

(1957) 10 MP CK 0025
In the Madhya Pradesh High Court
Case No : C.M.C. No. 9 of 1956

Babulal Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-10-1957

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 49

Citation : (1958) J LJ 187

Hon'ble Judges : Samvatsar, J; Khan, J

Bench : Division Bench

Advocate : Inamdar, for the Appellant; Mungre, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Samvatsar J.

1. This is a petition filed by one Babulal Gupta under Art. 226 of the Constitution of India for a writ of mandamus and certain other reliefs to quash the orders of the opponent No. 1, the State of Madhya Bharat affecting him prejudicially.

2. The facts which have given rise to this petition may be briefly stated as follows:--

On 12th July 1942 the petitioner was, for the first time, appointed as a civil servant in the rest-while Gwalior State as a permanent employee and by 15-4-1948 he had been ranked as a gazetted officer drawing a salary of Rs. 175/- per month in the Household Department of Gwalior. On the formation of Madhya Bharat, he was retained in service for a few days but was brought under retrenchment with effect from 10-6-1949.

3. On 21st May 1949 the Education Department of the Madhya Bharat State advertised the post of the Principal Madhao Sangit Maha Vidyalaya, Gwalior, of the grade of Rs. 150-10/2-200 likely to be revised to 300-20-500 and invited

applications for it. The petitioner who was in search of an employment, applied for this post and on 21-4-1950 was given an "officiating appointment" as a Principal of that Music College on a salary of Rs. 175/-- per month. The petitioner accordingly took charge of that office and joined duty with effect from 22-4-1950.

4. The order dated 21-4-1950 appointing the petitioner as Principal of the Music College is appended to this petition as Enclosure No. 2.

5. On 30th September 1950, the State Government published a list of Principals of all the Music Colleges in Madhya Bharat and in this list, the petitioner was shown as the Principal of Madhao Sangit Maha Vidyalaya, Gwalior. In the remark column, however, it is stated that he is holding that office temporarily

6. On 1st October 1951 Fundamental Rules and Supplementary Rules relating to terms and conditions of service of the civil servants of Madhya Bharat State came into force and the question of the salary and the fixation of the grade of the petitioner came up for consideration. The Accountant General of Madhya Bharat decided to continue the old grade of the salary payable to the Principal which was Rs. 150-10/2-200 and readjusted it by fixing the substantive pay of the petitioner at Rs. 170/- and personal pay as Rs. 5/- per month and intimated this fact to the petitioner, vide his order dated 22-11-1951 a copy of which is annexed to the petition as enclosure No. 11. The decision of the Accountant General was accepted by the Director of Education and on 18-7-1952 he informed the petitioner that he was entitled to draw a salary of Rs. 180/- per month from 22-11-1951 and a salary of Rs. 190/- per month from 22-4-1952 under Fundamental Rule 22(b).

7. On 20th July 1954, the grade of the Principals Sangit Maha Vidyalaya was revised as indicated in the advertisement published by the Government of Madhya Bharat on 21st May 1949 and the salary of that post was raised to Rs. 300-20-500 but the incumbent of these posts were not permitted to draw their salaries of the revised grade as the Education Department was of the opinion that the revised scale of salaries could be paid to its employees, only after the Central, Committee for integration of subordinate education services had determined the various grades and finalized the fixation. The petitioner, therefore, continued to draw his salary of the grade as fixed before.

8. On 5th August, 1954 the Government of Madhya Bharat, Education Department, issued a Memorandum being Memorandum No. 8816/ 9-H/ making certain appointments, in a temporary and provisional capacity, consequent on the reorganization of the structure of the State Education Services and Subordinate Services. In this memorandum, the post of the Principal, Sangit Maha Vidyalaya, Gwalior, was shown as vacant. The petitioner was designated as selected Pradhyapak (vocal), temporarily to work as Principal until further orders. The petitioner protested against this change and represented to the Government that he was a permanent incumbent of the post of the Principal of Music College, Gwalior, and was wrongly demoted to the post of a lecturer in that college.

9. On 30th August, 1954, the Madhya Bharat Public Service Commission invited applications for filling in two posts of the Principals, Music Colleges, of the grade of Rs. 300 20-500. Without prejudice to the representation that he had already made, the petitioner also applied for one of these posts. It appears that he was not selected by the Public Service Commission and on its recommendation, one Mr.P N. Chinchore-opponent No. 2 in this case-and Mr. Golwelkar were appointed as Acharya Sangit Maha Vidyalaya at Gwalior and Indore respectively. Mr. Chinchore accordingly assumed charge of the office of the Principal of the Music College Gwalior, on 8-7-55. As regards the petitioner no definite orders were immediately passed but on 22-12-1955, he was informed that he should join as a lecturer in the Music College, Gwalior. The petitioner joined the new office on 2-1-1956,

10. On 25th January 1956, the Deputy Secretary, Education Department, issued a further memorandum being Memorandum No. 6304/9-H/362/56-C in which it was mentioned that the Raj Pramukh has been pleased to order that the appointments of the lecturers to the posts of the Principals as mentioned in the Memorandum dated 5-11-1954 should be read as officiating appointments, under Fundamental Rule 35 on the pay mentioned against their names from the dates they took over charge until they were relieved by candidates duly selected by the Public Service Commission; that these officiating appointments did not create any claim in favor of the incumbents to the posts which they held, nor would they be taken into account in determining the seniority.

11. The petitioner, on 13-24956, filed the present petition for writ of mandamus to quash the Memoranda (1) No. 8816/9 H/5-8-1954; (2) No 2725/9, H-949/54--C/11-4-1955 (the order by which Mr. Chinchore and Mr. Golwelkar were appointed Principals of the Music College at Gwalior and Indore respectively); (3) No. 6304/9/H/363/56-C/26-1-1956. The petitioner has challenged the validity of the Government orders contained in the aforesaid Memoranda on several grounds.

12. It is contended in the petition that the petitioner was one of the Civil servants in a Covenanting State and that he is deemed to have been continued in service under the terms of the Covenant as a permanent employee of the integrated State; that the word "officiating appointment" did not have any particular significance and was used to indicate that the petitioner, like all other permanent employees of the State, was holding the post temporarily or provisionally, subject to displacement in the process of integration of services. His particular attack on the Memorandum No. 8816/9-H/ dated 5-8-1954, was based on the ground that it deprived him of the right to draw salary of the revised grade of the Principal, Music College, which was guaranteed to him under Fundamental Rule 22 and 23 and that it constituted his demotion in rank and grade.

13. The Memorandum dated 11-4-1955 by which Messrs Chinchore and Golwelkar were appointed as Principals of the two Music Colleges in the Madhya

Bharat State, was mainly attacked on the ground that there was no vacant post of the Principal, Madhao Sangit Maha Vidyalaya, Gwalior, and that the Government Order appointing Mr. Chinchore to that post was illegal and invalid.

14. The Memorandum dated 25-1-1956 (No. 6304/9-H/362-56-C/26-1-1956) was attacked on the ground that it was silent as regards the petitioner that it prejudicially affected the petitioner in-as-much as it deprived him of his seniority and status and contained mis-statements.

15. The validity of the Government Orders which had demoted the petitioner from the post of the Principal to that of the Lecturer, was also challenged on the ground that there was no just cause or excuse for doing so and that in any event these orders were passed in flagrant violation of Article 311 of the Constitution of India. It was also contended that the action of the Government in demoting the petitioner and depriving him without any substantial reason, of the revised grade and salary of the post of the Principal, was illegal inasmuch as it constituted an invasion on the rights conferred upon the petitioner by the rules relating to the terms and conditions of the service in Madhya Bharat.

16. On 20-6-1956 the State Government issued a notification being Notification No. 3611/9-H/ Indore/20-6-1956 which is said to have been issued in continuation of the orders regarding the reorganized structure of services and revised scales of pay. This notification purported to be a provisional seniority list, prepared during the integration of the officers of the Education Department. It was declared by this notification that (sic) the officer concerned was actually holding the post to which he has been shown to be appointed from 1st July 1954, he would be deemed to have been appointed to it with effect from that date.

17. On 4-8-1956 the petitioner submitted an application for permission to amend the petition and to seek relief for quashing the Government orders contained in this notification too. Considering that Notification No. 3611/9-H-Indore dated 20-6-1956 was issued in continuation of the impugned orders and that it was published after the petition was admitted, and also the fact that its validity was challenged on the same grounds on which the validity of the order dated 25-1-1954 was challenged, we allowed the application and heard the petitioner's counsel on merits.

18. The petitioner has impleaded the State of Madhya Bharat as opponent No. 1 and Mr.P N. Chinchore, validity of whose appointment is challenged in this petition, as opponent No. 2.

19. The State of Madhya Bharat has filed its return in the form of an affidavit of Basantilal Sharma, the Assistant Director of Education of the Madhya Bharat Government. He also filed a further affidavit on 24-9-1956 in reply to the allegations contained in the application of the petitioner dated 11-8-1956 by which he sought the further relief as regards the Memorandum No. 3611/9-H/ Indore, d/20-6 1956,

20. In its return the opponent No. 1 admitted the material facts and the various orders issued by it from time to time, but denied that the impugned orders were illegal or unconstitutional in any manner whatsoever. Its main contentions, however, are-

(i) that the petitioner was given the "officiating appointment" of the post of the Principal, Music College at Gwalior and he had therefore no lien as a permanent incumbent of that post; that neither at the time of appointment nor subsequently thereto, the Government had passed any order or had taken any action which constituted a recognition of the petitioner's claim as a permanent incumbent of the office of the Principal, Music College; that in 1951 in fixing the grade of the petitioner the Accountant General had only acted pursuant to Fundamental Rule No. 22 read with Rule No. 31 and that this action of the Accountant General did not and could not convert the "officiating appointment" of the petitioner into a substantive or permanent appointment-mint;

(ii) that the reorganization and integration of the Education Department became effective on 1-7-1954 but the rights of any individual officer were dependent on his fixation on a particular post and in a particular cadre in the reorganized structure. It was denied by the respondent No. 1 that the action of the Government constituted a demotion of the petitioner or that it deprived him of any legal right acquired either under the rules relating to conditions of service or the provisions of the Constitution.

21. In the additional grounds of objections it is urged --

(i) that the petitioner had not disclosed what is the specific legal provision or specific rule which has been violated by the Government in passing the impugned orders;

(ii) that the petitioner has not indicated any ground in support of the prayer for mandamus inasmuch as he has not referred to any specific order appointing him substantively to the post of Principal Madhao Music College;

(iii) that the petitioner had not stated the basis on which he invoked the application of Article 311 of the Constitution or the manner in which it was contravened.

(iv) that the petitioner has an alternative remedy by way of a suit and that the summary remedy by way of a writ-petition is inappropriate in the circumstances of this case.

22. On these various contentions raised by the petitioner, three points mainly arise for consideration : --

(1) Whether the petitioner was appointed permanently to the post of the Principal, Madhao Music College, subject to displacement only in the process of integration ?

(2) Whether the petitioner has a legal right to hold the office of the Principal of

Music College and to draw the revised salary of that post under any of the rules framed by the Raj Pramukh or the State under Art, 309 of the Constitution of India or, under any other statutory provision of law and whether the petitioner has been deprived of any such right ?

(3) Whether the petitioner was reduced in rank in contravention of Art. 311 of the Constitution of India ?

(4) Whether the petitioner has another equally efficacious remedy available to vindicate his grievance and the present petition is mis-conceived.

23. The petitioner has, in paragraph No. 20(b), prayed for a writ of mandamus to the opponent No. 1 to get the Principal's post vacated by opponent No. 2 in favor of the petitioner. At the stage of the argument Mr. Inamdar, learned counsel for the petitioner, frankly conceded that all that the petitioner can claim is the grade of the Principal and reinstatement to that post and that he cannot claim to remain as a Principal of the particular Music College at Gwalior. The learned counsel further conceded that in view of this position, the petitioner was not entitled to the relief claimed by him in paragraph No. 20(b) of his petition. The necessary and inevitable consequence of these concessions is that the petitioner's grievance as regards the order appointing opponent No. 2 as Principal of Madhao Music College, Gwalior, vide Notification No. 2725/9-H/949/54-C/ dated 11-4-1955 must be held to be untenable. Relief with respect thereto cannot therefore be given to the petitioner.

24. To appreciate the other contentions raised by the learned counsel for both the parties during the course of their arguments, it will be necessary to bear in mind certain salient facts.

25. It was on 28th May 1948 that 22 States of Central India integrated into the United State of Gwalior, Indore and Malwa (Madhya Bharat) under the terms of a Covenant which was signed by the rulers of these various States. Article 16 of the Covenant provided that all civil servants in the permanent service of the Covenanting States on 15-4-1948 will be absorbed in the service of the new State on terms and conditions not less advantageous to those on which they were working in the integrating States or to suitable compensation.

26. One of the difficult task that the new State had to undertake on its coming into existence was to reorganize the structure of the service of various departments and to fix, on the posts created in the process of reorganization as many old employees of the Covenanting States as possible. To achieve this objective, the first thing which the new State did was to declare that all posts created under the Government of Madhya Bharat, were for the time being, purely provisional and temporary, indicating thereby that no person could claim any lien to a particular post merely because of his appointment to it. After making this declaration the Government issued instructions as to how these services should be reorganized and their integration effected. It laid it down as a matter of policy that appointments to the posts should be made from among the persons already

in the service of either one or the other of the integrating State. It also laid down that after the structure of the service is reorganized and the strength of the cadre fixed, the department concerned should fix up various persons in the cadre, and draw up their gradation list to be finalized in consultation with the Public Service Commission, if necessary.

27. The reorganization of the structure and the integration of the service was a stupendous task and naturally took considerable time. The reorganization of the structure of the State Education Service and the Subordinate Education Service was sanctioned by the Raj Pramukh under the Notification dated 24th June 1954.

28. It was in the background of these events that Mr. Inamdar learned counsel for the petitioner contended that the term "officiating appointment" used in the order dated 21-4-1950 under which the petitioner was appointed Principal, Music College, Gwalior, should be interpreted as "provisional" i.e. only subject to change consequent upon the integration. The precise submission of the learned counsel was that all services in the Madhya Bharat were temporary and provisional until their official integration, and the petitioner in this respect stood on par with them and was not subject to any further disadvantage. The learned counsel referred to Circular No. 12 dated 27-9-1950 in which it was mentioned that the personnel in the service in the Covenanted States whose appointments in the Madhya Bharat are on a provisional basis are for all practical purposes being treated as permanent Government employees. He, therefore, contended that the petitioner's appointment, though described as officiating or provisional, was in fact a substantive appointment and that he was permanently taken up as a Principal of the Music College, subject to displacement only in the process of integration by a person having a superior claim. Pursuing this line of argument further, Mr. Inamdar submitted that the petitioner's displacement from the post of the Principal was not due to some one from among the services of the Covenanted States having been found to have superior right to the post of the Principal, but was due to fresh appointment made by the Government on 21-4-1955 and the displacement of the petitioner was, therefore, illegal.

29. I do not think that the line of argument adopted by Mr. Inamdar, lands any assistance to him. If every civil servant in the State of Madhya Bharat was, until he was fixed up permanently on one of the posts in the new structure, deemed to have been appointed temporarily or on a provisional basis, he could certainly have no legal claim or title to the post on which he was appointed. No doubt, the Government did not intend to replace all the public servants by new ones and as a matter of policy laid it out that for all practical purposes the existing personnel will be treated as permanent. The legal position is, however, not changed and the civil servants appointed temporarily or provisionally could not claim as a matter of right a lien on the posts which they were supposed to hold for the time being. In *Vijayshankar Saksena & others vs. State*, 1954 M.B L.J 986, a Division Bench of the Madhya Bharat High Court had occasioned to consider the position of the servants who were retrenched as a result of reorganization and integration of the

Judicial Department: In that case it was held that--

The petitioners have no legal right which is infringed by the action of the Government and it cannot be said that their discontinuance from service or retirement amounted to a removal within the meaning of Article 311.

30. In the case of the petitioner the position is worst still. His initial appointment on 21-4-1950 was described as "officiating appointment". The word "officiating appointment" has not been defined in any of the circulars or notifications, nor has it been defined in the Fundamental Rules. The word seems to have been used in contradistinction with the word "substantive appointment" or an appointment that creates a lien in favor of the employee to the post on which he is appointed. The word "lien" has been defined in Rule 9 Clause 13 of the Fundamental Rules, to mean --"The title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post to which he has been appointed substantively." In the ordinary sense of the term by an "officiating appointment" is meant--"An appointment of a person on trial or temporarily until further arrangements for filling the post permanently are made". When therefore a person officiates on any post, he does not acquire the rank of the post in which he officiates. He simply holds the post but acquires no title to it. An officiating appointment cannot, therefore, be confused with a substantive appointment and to construe the words "officiating appointment" as substantive appointment, would mean refusal by the Court to give the words the meaning due to them.

31. The documents on record further do not show that the Government of Madhya Bharat intended to treat the petitioner as holding the Principal's post substantively. On the other hand as far back as 30th September 1950, the Government published a consolidated list of the Principals of the Music Colleges in which the petitioner was shown as holding the appointment as Principal Sangit Maha Vidyalaya Gwalior, temporarily. The petitioner has made no grievance either against the language in which the order of his appointment was worded nor has he taken any exception to the list published on 30-9-1950. The petitioner's conduct also shows that he knew that his appointment to the post of the Principal was not permanent. On 6-6-1951 he applied to the Education Department to take steps to confirm him on the post of the Principal Madhav Music College, Gwalior. His request was not conceded. On the contrary he was informed by the Director of Education, vide letter dated 4-8-1951, that final integration by the Integration Committee had not been made and that he should therefore wait. It then appears from the Government Memorandum No. 8816/9-H dated 5-8-1954 that in the reorganization of the structure of the State Education Service, the petitioner was selected as a Pradhyapak or lecturer and was shown as temporarily working as Principal until further orders. There is thus nothing either in the orders issued by the Education Department or in the conduct of the respondent No. 1 to show that they had treated the petitioner as a permanent holder of the office of the Principal, Music College or recognized him

to be a permanent incumbent of that post. No rule having a force of law has also been brought to our notice, which supports the contention that the "officiating appointment" created a lien in favor of the employee on the post on which he was to officiate,

32. Mr. Inamdar, however, placed some reliance on the letter of the Accountant General, Madhya Bharat, dated 22nd November 1951 by which substantive pay of the petitioner was fixed at Rs. 170 per month and his persona] pay as Rs. 5 per month. He also referred to the letter of the Director of Education Department Madhya Bharat dated 18-7-1952 in which he has stated that the petitioner was entitled to draw his salary with increments as provided in Fundamental Rule No. 22(b). On these documents the learned counsel contended that the petitioner should be assumed to have been permanently absorbed in the State service.

33. There is no order of the Government changing the term of the appointment of the petitioner and it is argued by Mr. Mungre with some force that the letter of the Accountant General or the Director of Education were not sufficient to convert the "officiating appointment" of the petitioner into a substantive appointment. The Accountant General has in his letter dated 22-11-1951 not referred to any specific rule and in fixing the salary payable to the petitioner, seems to have acted under Fundamental Rule No. 31 under which a Government servant officiating in a post is entitled to draw the presumptive pay of the post. The presumptive pay is the pay to which the Government servant would be entitled to, if he held the post substantively, and was performing its duties. Reference to Fundamental Rule No. 22 in the letter of the Director of Education, seems to have been made only to indicate that though not confirmed, the petitioner was entitled to draw the pay to which he would be entitled if he had held the post substantively.

34. Since the petitioner was not appointed permanently or substantively, on the post of the Principal, Music College and his appointment was described as officiating appointment and the position was not subsequently improved by any competent authority of the State, his contention that his appointment for all practical purposes, was a substantive appointment, must fail.

35. The next contention of Mr. Inamdar is that the petitioner has acquired a right to hold the post of a Principal, Music College, and to receive the salary of that post according to revised scale, under the rules relating to the conditions of service of the civil servants in Madhya Bharat.

36. No specific rule has been referred to by the learned counsel as creating in favor of the petitioner, the right claimed by him. As a matter of fact Mr. Inamdar had contended at an earlier stage of the arguments that he had no complaint that any specific rule governing the civil servants was contravened and he had then contended that the principles laid down in the departmental circulars, correspondence and the instructions issued by the Chief Secretary had created a right in favor of the employees of the Covenanting States, to hold their posts

substantively. At the later stage of the arguments he referred to Fundamental Rules 22 and 23 as indirectly conferring this right.

37. The learned counsel for the petitioner referred to a large number of Circulars published by the appointments Department in the Book of Circulars. The first of the series of Circulars is Circular No. 1 from "A" series by which the Government declared for the guidance of all the Departments that all posts that were being created under the Government of Madhya Bharat were, for the time being, provisional and temporary and appointments to them should only be made from among the persons in service of one or the other State forming Madhya Bharat.

38. Circular No. 4 dated 26-9-1949 from the same series was next relied upon. It purported to be a copy of the letter sent by the Officer on Special Duty to Health Department's letter on the subject of confirmation of employees. It is stated therein that no person should be confirmed in his present post until various posts have been grouped together to form a service on the lines indicated in the note of the Officer on Special Duty. It is further stated that after the services have been organized and the strength of the cadre fixed, the department concerned will fix up various persons in the cadre and draw up the gradation list which will be finalized in consultation with the Public Service Commission, where it is necessary.

39. Circular No. 7 dated 2nd March 1950 purports to be a copy of the note prepared by the Chief Secretary and approved by the State Council. It contains instructions to be followed by the various departments in the process of integration.

40. Circular No. 10 which is relied upon embodies instructions by the Officer on Special Duty as regards organization of services in Madhya Bharat.

41. Mr. Inamdar next referred to the last paragraph of Circular No. 10 dated 27-9-1950 issued by the Chief Secretary and containing instructions in regard to the procedure to be followed for dealing with Government servants engaged in or associated with subversive activity. In the last paragraph of the Circular, the Chief Secretary has stated that this procedure will not apply to the personnel in service in the Covenanting States whose appointment in Madhya Bharat is on a provisional basis, but, who for all practical purposes are being treated as permanent employees.

42. Three further Circulars were referred to by Mr. Inamdar, one of which is from series "K" and the remaining from series "L" The first of these three Circulars, is Circular No. 2 dated 13th December 1949, which pur ports to be a copy of the letter sent by the Under-Secretary, Appointments Department, to the Senior Member, Board of Revenue, Madhya Bharat, in reply to certain queries made by him. Circular No. 1 dated 3-5-1949 from series "L" contains instructions of the Chief Secretary and provides that except in cases of experts or persons of high academic distinctions specially selected for their qualifications with the previous concurrence of the Government, all Departments should, in making

appointments against posts under them, give priority to Government servants of the integrating States as laid down in Circular No. 1 dated 31-8-1948 ("A" series).

43. The last Circular read to us by Mr. Inamdar was Circular No. 5 dated 4-1-1950 ("L" series) which contains instructions from the Chief Secretary to the various Departments for absorption of certain staff in Madhya Bharat Government services,

44. The language and the form in which these Circulars are issued do not indicate that they have any statutory force. They are in the nature of directions issued by the Appointments Department to the Heads of other Departments as regards the procedure to be followed in the reorganization of the structure of services and steps to be taken to bring about this integration.

45. Mr. Inamdar, however, contended that these Circulars had the force of law and were issued by the Government in exercise of the powers conferred upon it by Section 5 of the Regulation of Government Act (Act No. 1 of 1948).

46. Section 5 of the Act No. 1 of 1948 empowers the Government to make regulations for peace and good Government of all the territories which had vested in the United State or which were to become so vested in it. It was urged that these powers to make regulation embraced the power to make regulations relating to the conditions of service of the Government employees.

47. I do not think this contention is sound. Power to make regulations for peace and good Government included power to make rules and issue orders for maintenance of law and order. It has nothing to do with the laying down conditions of service. It is however unnecessary to pursue the matter any further, for even if it is assumed that the Government were competent under this omnibus provision to frame rules relating to terms and conditions of the employment of civil servants, a plain reading of the circulars shows that they were recommendatory in nature and contained a statement on the policy which the Government intended to follow in re-organizing its services and in integrating them.

48. Mr. Inamdar then referred to Madhya Bharat Secretariat Service Rules 1950 which were framed by the Raj Pramukh under the authority of Art. 309 of the Constitution of India. The learned counsel laid stress on the note to Rule No. 1 which is as follows: --

Note--These rules do not apply to appointments in a substantive capacity of the persons inherited from the Covenanted States in the posts held by them before the promulgation of these rules. Such appointments will be governed by orders and rules issued from time to time in regard to the integration of the service.

The Madhya Bharat Secretariat Service Rules of 1950 do not help the petitioners case as admittedly he does not belong to the Secretariat Services. The note also is of no assistance as it relates to appointments in a substantive capacity as

distinguished from appointments which are officiating. The note also emphasizes the fact that such previous appointment will be governed by orders and rules issued from time to time in regard to integration of the services.

49. While conceding that the note has not its effect of converting the Circulars issued by the Appointments Department into statutory rules, the learned counsel argued that the note gave a statutory recognition to the Circulars issued by the Appointments Department. What is meant by the "statutory recognition" is not clear but it seems to me that the note is appended to Rule No. 1 to indicate that these rules do not apply to the Appointment in a substantive capacity of the persons inherited from the Covenanting States.

50. As the petitioner's appointment was "officiating appointment" and he did not hold the post of the Principal substantively, no advantage can be derived by him from this note.

51. The Circulars and the correspondence referred to by the petitioner's learned counsel have no statutory force. They are in the nature of instructions issued by the higher officials and the Appointment Department to other departments, and relate to the policy which was to be followed in effecting reorganization of the structure of the services and integration. They do not have the force of rules under Article 309 of the Constitution, much less there is anything therein which can be held to confer upon the petitioner, the right claimed by him. The petitioner held an "officiating appointment" and it was within the discretion of the Government to retain him or not, on the post of the Principal. Even under the Rules where discretionary powers are given to the administration of the State to confer certain benefits or privileges on its servants, no legal right arises in their favor and no legal action would lie to enforce them (See. *The State of Madhya Pradesh Vs. G.C. Mandawar*,).

52. Rule No. 22 of the Fundamental Rules deals with the pay of a person appointed substantively to a post. It permits him to draw the pay of the substantive appointment on a certain scale. The petitioner was not appointed substantively to the post of the Principal and cannot invoke the aid of this Rule. Fundamental Rule No. 23 has also no application to the case inasmuch as it relates to the pay to be drawn by the holder of a post, the pay of which is changed. This rule may perhaps help the petitioner for claiming the salary at the revised scale of pay for the period during which he held the post of the Principal but it certainly cannot mean that Rule No. 23 creates a right to hold an officiating post permanently or to draw the pay of that post at the revised grade permanently.

53. I am, therefore, of the opinion that there is no rule relating to the terms and conditions of the service and having the force of law which lends any support to the petitioner's claim and it must therefore be rejected.

54. The last contention of Mr. Inamdar was that the appointment of the petitioner to the post of a lecturer constituted his demotion or reduction in rank and as this

was affected without giving him any opportunity of being heard or without there being any reasonable cause, was hit by the provisions of Article 311 of the Constitution.

55. It is true that Article 311 of the Constitution has been held to be applicable both to permanent servants and temporary servants of the State and any violation thereof is justifiable, The question, however, to be determined is whether a change in the position of the petitioner, constitutes reduction of rank within the meaning of Article 311 of the Constitution.

56. The material provisions of Article 311 are as follows : --

(1) No person who is a member of a civil service of the Union or an All India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided....

It has been held by the Supreme Court in *Satish Chandra Anand Vs. The Union of India (UOI)*, that the word "removal" in Article 311 has been used in the same sense in which it has been used in Rule No. 49 of the Civil Service Classification, Control and Appeal Rules and hence to constitute removal within the meaning of this Article, it is necessary that it should be as or by way of punishment and that this Article does not apply to all cases of termination of service. This view was reiterated in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, In *Shyam Lal's* case, the question was whether an employee could be compulsorily retired from service before the period of superannuation was reached. It was argued for the employee that compulsory retirement involved loss of service and salary and Article 311 applied to that case. The contention was negated by the Supreme Court, *S.R Das J.* as he then was, observed --

There can be no doubt that removal-I am using the term synonymously with dismissal--generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the leveling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer.

There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement, are that the officer has completed twenty five years" service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory

retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465-A makes it abundantly clear that an imputation of charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehavior or incapacity.

57. From these observations it is clear that the Supreme Court has held that compulsory retirement of an officer would not attract Article 311 clause 2 unless it was as a punishment imposed by reason of some misconduct or charge against him;

58. Mr. Inamdar did not dispute that the Supreme Court had laid down that to constitute removal under this Article, it was necessary that it should be by way of punishment. He, however, submitted that the Supreme Court had no occasion to consider the words "reduction in rank" and had nowhere laid down that to attract this Article, the reduction in rank should also be by way of punishment. The learned counsel further submitted that in the instant case, the petitioner was deprived of the earned benefits of the past service and that this was a punishment within the dictum of the Supreme Court in Shyamlal's case.

59. I do not think either of these contentions is well founded. In Shyamlal's case the Supreme Court considered the word "removal" from service used in Article 311(2) and held that it must be read as synonymous with the word "dismissal" which involved termination of service for default or by way of penalty. It is true that in that case the word reduction in rank did not come in for consideration but Their Lordships have pointed out in unmistakable terms that the words used in Article 311(2) had the same meaning that was given to them in Rule 49 of the Civil Service Classification, Control and Appeal Rule. If to attract the provisions of Article 311(2) the removal of service had to be by way of punishment or as a result of stigma, I fail to see how it can be otherwise in the case of reduction in rank. In my opinion the word reduction in rank used in Article 311 means reduction in rank of the officer for his default or misconduct and by way of penalty to him. This view has also been taken by this Court in AIR 1952 288 (Nagpur) ; by the High Court of Calcutta in Jatindra Nath Biswas Vs. R. Gupta, Superintendent of Police and Others, and Ravindra vs. Manager, Eastern Railways 59 C.W N. 859 ; by the High Court of Allahabad in Jayantiprashad vs. The State U.P, A.I R. 1951 All 797 ; by the High Court of Travancore Cochin in Sebastian T.K Petitioner vs. State AIR 1955 TC 12.

60. For applying Article 311(2) it is thus necessary that there should be reduction in rank i.e. the employee or civil servant concerned should have been removed from a higher post on which he had a lien to a post inferior in rank or grade and that this demotion should be by way of penalty imposed on account of some default or misconduct.

61. Reduction in rank connotes that a person has attained a higher rank and

from that rank he has been reduced. No one can be reduced from a rank which he has not attained. (See Ravindra vs. Manager, Eastn Railways 59 CWN 859). A person holding an officiating appointment cannot be said to be holding the rank of the post in which he officiates. When therefore such a person is reverted from the post in which he is officiating and put on a lower post it cannot be said that he has been reduced in rank.

62. In the instant case I have already held that the petitioner who was given an officiating appointment, was not holding the post of the Principal, Music College, substantively and did not therefore acquire any title or lien to it. His reversion cannot therefore be deemed to be a reduction in rank.

63. Even if it is assumed that a Government servant officiating in a post holds at least an officiating rank, the second requirement that the reduction must be as penalty imposed on the civil servant is lacking in the present case.

64. Mr. Inamdar learned counsel for the petitioner contended that the petitioner was by reason of his reversion from the post of the Principal, Music College, deprived of the benefit earned by him by his past service inasmuch as he has not been able to draw his salary of the Principal's post at the revised grade.

65. The earned benefits to which the Supreme Court referred in Shyamlal's case, are benefits like pension, gratuity and leave to which a civil servant has become entitled on the basis of his previous services. That is not so in the present case. The reversion of the petitioner from the post of the Principal has not affected any of these benefits and the mere fact that by his appointment in the lower post he has been deprived of what otherwise he would have been entitled to, cannot by itself be held to be a penalty. There is no charge of misconduct or incapacity leveled against the petitioner nor is his appointment to a lower post due to any of these considerations. By giving the petitioner an officiating appointment the Government had clearly indicated that his appointment was in the nature of a temporary arrangement and that it would be open to it to confirm the petitioner or to appoint any other person to that post if a more qualified or competent person was found available for it. In the instant case the Public Service Commission, which is a statutory body, found Mr. Chinchore more suitable for the post and selected him in preference to that of the petitioner. The petitioner's appointment on the post of the lecturer cannot, therefore, be treated as imposition of penalty. The second essential] condition for applying Article 311 clause (2) thus does not exist.

66. As in the instant case, the petitioner's reversion from the post of the Principal, in which he was officiating, and his permanent selection and appointment as a lecturer is neither a reduction in rank nor is it effected as penalty inflicted upon him. Article 311(2) cannot be invoked.

67. On the view I have taken on the merits of the case, it is unnecessary to consider whether the petitioner had an alternative and equally efficacious remedy of filing a suit.

68. The result is that the petition fails and is hereby dismissed with costs. Advocate's fees will be taxed at Rs. 100/-.

Khan, J.

68. I agree.