Union of India* v. *P.K. More*, AIR 1962 SC 630.

2 *Nagaraja Rao* v. *State of Mysore*, 1957 Mys LJ 347; *Madan Gopal* v. *State of Punjab*, AIR 1963 SC 531; 1963(3) SCR 716; *State of Mysore* v. *Padmavati*, 1964 Mys LJ Supp 138; *Union Territory of Tripura* v. *Gopalachandra*, AIR 1963 SC 601.

3 *T.C. Govindan* v. *Inspector of Post Offices*, SLR 1967 Ker 515.

such an order cannot be made without inquiry.[4] When the order of termination of service is passed by way of punishment and is *ex facie* punitive in nature, such an order cannot be passed even in respect of temporary employee, without a regular departmental inquiry.[5]

The Supreme Court has ruled that if there are allegations of misconduct against an employee on probation and an inquiry is held to find out the truth of that misconduct wherein an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not with a view to assess the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In such a situation, the order would be founded on misconduct.[6]

If the government dismisses such an employee in a punitive manner, or as a punishment, then termination of his service may amount to 'dismissal' or 'removal' attracting the application of article 311.[7] In such a case, it becomes incumbent to hold a formal inquiry by framing charges against him and giving him reasonable opportunity in accordance with article 311(2).

As in the case of reversion 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 whether the termination 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).[8] The principles governing the cases of termination of temporary civil servants attracting the provisions of article 311(2) are set out below.

Motive for passing the order not relevant

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 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.

4 *Chandreshwar Narain Dubey* v. *State of Uttar Pradesh*, AIR 1998 SC 2671.
5 *Nar Singh Pal* v. *Union of India*, AIR 2000 SC 1401.
6 *Chander Prakash Shahi* v. *State of Uttar Pradesh*, AIR 2000 SC 1706.
7 *State of Madhya Pradesh* v. *Ramashankar Raghuvanshi*, AIR 1983 SC374; *Kanhailal* v. *Distt.Judge*, AIR 1983 SC 351; *Nepal Singh* v. *State of Uttar Pradesh*; AIR 1980 SC 1459.
8 *A.G. Benjamin* v. *Union of India*, SLR 1967 SC 185; *Union of India* v. *P.S. Bhatt*, SLR 1981 (1) SC 370; *Gill G.S.* v. *State of Punjab*, AIR 1974 SC 1898; *State of U.P.* v. *Ramachander*, AIR 1976 SC 2547; SLR 1976(2) SC 859; *Vishal Mallapa* v. *State of Karnataka*, 1976(1) Kar LJ 503.

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. A preliminary enquiry of this nature must not be mistaken for the regular departmental enquiry in order to inflict one of the three major penalties. The preliminary enquiry is not governed by article 311(2). 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 deicide 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, it may pass a simple order of discharge under the rules. In such a case, it is not open for him to invoke the protection of article 311(2).[9]

When termination is punitive

(a) Whether the order of termination of the services of a temporary government servant is discharge *simpliciter* or punishment is, of necessity, to be determined with reference to each individual case. In so doing while the motive operating on the mind of the authority in terminating the services of a temporary employee is irrelevant 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 though 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 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 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 regardless of the form of the order, the termination must be held as amounting to dismissal.[10]

(b) Where the services of a temporary employee is terminated on the ground that he has been found undesirable such an order clearly imposes a

9 *Ibid.*

10 *Jagadish Mitter* v. *Union of India*, AIR 1964 SC 449.

stigma on the civil servant and therefore amounts to a penalty and the provisions of article 311(2) of the Constitution is attracted.[11]

(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 an imposition of penalty. In these circumstances though the order appears to be an order of termination *simpliciter*, the effect would be punitive.[12]

(d) *Temporary employee has to prove that termination is a penalty:* A temporary employee claiming article 311(2) protection has to prove that the termination in his case amounts to removal or dismissal within the meaning of that article. Where on the face of it, the termination of the 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 not 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.[13] If he fails to prove that it is a penalty then the termination has to be upheld.[14]

Other aspects relating to termination

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.

Where appointments were made on temporary basis and the services were terminable without notice or assigning any reasons, such employees are not entitled to hearing before termination of their services.[15] Order of termination *simpliciter* on the basis of unsatisfactory service record without attaching any stigma against the employee and without holding any departmental inquiry is not violative of article 311.[16] Where during the pendency of a criminal trial for assault, the services of a temporary employee were terminated for the same assault, it was not a simple order of termination but was punitive, amounting

11 *Madan Mohan* v. *State of Bihar*, SLR 1973(1) SC 630; *State of Punjab* v. *Prakash Singh*, SLR 1975 SC 85; *Anoop Jaiswal* v. *Govt. of India*, AIR 1985 SC 636.

12 *Ibid.*

13 *Nagaraja Rao* v. *State of Mysore*, 1957 Mys. LJ 347; *Madan Gopal* v. *State of Punjab*, AIR 1963 SC 531; 1963(3) SCR 716.

14 *Union Territory of Tripura* v. *Gopalachandra*, AIR 1963 SC 601.

15 *M.P. Hasta Shilpa Vikas Ltd.* v. *Devender Kumar Jain*, (1995) 1 SCC 638.

16 *Hukam Chand Khundia* v. *Chandigarh Administration*, (1995) 6 SCC 534.

to dismissal. Since the order was passed on the basis of a preliminary inquiry and not that of a regular inquiry, the order was held to be invalid.[17]

Where the petitioners should have been treated as government servants, their services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating their services was that it was only for five years and their services were no longer required. It was held by the court that termination was illegal and petitioners were entitled to be reinstated in service with consequential benefits.[18] The mere fact that the status of the employees amounts to government servants would not by itself entitle them to get all the benefits as is available to the regular government servants or even to their counterparts serving in the CSD canteen.[19]

Ordinarily the order of termination *simpliciter* does not attach any stigma.[20] The question whether the termination is *simpliciter* or punitive has been examined in several cases.[21] In two recent decisions the apex court,[22] after a survey of most of the earlier decisions touching on the question, has observed as to when an order of termination can be treated as *simpliciter* and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation.

17 *Nar Singh Pal* v. *Union of India*, (2000) 3 SCC 588.
18 *Union of India* v. *M. Aslam*, AIR 2001 SC 526.
19 *G. Srinivas Rao* v. *Union of India*, 2006(1) SLR 109.
20 *State of U.P. Ashok Kumar*, 2006(10) SLR 413.
21 *Dhanjay* v. *Chief Officer, Zila Parishad, Jalna*, AIR 2003 SC 1175; *Mathew P. Thomas* v. *Kerala State Civil Supply Corporation*, JT 2003 (2) SC 162.
22 *Ibid.*