CHAPTER V

TEMPORARY SERVICE*

The state may legitimately employ temporary servants to satisfy the needs of a particular contingency. The state may also regulate conditions of service of a class of temporary servants in different ways in some respects from those of permanent employees. The very fact that the service of a class of government servants is temporary makes the class separate 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 tenure of service. The state, accordingly, frames rules regulating conditions of service of temporary employees including a rule providing for termination of service of temporary government servants.[1]

Temporary appointments

Appointment made to temporary post: Even when 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 temporary, as there can be no permanent appointment to a temporary post. Therefore, a person appointed to a temporary post is 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.[3] The qualifications prescribed for a permanent post have to be strictly followed in a temporary post too.[4]

Temporary appointment considered 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 these specific purposes does not convert the appointment into a substantive one for all other purposes. Except for the specified purposes, the appointment continues to be temporary.[5]

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1 *Champaklal* v. *Union of India*, AIR 1964 SC 1854; *Nanakchand* v. *State of U.P.*, SLR 1971 All 661.

2 *Sureshchand* v. *Principal, Government Girls College, Khandwa*, SLR 1972 MP 564.

3 *M.K. Lakshmipathi* v. *Board of Mineral Development*, W.P.No.86/1966 D 22-6-67(Mys)

4 *State of Rajasthan* v. *Fateh Chandthe*, AIR 1970 SC 1099.

5 *Director of Panchayatraj* v. *Babu Singh*, AIR 1972 SC 420.

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 as he is not made permanent, he continues to be a temporary employee.[6] and his services are terminable by issue of a notice as required by rules.[7] A temporary employee appointed to a permanent post has all the privileges of a regular employee.[8]

Declaration of quasi-permanency

Conditions for acquiring quasi-permanency: The rules regulating conditions of service of temporary employees provide that after the temporary employee completes more than three years of service, the appointing authority may declare that he be treated as in quasi-permanent service if it is satisfied by the quality of his work, conduct and character. Both the following 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 three 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 three years does not give him the quasi-permanent status unless it is 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.[9]

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, upon satisfaction concerning his suitability, no *mandamus* can lie 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 lie directing the appointing authority to consider the case for purpose of such declaration.[10]

Quasi - permanency condition precedent for permanent absorption: The rules provide that persons in quasi-permanent service may be absorbed

6 *State of U P* v. *Nand Kishore Tandon*, 1977 Lab I C 838 at 839.
7 *State of Nagaland* v. *G Vasantha*, AIR 1970 SC 537.
8 *Arundhati Ajit Pargaonkar* v. *State of Maharashtra*, AIR 1995 SC 962.
9 *Champaklal, supra* note 1; *Apparna* v. *Accountant General*, 1962 Mys LJ Suppl 132.
10 *Apparna, ibid.*

permanently against specified vacancies reserved for such persons; they also provide procedures for consultation with departmental promotion committee on the basis of which a list is required to be prepared for absorption into permanent service. Under the rules, the appointing authority must make appointments from the list. It cannot dispense with the requirement that persons who are not already quasi-permanent servants may not be thus absorbed. It may not appoint to the post reserved for quasi-permanent servants, purely temporary servants. The rules are unambiguous and mandatory. [11]

Acquisition of permanency

A temporary civil servant does not become permanent unless he gets that capacity either under some rules framed for this or he is declared or appointed by the government as a permanent servant. [12] Merely because a temporary employee was allowed to continue in employment for a time beyond the term of his appointment, would not entitle him to be absorbed in regular service or to be made permanent, merely on the strength of such continuance, if original appointment was not made by following due procedure of selection as envisaged by the rules framed for this purpose.[13]

Temporary employee is not entitled to challenge the regular selection: In some cases temporary appointment was made by the authority and in the order it was stated that the servant would serve till appointment is made on regular basis. The apex court did not allow the temporary employee to challenge the regular selection on the ground that no written test was held. It was also held that it was not necessary in these proceedings for the high court to look at the order-sheet of the selection. [14]

Termination

Temporary government servants are also entitled to the protection of article 311 as permanent government servants if the government intends to impose any one of the major punishments i.e., dismissal, removal or reduction in rank. [15] As per section 5 of the Central Government Service (Temporary) Rules, 1949 three options are open to the employer to terminate the services of a temporary employee: firstly, in terms of the order of appointment; secondly, according to the conduct rules; and thirdly, as a result of a criminal case.[16]

11 *V.Ramaprasad* v. *Director of Atomic Minerals Division*, 1972(1) Mys LJ 1.
12 *Director of Panchayatraj* v. *Babu Singh*, AIR 1972 SC 420.
13 *Secretary, State of Karnataka* v. *Umadevi*, 2006 (4) SCC 1, para 45.
14 *Commissioner, Assam State Housing* v. *Purna Chandra Bora*, 1998(6) SCC 619, 620.
15 *S. Sial* v. *State of UP*, AIR 1974 SC 1317.
16 *Secretary, Ministry of Works and Housing, Government of India* v. *Mohinder Singh Jagdev*, 1996 (6) SCC 229.

Temporary service can be terminated in accordance with the rules at any time: The service of a person in a temporary service is liable to be terminated at any time by giving the prescribed notice or prescribed pay in lieu of notice. For such termination of service made in exercise of the powers under the rules regulating conditions of service of temporary employees, the provisions of article 311(2) are not attracted.[17] When the government exercises the statutory powers, the need to conduct enquiry as contemplated under article 311(2) by necessary implication gets obviated. [18]

Government has the discretion to terminate the temporary government servant: The services of a temporary employee may be terminated by giving one month's notice whenever the government thinks it necessary or expedient to do so. It is for administrative reasons within the discretionary power of the administrative authorities to terminate the services of a temporary employee without assigning any particular reason.[19]

Termination should be by competent authority: However, such termination can be brought about only by 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.[20]

Termination of temporary service in disobedience of rules regulating termination: (a) 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, as required by the rules, such an order of termination is illegal and does not bring about a valid termination of the service of a temporary employee.[21] 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

17 *Gopalakrishna* v. *Union of India*, AIR 1954 SC 632; *Satischandra Anand* v. *Union of India*, AIR 1953 SC 250: 1953 SCR 655; *K.S.Srinivasan* v. *Union of India*, AIR 1958 SC 419: 1958 SCR 1295; *Champaklal, supra* note 1; *G.Vasantha, supra* note 7; *Ram Gopal Chaturvedi* v. *State of M.P.*, 1969 (2) SCC 240; *Apparna, supra* note 9; *Rangarao* v. *State of Mysore*, 1962 Mys LJ Suppl 487; *Narayandas* v. *State of Mysore*, 1969 Mys LJ SN 83.

18 *State of U.P.* v. *Kamala Devi*, 1996 (4) SCC 548.

19 *Ram Gopal Chaturvedi* v. *State of Madhya Pradesh*, 1969 (2) SCC 240, 245.

20 *Krishnamurthy* v. *State of Mysore*, 1969 Mys LJ SN 83; *A.M.Viswanatha Rao* v. *Assistant Commissioner*, 1969 Mys LJ SN 172.

21 *Sr. Supdt. R.M.S. Cochin* v. *K.V. Gopinath*, AIR 1972 SC 1487 (the decision in *State of Uttar Pradesh* v. *Dinanath Rai*, SLR 1969 SC 647 distinguished); *K.V. Gopinath* v. *Sr. Supdt. R.M.S.*, SLR 1969 Ker 494; *Rajkumar* v. *Union of India*, AIR 1975 SC 536; *Vasantha* v. *State of Mysore*, 1972 Mys LJ SN 104.

of termination made in contravention of the rules.[22] If the rules provide only for payment of salary on termination, termination without payment is valid. The civil servant is only entitled to recover one month's salary. [23]

(b) 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 only by the issue of a valid notice. [24]

(c) No notice is required when the termination order is in form and substance a mere order of discharge under the terms of contract. [25]

Termination or reversion from temporary service on irrelevant ground is illegal: (a) The service of a person appointed on temporary basis is always liable to be terminated at any time in the exigencies of public service. If the government servant appointed on a 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.[26] Therefore, when a person appointed to a post temporarily was reverted on the ground that he did not possess the diploma qualification and there was no prescription of such a qualification for the post in question, the order of reversion is illegal and liable to be quashed. The termination or reversion so made on an irrelevant, unsustainable ground cannot be defended by a mere averment that the appointment was only temporary. [27]

(b) Similarly, where the services of a person appointed to a temporary post were terminated solely on the ground that the post had been abolished, without noticing that the post had been made permanent, the order of termination is liable to be set aside as the ground on which the termination was made did not exist. [28]

(c) The termination of service of a temporary employee on the ground that the name had not been sponsored by the employment exchange, when this was not obligatory, is invalid. [29]

22 *B. Devappa Shetty* v. *State of Mysore*, 1962 Mys LJ SN 135. (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).

23 *Rajkumar* v. *Union of India*, AIR 1975 SC 1116; this decision recalls and reverses the order in AIR 1975 SC 536.

24 *Sanjeeva Murthy* v. *Commissioner of Commercial Taxes*, 1973(2) Mys LJ SN 50.

25 *Somanath Saho* v. *State of Orissa*, 1981(2) SLR 550.

26 *Amarlah* v. *Divisional Commissioner*, SLR 1970 Mys 159; *State of Mysore* v. *P.R. Kulkarni*, AIR 1972 SC 2170.

27 See *Amarlah, ibid.*

28 *D.R.Saroja* v. *Director of Public Instruction*, W.P.No.1874/67 D 15-1-69(Mys).

29 *Shambhunath* v. *State of U.P.*, SLR 1975(2) All 636.

(d) The termination of-service of a temporary employee who, under the relevant rules of absorption, is entitled to be considered without considering his suitability for absorption is illegal. [30]

(e) Though a civil servant is entitled under the rules to a notice of termination, when the law which gave right to continue in service itself provides that the appointment comes to an end on the appointment of a regular candidate, the termination takes place by the operation of law. In such a case, the general rule requiring the issue of notice of termination does not apply. [31]

(f) Though an order terminating the service of a temporary employee may be innocuously worded, the court can inquire into the entirety of the circumstances in order to decide whether the order is in the nature of imposition of penalty. If it is found to be such and had been made without inquiry, the order is liable to be set aside. [32]

(g) A temporary civil servant has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and terms of the service. Thus, termination of his services could be made at any time without assigning any reason but only after giving one month's notice. The well-settled principle is that such order is not conclusive and it is open to the court to determine the true nature of the order.[33]

(h) In one of the cases the screening committee constituted to regularise the services of the temporary or *adhoc* employee found that the civil servant was not fit to be confirmed. The court held that his termination could be affected only after giving him three months notice in writing.[34]

Quasi-permanent status - government servant is entitled to the protection of article 311(2)

A person in quasi-permanent service under the rules 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 the post, has to be made in conformity with article 311(2) after following the procedure prescribed for the termination of service of a permanent government servant.[35]

30 *J.N.Kacker* v. *State of Rajasthan*, SLR 1976(1) Raj 185.
31 *Y.Gundu Rao* v. *K.Ramachandra Rao*, 1974(2) Kar LJ SN 22.
32 *Samar Singh* v. *Comptroller and Auditor General of India*, SLR 1976(1) Del 226.
33 *State of U P* v. *Kaushual Kishore Shukla*, 1991 (1) SCC 691.
34 *State of Rajasthan* v. *Dinesh Kumar Bharti*, AIR 1997 SC 976, 978.
35 *K.S. Srinivasan* v. *Union of India*, AIR 1958 SCR 1295; CCS (Temp.Service) Rules, 1965, rules 7 and 9; MCS (Temp.Service) Rules, 1967-rules 7 and 9.

Abolition of posts 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 as the post exists. When the termination becomes necessary either on account of abolition of the post or posts, or reduction of the establishment, a person in quasi-permanent service is not entitled to continue. Therefore, if a person in quasi-permanent service was given a temporary appointment, instead of being terminated on the reduction of the establishment he no longer retains the quasi-permanent status. The termination of his service from the temporary post given to him consequent on the reduction of the establishment, by giving the requisite notice as prescribed in the rules is valid.[36]

36 See CCS Rules, *ibid.*