

1962

August 27.

MADAN GOPAL

v.

STATE OF PUNJAB

(P. B. SINHA, C. J., K. SUBBA RAO, J. C. SHAH,
N. RAJAGOPALA AYYANGAR and
J. R. MUDHOLKAR, JJ.)

*Temporary Government Servant—Termination of Service—
Enquiry—Misconduct—Constitution of India, Art. 311(2).*

The appellant, a temporary Government servant, was served with a charge sheet alleging misconduct. An enquiry was held on the charges by the Settlement Officer and the appellant was found guilty. The Deputy Commissioner accepting the findings of the Settlement Officer and without giving a reasonable opportunity to the appellant of showing cause against the action proposed to be taken in regard to him terminated his services after giving him one month's pay in lieu of one month's notice. The appellant challenged the termination of his service by way of a writ petition before the Punjab High Court. The Single Judge granted the writ quashing the order. The Division Bench reversed the Single Judge's order.

Held, that the termination of the appellant's service which was preceded by an enquiry into his alleged misconduct and based on the finding of misconduct, amounted to casting a stigma affecting his future career, and, there being non-compliance with Art. 311(2) of the Constitution of India in that the appellant was not afforded the opportunity to show cause against the proposed punishment, the order contravened Art. 311(2) of the Constitution.

Purushottam Lal Dhingra v. Union of India, (1958) S. C. R. 828, referred to.

State of Bihar v. Gopi Kishore Prasad A. I. R. 1960 S. C. 689, followed.

State of Orissa v. Ram Narain Das, (1961) 1 S. C. R. 606, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal
No. 329 of 1960.

Appeal from the judgment and order dated October 28, 1958, of the Punjab High Court in L. P. A. No. 72 of 1958.

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N. N. Keswani, for the appellant.

N. S. Bindra and *P. D. Menon*, for the respondents.

1962. August 27. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—The appellant Madan Gopal was appointed an Inspector of Consolidation by order dated October 5, 1953 of the Settlement Commissioner of the Patiala and East Punjab States Union. The appointment was “on temporary basis and terminable with one month’s notice”. On February 5, 1955, the appellant was served with a “charge-sheet” by the Settlement Officer, Bhatinda that he (the appellant) had received Rs. 150/- as illegal gratification from one Darbara Singh and had demanded Rs. 30/- as illegal gratification from one Ude Singh. The appellant was called upon to show cause why disciplinary action should not be taken against him if the allegations in the charge-sheet were proved. The appellant submitted his explanation to the charge-sheet. On February 22, 1955, the Settlement Officer submitted his report to the Deputy Commissioner Bhatinda, that the charge relating to receipt of illegal gratification from Darbara Singh was proved. The Deputy Commissioner by order dated March 17, 1955 ordered that the services of Madan Gopal Inspector be terminated forthwith and that in lieu of notice he will get one month’s pay as required by the Rules.

The appellant requested the Deputy Commissioner to review the order, and also submitted a memorial to the Minister for Revenue affairs. Having failed to obtain relief, the appellant applied to

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to the High Court of Pepsu for a writ under Art. 226 of the Constitution quashing the order dated March 17, 1955 on the ground *inter alia* that the order of dismissal from service was in contravention of Art. 311 of the Constitution as no reasonable opportunity to show cause against the order of dismissal was at all given. He also challenged the authority of the Settlement Officer to hold the enquiry and submitted that the procedure followed by that Officer in making the enquiry was irregular. The petition was transferred to the High Court of Punjab on the reorganization of the State of Punjab.

Mr. Justice Bishan Narain who heard the application issued the writ prayed for, because, in his view, the order of termination of employment was in the nature of an order of punishment and as the provisions of Art. 311(2) had not been complied with by the Enquiry Officer, the Deputy Commissioner or the Settlement Commissioner, the order was invalid. In appeal under the Letters Patent, the order was reversed by a Division Bench of the High Court. The High Court held that the appellant was a temporary servant and had no right to hold the post he was occupying and by the impugned order the appellant was not dismissed or removed from service, but his employment was terminated in exercise of authority reserved under the terms of employment, and no penalty was imposed upon the appellant.

The appellant was a temporary employee, and his employment was liable to be terminated by "notice of one month" without assigning any reason. The Deputy Commissioner, however, did not act in exercise of this authority : the appellant was served with a charge-sheet setting out his mis-demeanour, an enquiry was held in respect of the alleged misdemeanour and his employment was terminated because in the view of the Settlement Officer—with

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which view the Deputy Commissioner agreed—the misdemeanour was proved. Such a termination amounted to casting a “stigma affecting his future career”. In *State of Bihar v. Gopi Kishore Prasad* (1), the learned Chief Justice in dealing with cases of termination of service or discharge of public servant on probation set out five propositions of which the 3rd is enunciated thus :

“But, if instead of terminating such a person’s service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection or Art. 311 (2) of the Constitution.”

It is true that in that case the Court was dealing with the case of a public servant on probation whereas the appellant was a temporary employee, but, in principle, it will make no difference whether the appellant was a probationer or a temporary employee. The appellant had been served with a charge sheet that he had received illegal gratification from one person and had demanded illegal gratification from another. The appellant was given an opportunity to make his defence and it appears that witnesses in support of the charge and in defence were examined before the Settlement Officer. The Settlement Officer reported that on the evidence he was satisfied that the appellant had received Rs. 150/- as illegal gratification and that the appellant did not “enjoy good reputation and was a person of doubtful integrity”. It is now well-settled that the protection of Art. 311 (2) of the Constitution applies as much to a temporary public

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servant as to permanent public servants. By virtue of Art. 311 of the Constitution the appellant was not liable to be dismissed or removed from service until he had been given reasonable opportunity against the action proposed to be taken in regard to him: The appellant was given no such opportunity and Art. 311 of the Constitution was therefore not complied with.

Counsel appearing for the State of Punjab contended that the order dated March 17, 1955, was not the order pursuant to which employment of the appellant was terminated, the effective order being one passed by the Settlement Officer on March 30, 1955. No such order is however found on the record, and it appears that in the written statement filed by the State in the High Court it was expressly admitted that the employment of the appellant was terminated on March 17, 1955. Counsel also contended that enquiry was made by the Settlement Officer for the purpose of ascertaining whether the appellant who was a temporary employee should be continued in service or should be discharged under the terms of his employment, and to a termination made pursuant to such an enquiry the protection of Art. 311 (2) of the Constitution was not attracted, and in support of his submission counsel relied upon a judgment of this Court in *the State of Orissa v. Ram Narayan Das* (1). In *Ram Narayan Das's* case enquiry was made pursuant to Rules governing the conduct of public servants for ascertaining whether the probation of the public servant concerned should be continued and a notice to show cause in that behalf was served upon him. On the report of the enquiry officer that the work and conduct of the public servant was unsatisfactory, an order of termination of employment was passed without affording him an

(1) (1961) 1 S.C.R. 606.

opportunity of showing cause against the action proposed to be taken in regard to him. This Court pointed out that the public servant had no right to the post he occupied and under the terms of his appointment he was liable to be discharged at any time during the period of probation. It was observed that mere termination of employment does not carry with it "any evil consequences" such as forfeiture of his pay or allowances, loss of seniority, stoppage or postponement of future chances of promotion etc. and, therefore, there was no stigma affecting the future career of the public servant by the order terminating his employment for unsatisfactory work and conduct. "The enquiry against the respondent was for ascertaining whether he was fit to be confirmed. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately be regarded as one by way of punishment, but an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed, is not of that nature x x x x x The third proposition in the latter (Gopi Kishore Prasad's) case refers to an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to imposing punishment and not to an enquiry whether a probationer should be confirmed. Therefore, the fact of the holding of an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment, in the light of the tests laid down in *Parshottam Lal Dhingra's case* (1)."

In this case the enquiry made by the Settlement Officer was made with the object of ascertaining whether disciplinary action should be taken against the appellant for his alleged misdemeanour. It was clearly an enquiry for the purpose of taking

(1) (1958) S.C.R. 828.

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punitive action including dismissal or removal from service if the appellant was found to have committed the misdemeanour charged against him. Such an enquiry and order consequent upon the report made in the enquiry will not fall within the principle of *Ram Narayan Das's case* (1).

The appeal is therefore allowed and the order passed by the High Court is set aside and the order passed by Mr. Justice Bishan Narain is restored with costs in this Court and the High Court.

Appeal allowed.

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ISHWARI PRASAD MISHRA

v.

MOHAMMAD ISA

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and
RAGHUBAR DAYAL, JJ.)

Appellate Court—Duty of the appellate Judges in dealing with the Judgment of the lower court—Criticism of the trial Judge or the witnesses—Extravagant language to be avoided.

In a suit instituted by the appellant for the specific performance of an agreement of sale executed by the respondent, the latter disputed the genuineness and validity of the agreement and its consideration. The trial court decreed the suit but on appeal the High Court reversed the findings of the trial court and dismissed the suit. In the appeal filed by the appellant, the Supreme Court went into the evidence in the case elaborately and came to the conclusion that the decision of the trial court that the suit agreement was genuine and valid and was supported by consideration, was right and that the High Court erred in reversing that decision. In the Judgment delivered by it, the High Court had passed severe strictures against the trial court suggesting that the decision of the trial court was based on extraneous considerations.

(1) (1958) S.C.R. 828.