

**(1960) 01 AHC CK 0004**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 956 of 1959

Dhruva Malviya

APPELLANT

Vs

State of Uttar Pradesh, Lucknow and Others

RESPONDENT

**Date of Decision :** 29-01-1960

**Acts Referred:**

Constitution of India, 1950 — Article 309

**Citation :** AIR 1961 All 421

**Hon'ble Judges :** J.K. Tandon, J

**Bench :** Single Bench

**Advocate :** S.C. Khare and Yashoda Nandan, for the Appellant; K.L. Misra, General, for the Respondent

**Final Decision :** Dismissed

## Judgement

J.K. Tandon, J.—The petitioner who was serving as temporary Deputy Director of Panchayats in the Panchayat Raj Department under the State of U. P. was served a notice dated February 28, 1959 by the Deputy Secretary to Government in that department intimating to him that his services shall stand terminated on the expiry of the period of one month from the date of receipt of the above notice. This notice which, therefore, was delivered to him on 28th February, 1959 resulted in terminating his employment on the expiry of 31st March, 1959.

Earlier also on 27th January, 1959 a similar notice had been delivered to him by the Deputy Secretary Panchayat Raj Department wherefore his services were sought to be put an end to evidently from 28th of February, 1959 but, as it seems, this was subsequently superseded by the notice first above mentioned. The petitioner, who is questioning the right of the State Government to put an end to his employment in this manner, has asked the two notices to be quashed, at the same time a mandamus also commanding the respondent to allow him to continue in service in the first instance as Deputy Director, Panchayats and in the alternative as Assistant Director Information Directorate to which post he had been appointed initially.

2. It may be necessary in order to appreciate the controversy to mention in some detail the facts commencing with the appointment of the petitioner in 1948 as Officer on Special Duty in the Information Department and ending with the termination notice given to him in January 1959. He was first appointed as Officer on Special Duty in January 1948 in the Information Directorate of the State Government. On 2nd July, 1949 the U. P. Public Service Commission advertised an invitation for applications for the post of Assistant Director, Information.

This post was temporary but was stated as likely to be retained for some years. In the advertisement it also was mentioned that the person appointed shall be on probation for six months and be on the scale of pay of Rs. 200-25-500-40-700. The petitioner was one of the applicants before the Public Service Commission which ultimately recommended his name for appointment to the post. This happened on 10th September, 1949.

A couple of months later on 21st November, 1949 the Governor, accepting the recommendation of the Public Service Commission, appointed the petitioner to the above post of Assistant Director Information and also fixed his initial pay at Rs. 475/- per mensem in the advertised scale. His appointment was made to commence from November 9, 1949 and he was placed on probation for six months. The appointment order expressly stated that the petitioner's appointment was on a temporary basis whose term was upto 31st March, 1950.

3. In April 1950 the temporary post was extended for a period of one year upto March 31, 1950. By the same order the continued appointment of Sri Malviya on the terms on which he had been appointed thereto was also sanctioned. His probationary period which was due to expire on May 9, 1950 was extended on two occasions; on the first for six months, and on the second occasion for one year. The temporary post also was likewise extended year after year upto 31st March, 1953.

The orders granting extension of the post likewise approved the continued appointment of the petitioner thereto. On 3rd December, 1951 the Government wrote to the petitioner that his period of probation shall be treated to have come to an end with effect from November 9, 1951 as he had been held to be suitable to continue in his post. The relevant order stated thus :

"As the post of Assistant Director of Information is still temporary, the question of his confirmation in it does not arise at present."

4. The petitioner while still a temporary employee in a temporary post wrote to the State Government on 7th August, 1952 thus (the relevant portion of his letter to which reference will need to be made in the course of discussion here):

"Being a temporary holder of a temporary post, which in future is perhaps likely to be made permanent, considerable hardship is caused to me in drawing increments if and when I have to take leave. This hardship results in a recurring

loss to me. I would, therefore, earnestly request you to please declare me a temporary substantive holder of the post of the Assistant Director from the date of my appointment, with retrospective effect, so that the date of my future increment is not deferred if I were to take leave. It is needless to point out that the post of Assistant Director of Information is in existence since August 1947 and that I am holding this post for about 3 years now. You, Sir, as Secretary to Government, can declare this post substantive and me as substantive holder of the post, under Rule 26 (d) of Financial Handbook Volume II, Part II."

5. On April 22, 1953 the Government apparently in reply to the above application by the petitioner issued the following order (relevant portion is quoted below):

"I am directed to say that the Governor is pleased to order that temporary gazetted post of Assistant Director of Information at the Headquarters of Government held by Sri D. Malviya, the term of which was last extended till March 31, 1953 in office memorandum No. A-2149/XIX-180/ 1949 dated April 5, 1952 and which has been in existence for more than three years shall be deemed to be of a quasi permanent nature and Sri Malviya shall be deemed to have held it in a substantive capacity with effect from the date of appointment to the post i.e. November 9, 1949 for the purpose of the orders of the Governor regarding Fundamental Rule 26 (d) in the Financial Hand Book Volume II, part II."

It might also be mentioned at this very place that the term of the temporary post of Assistant Director of Information was not extended this time, but it was made permanent with effect from April 1, 1953 as per G. O. No. A-5551/XIX-133/1949. In making the post permanent the time scale attached to it was altered so far as the rate of annual increment and the Stage of efficiency bar were concerned.

But as this post was already held by the petitioner, who was drawing his salary in the scale of 200-25-500-EB-40-700, he was given the option to elect the old scale, if so desired, with the condition that he should do so within three months from the date of the order, i.e., June 27, 1953. The continued appointment of the petitioner to this post even after it had been declared permanent, is undisputed.

6. An important fact also is that on 17th March, 1953 before the term of the temporary post held by the petitioner had come to an end -- this was due to end on 31st March, 1953 -- the Secretary of his department handed over to him the following notice:

"The temporary appointment which you, Sri D. Malviya a temporary employee, occupying the office of an Assistant Director in the Information Directorate, are holding, will terminate on 31st March, 1953 when the current sanction for the post is due to expire. You can be re-employed in this post in the event of its being sanctioned beyond that date, on the terms of employment for temporary Government servants which are now in force vide Notification No. O-230/IIB-1953 dated January 30, 1953, a copy of which is printed on the reverse. It is not intended that the formal termination of your present appointment should have any other consequences of a break in service. You are hereby requested to

intimate to the undersigned by 25th March, 1953 positively whether you are prepared to be re-employed from 1st April, 1953, on the said terms."

The petitioner endorsed his reply on the notice itself which was returned to the Secretary to the Government thus:

"Sachiv,

Sharte mujhe sweekar hain.

Sd./ Dhruva Malviya 21-3-1953."

Order No. O-230/IIB-1953 dated January 30, 1953, which hereinafter in this judgment will be referred to as the order of 30th January 1953, was made by the Governor in exercise of his powers under the proviso to Article 309 of the Constitution and it authorised the services of a Government servant on temporary service to be terminated at any time by notice in writing given by either party to the other. The period of notice was appointed as one month.

Another part of this rule, as it has been called, provided that it shall be applicable to all persons who are appointed after January 30, 1953 in a civil post in connection with the affairs of the Uttar Pradesh but who do not hold a lien on any permanent Government post "Temporary service" also has been defined in it to mean officiating and substantive service in a temporary post and officiating service in a permanent post under the Government of Uttar Pradesh.

It also appears that the notice of March 17, 1953 given to the petitioner was only one such notice, which had been given by the State Government at that time to its temporary employees in pursuance of the recommendation made by the Disciplinary Enquiry Committee which had been appointed previously by the State Government and one of whose recommendations required the making of the order of January 30, 1953.

As this order or rule was applicable to employees to be appointed after the above date, temporary employees already in service of the State were served notices on the lines of the notice dated March 17, 1953 to bring them in line with employees appointed after January 30, 1953. The recommendation of the Disciplinary Enquiry Committee and the close similarity of the language used in the notice of March 17, 1953 and as suggested in that behalf by the Disciplinary Enquiry Committee left no doubt in this matter.

7. It was noticed earlier that the post of Assistant Director of Information was declared permanent with effect from April 1, 1953. The petitioner who was holding this post previously continued to hold it thereafter also. On 16th July, 1953 the Government passed an order according sanction to his appointment in the permanent post in an officiating capacity until further orders. The order also mentioned that his officiating appointment shall be subject to terms of employment for temporary Government servants laid down in the order of January 30, 1953.

As a new time scale had been attached to the permanent post the order also incorporated the decision of the Government to give to the petitioner the option to elect his old scale which as was noticed previously, had to be done within three months from June 27, 1953. On July 20, 1953 the petitioner submitted his declaration retaining the old scale of pay which used to be attached to the temporary post of Assistant Director of Information. On petitioner's exercising his option the Government issued another order on October 11, 1954 accepting it and at the same time directed "that the post should be deemed to have been created in the grade of 200-25-500-EB-40-700 for so long as it is held by Sri Malviya."

8. The petitioner thereafter continued to work on the post of the Assistant Director of Information, when in May 1956 he was asked whether he would like to be appointed on the post of Deputy Director of Panchayat Raj as that department had made such a request. The following day he gave his consent and on June 18, 1956 his selection for appointment as Deputy Director Panchayat Raj was communicated to his Secretary who was further requested to relieve him.

Sri Malviya thereafter took over as Deputy Director Panchayat Raj with effect from the fore-noon of June 21, 1956. At first his appointment as Deputy Director Panchayat Raj was made in the post previously held by one Sri Anang Pal Singh but later he was transferred on another similar post created temporarily from October 17, 1956. The post on which he was originally appointed as Deputy Director happened to be a permanent post but in abeyance for some time though had been revived with effect from June 21, 1956.

Though this post was a permanent post Sri Malviya's appointment was temporary and in an officiating capacity only. In course of time necessity was felt to declare the post of the Deputy Director Panchayat Raj held by the petitioner as a permanent post. Accordingly the Government in the Panchayat Raj Department wrote to the Public Service Commission on 6th August, 1957 to recommend the name of a suitable candidate for appointment thereto. The Government further requested the Commission to approve the continued appointment of Dhruva Malviya Temporary Deputy Director of Panchayats till such time as a suitable candidate had been selected by it. The Commission accorded its approval.

9. The precise recommendation made by the Commission on the recruitment to the post of Deputy Director Panchayats is not clearly borne out by the material on record but one fact is not doubted namely, that the petitioner was not recommended by it. Accordingly on 13th May, 1958 the Panchayat Raj Department delivered him a notice intimating that his services in the Panchayat Raj Department would come to an end on the expiry of one month from this date.

This was done on the strength of the order of January 30, 1953. Three days later on 16th May, 1958 Secretary to Government in the Panchayat Raj Department wrote to the Director Panchayat Raj about the desirability of reducing the expenditure in the department and to put an end to Sri Malviya's services in the

department on the expiry of the notice. He, however, further asked the Director by this very letter to inform Sri Malviya that Information Department to which he originally belonged had been told to give him an appointment in their department should he so desire.

The letter written to the Information Department a copy whereof is on record would show that in so writing to them their attention was also invited to an earlier order by the Information Directorate in which they had certified that Sri Malviya would have, had he not been sent to Panchayat Raj Department, continued to serve in the Information Department. On receipt of the notice of termination given to him on 13th May, 1958 the petitioner represented his case to the Chief Minister.

Consequently on 11th June, 1958 another order was issued by the Government to the Director Panchayat Raj requiring him not to put an end to the petitioner's services until further orders. The notice of 13th May, 1958, though delivered to the petitioner, was thus cancelled and he continued in his post of Deputy Director Panchayat Raj. In the succeeding few months the Information Department decided to make recruitment for appointment as Assistant Director Information through the Public Service Commission. It, therefore, wrote to the Deputy Secretary in the Panchayat Raj Department on 16th January, 1959 to inform Sri Malviya, who was still holding the post of Deputy Director Panchayats that he could apply to the Public Service Commission in response to their advertisement for recruitment as Assistant Director of Information if he so desired. It was also stated that:

"If Sri Malviya does not apply for any of these posts to the Public Service Commission and in case i.e. applies and is not selected he will obviously have no claim for employment in any of the posts in the Information Department".

On 27th January 1959 the Deputy Secretary Panchayat Raj Department then served the first notice, which is sought to be quashed by this petition, to the effect that Sri Malviya's services shall terminate on the expiry of one month from its receipt. A month later on 28th February 1959, as perhaps the first notice was not given effect to, another similar notice was served on the petitioner. In this manner the petitioner's service under the State came to an end. Before some other facts are mentioned it will be noticed that although both these notices have said

"that the services of Sri Dhruva Malviya, Temporary Deputy Director of Panchayats, U. P., shall be terminated on the expiry of the period of one month from the date of receipt by him of the notice"

nothing was said in them regarding his appointment in the Information Department. The stand taken by the State is that the petitioner's employment under the State was put an end to by them. Indeed he was not allowed after this notice had been given to take over on any post to which he might otherwise have been entitled in the Information Directorate.

10. Another fact relied upon by the petitioner is that the Chief Minister had actually made an order for his confirmation as Assistant Director of Information in 1954; therefore, in case it be held as a fact,, which he does not admit, that he was still temporary employee notwithstanding that the post of Assistant Director of Information had been made permanent with effect from April 1, 1953 he became a permanent servant and also acquired a lien on that post. A copy of the order passed by the Chief Minister is not on record, but it appeared from letter No. A-1081-/XIX-180/49 dated May 31, 1954 that the Information Secretary wrote to the Public Service Commission to tender its advice regarding the confirmation of Sri Malviya in the permanent post which came into being from April 1, 1953.

The reply received from the Commission, which is dated August 9, 1954, will however, show that it was not prepared to agree with the proposed confirmation of Sri Malviya and advised that fresh applications should be invited particularly as the pay, qualifications and duties attached to the post had been revised. It will be necessary to advert to these facts when, considering the relevant contention of the petitioner.

11. The material facts having been thus noticed the petitioner has impugned his termination claiming that he was a permanent employee, firstly, as Deputy Director Panchayat Raj, and, alternatively, as Assistant Director Information hence the order of January 30, 1953, which applied to temporary servants only, was inapplicable to him. He has further attacked it on the ground of being discriminatory under Article 16 of the Constitution as also contravening Article 311 in the absence of providing him an opportunity to show cause against it.

12. The reply by the State Government in brief is that the petitioner had never been substantively appointed in any permanent post, on the contrary, was in temporary service throughout; his employment also under the circumstances was terminable by giving a month's notice in accordance with the order dated January 30, 1953. They also dispute that the order terminating his services as affected by Article 16 of the Constitution.

13. From the facts appearing earlier it will follow that the total period during which the petitioner has been in the service of the State can be considered in four distinct parts--the first part with which we are not directly concerned in this petition relates to his appointment since January 1948 till November 9, 1949 as Officer on Special Duty in the Information Department, the second part commences On November 9, 1949 when he was appointed as Assistant Director of Information on the recommendation of the U. P. Public Service Commission, the third portion is with effect from 1st of April, 1953, when the post of Assistant Director of Information was declared a permanent post and the fourth is his occupying the office of Deputy Director Panchayat Raj.

14. There is no controversy about the fact that the petitioner was appointed as a temporary servant on a temporary post, namely, the Assistant Director of

Information, with effect From November 9, 1949. The advertisement issued by the Public Service Commission inviting applications for appointment on this post on May 25, 1949 placed the matter beyond doubt. The appointment order gazetted on 21st November, 1949, and the office memo approving the appointment of Sri Malviya on the post further showed that his appointment was in a temporary capacity.

There is no dispute again that he had been placed on probation initially for six months but the period was extended on two occasions and that ultimately on 3rd December 1951 his probation was over as he had been found suitable by the Government to continue in the post of Assistant Director of Information. As probationary period is a period of test of the servant concerned as to his suitability the mere fact that some probation is imposed does not show, indeed it cannot do so, that the appointment of the servant is in a permanent capacity. Probation can equally be imposed both on temporary employees and permanent employees. The petitioner cannot benefit by the fact, therefore, that his appointment commenced with a probation and in the end he was held to be suitable to hold the post occupied by him.

15. If the petitioner's appointment was in a temporary post and in a temporary capacity also the question which is bound to arise next is whether he subsequently by operation of any rule or the intervention of any new fact or some order in that behalf acquired the status of a permanent servant; in other words, he ceased to be in temporary service and earned a lien on the post held by him. In order to determine these facts following provisions from Volume II Part II of the Financial Hand Book will be relevant.

16. The volume has defined lien in sub-para 13 of para 9 thus :

"Lien means 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, including a tenure post, to which he had been appointed substantively".

17. For a person to hold a lien it is necessary amongst other things that the post is a permanent post and further his appointment is in a substantive capacity. There can be a substantive appointment on a temporary post also but a lien will arise in the case of a permanent post only. Sub-para 22 defines the expression "permanent post" as meaning a post carrying a definite rate of pay sanctioned without limit of time. Similarly sub-para 30 has defined "temporary post" as "meaning a post carrying a definite rate of pay sanctioned for a limited time.

18. It will appear from the above definitions that a temporary post is that which in its duration is limited by time and a permanent post is that which is without any such limit. So long as a post is limited in its duration with the specification of time, it remains a temporary post. But when the post has no such limitation it is a permanent post. In view of the above definitions of the two types of posts, it is claimed that when a temporary post is, to use that expression, turned into a

permanent post, the permanent post is a new post and not the continuation, of the post which was temporary previously even though in actual practice the temporary post is made into a permanent post.

18a. The petitioner's claim, on the other hand, is that by turning or making the temporary post into a permanent post all that is done is to attach some further attributes to the erstwhile temporary post, i.e., the permanent post is the same thing as its predecessor temporary post and any rights held by the occupant of the temporary post continue to attach in his favour on the permanent post as well.

On the strength of this contention he has further argued that when the post of Assistant Director of Information was declared a permanent post with effect from April 1, 1953--until 31st March 1953 it was a temporary post extended from year to year--his appointment which was held to be in a substantive capacity on the temporary post became a substantive appointment automatically on the permanent post. Thus he has claimed that when this post was declared a permanent post his appointment thereto will be deemed to be in a substantive capacity and he will possess a lien also upon it.

19. The first question which, therefore, will require to be answered is whether the permanent post instituted with effect from 1st April 1953 was, as claimed by the petitioner, the very same post which was temporary upto 31st March 1953, and it continued thereafter with some further attributes belonging to it; or was it, as the learned Advocate General has put it, a new post though in immediate succession to the temporary post sanctioned upto 31st March 1953.

If it is a new post it will also follow that in the absence of any specific rule or other order so providing the incumbent on the temporary post, in this case the petitioner, will not be entitled to claim that because his appointment on the temporary post was in a substantive capacity his appointment on the permanent post must also be so. It will be necessary in this connection a little later to consider the effect of the Government's letter dated April 22, 1953 by which he was to be deemed to be a quasi permanent servant and holding the temporary post in a substantive capacity from the commencement of his appointment on the temporary post. Just at present the effect of the provisions contained in the Fundamental Rules and reflecting on the subject may be considered.

20. The definition of permanent post and temporary post, as earlier produced in this judgment, prescribed very definite conditions to differentiate between the two types of posts. In one case the post is sanctioned without limit of time and in the other it is sanctioned for a limited time. It is thus the sanction of the post which results in its creation. And if it is without limit of time sanctioned it is a permanent post. But if it is sanctioned for a limited period only it is a temporary post. The fact, therefore, that the post is dependant for its existence on the sanction, as it is granted, made it clear that the two posts are different posts and not the same posts.

Even where a temporary post is allowed to be converted into a permanent post, whether after an interval or in immediate succession to it, a new post is indeed sanctioned and there is in law no conversion of the temporary post into a permanent post. In loose language one may say that the temporary post has been converted into a permanent post, but since the permanent post is sanctioned as a post without limit of time there is a new post thus created.

21. This distinction is maintained by fundamental rule Rule 22 which makes provision for the fixation of the pay of a servant in cases also where he is appointed on 3 permanent post of the same nomenclature etc. as he was previously holding in a temporary post. The permanent post is held to be a different post than the temporary post by this rule which only permits the period of service spent on the temporary post to be taken into account in certain cases in fixing the initial salary on the permanent post. Had the intention been that the two posts are really one and the permanent post is only the continuation of the temporary post this rule would not have been in its present shape.

The learned Advocate General also invited my attention to an order of the Government under R. 22 printed on page 29 of Financial Hand Book Volume II Part II 1941-42 Edn. according to which also a temporary post on a certain rate of pay (fixed or time scale) which is converted into a permanent post on the same or a different rate of pay is not the same post as the permanent post even though the duties remain the same. What happens, as was affirmed in the above order also of the Government, is when a temporary post is made into a permanent post the temporary post ceases and is replaced by a permanent post. It is a different post than the other and the incumbent of the temporary post carries with him such incidents only of his service on the temporary post as the rules expressly permit in his favour.

22. As a result of the above finding the petitioner, even though he was holding the temporary post of Assistant Director of Information right upto the last moment, i.e., the end of March 1953 and also without break held the permanent post of the same description instituted with effect from 1st of April 1953, cannot by reason alone of the fact that he held the two posts successively claim to hold it substantively, even if his appointment on the temporary post was declared to be in a substantive capacity.

23. Reverting immediately to consider the effect of the letter of April 22, 1953 the fact is manifest that the effect given by it to the petitioner's appointment, both as regards the capacity in which he held the post and as regards the nature of the post, was confined to the temporary post or rather posts held by him since November 9, 1949. No doubt, it is true that this letter was issued at a time when the decision to make the post of Assistant Director of Information a permanent] post had in all likelihood been taken by the State Government but that circumstance is hardly of any importance in view of the clear language of the letter, which in declaring the temporary post to be of a quasi permanent nature and Sri Malviya to have held it in a substantive capacity, qualified these

directions to govern the temporary post whose term had last been extended till March 31, 1953.

Moreover this letter was issued in response to the request made by the petitioner on August 7, 1952 to overcome the difficulties which seemed to arise in his case whenever, he proceeded on leave in the matter of earning his annual increment. A reference to the order of the Government under Clause (d) of Fundamental Rule 26 also, referred to in the letter of April 22, 1953, would point out that this order had been necessitated to overcome the direction contained in the above order requiring appointments on temporary post to be made ordinarily in other than substantive capacity so as to cover up the disadvantage which otherwise attended the petitioner.

In the view held of the provisions in Rule 28 his appointment on the temporary post was declared to be in a substantive capacity. It cannot by any manner of interpretation be extended to apply to the post or rather the permanent post instituted with effect from 1st April 1953. That this was indeed the intention is affirmed by the office memorandum of July 16, 1953 sanctioning the petitioner's appointment on the permanent post in an officiating capacity. To place the matter beyond all controversy the above memorandum also directed that the officiating appointment will be subject to the terms of employment for temporary Government servants laid down in the order dated January 30, 1953.

24. Two things are to my mind abundantly established by this document, firstly, that the petitioner's appointment on the new post was sanctioned afresh, there was a new appointment, and, secondly that his appointment was in an officiating capacity and subject to the terms of employment contained in the Government order of January 30, 1953. The above facts disproved the petitioner's claim that he continued to hold the status of a substantive appointment which had been conceded to him on the temporary post which lasted upto 31st March 1953.

25. Reliance was also placed on behalf of the respondents on the notice of March 17, 1953 and the petitioner's acceptance of the conditions contained in it as regards his future employment and it was contended that in view of his acceptance his employment, even beyond 31st March 1953, was for this reason alone in the capacity of a temporary Government servant. Mr. Khare has very rightly contended that the effect of this notice, including the acceptance of its terms by the petitioner will not avail in the case of the permanent post instituted from the 1st of April 1953.

As is borne out by its language the appointment on the permanent post which commenced from 1st April 1953 was not in the contemplation of the parties at the time of its service or the acceptance of its terms by the petitioner. Its operation was directed on the temporary post and what the petitioner accepted was that in the event of the temporary post being sanctioned beyond March 31, 1953 his employment will be governed by the conditions contained in the order of January 30, 1953.

Since this temporary post which was due to expire on 31st March 1953 had not been sanctioned beyond that date, but a new permanent post had been created the petitioner cannot be held to be bound in respect of his present appointment with the terms contained in the order of January 30, 1953. This observation is not to affect his liability to be bound by those terms, otherwise however than upon these two documents.

26. The next question for consideration is whether there was any order otherwise by the State Government confirming the petitioner as a substantive holder of the permanent post of Assistant Director of Information. He himself does not produce any such order but has merely referred to an alleged proceeding in which, it is said, the Chief Minister of the State had consented to his confirmation as Assistant Director of Information.

It seems that on May 31, 1954 the State Government wrote to the Public Service Commission for its recommendation in the matter of petitioner's confirmation on the permanent post of Assistant Director of Information. The Commission, however, declined to recommend his case without fresh selection as it was of the opinion that the permanent post was substantially different than the one for which the petitioner had been approved.

The utmost, therefore, that appears from these letters is that the Government at one time considered the petitioner to be fit for confirmation as Assistant Director of Information. It also asked the Commission to consider his case and forward its recommendation. But the Commission refrained from the course. There was thus at the best a proposal of the State Government to confirm him. A confirmation order which depended, if not wholly, partly on the recommendation of the Commission never came into being.

The learned Advocate General has invited reference to a Government Order No. 2949/II-B-100/1953 dated December 10, 1953 according to which it was necessary in the present case to consult the Public Service Commission before ordering confirmation. The terms of this order clearly applied to the present facts. It was, therefore, incumbent upon the Government to consult the Commission before ordering confirmation. Indeed it was in pursuance of it that the Commission was approached to forward its recommendation.

Any decision by the Government which is antecedent to the recommendation of the Commission is merely a proposal and not the final order which is possible after the recommendation of the Commission had been received and considered. As no such recommendation was ever had in this case for the same reason no final order also was made on this recommendation at least none such has been produced or relied upon by the petitioner it cannot successfully be urged that the petitioner had been confirmed in the permanent post of Assistant Director of Information. His appointment on this post commenced in an officiating capacity and so long as he remained on that post he must be held to have continued in that capacity.

27. Let me now turn to the fourth portion of his service which was as Deputy Director Panchayat Raj. The petitioner nowhere points out that he held his appointment as Deputy Director Panchayat Raj in a substantive capacity. No doubt for a short time after his transfer to that post he held in an officiating capacity a permanent post of a Deputy Director of Information but that will not benefit him if his appointment as it had been, was in an officiating capacity.

Later he was put on a temporary post of Deputy Director Panchayat Raj. Once again he was not holding any permanent post in a substantive capacity. As a matter of fact the petitioner also is not claiming his appointment in a substantive capacity on this post except on the reasoning that he held the post of Assistant Director of Information in such a capacity. His reasoning further is that his transfer to the post of Deputy Director of Panchayat Raj should not deprive him of his status as a substantive servant.

28. As has already been held his appointment on the permanent post of Assistant Director of Information was not in a substantive capacity. That being so his argument that he held the post of Deputy Director of Panchayat Raj in a permanent capacity fails on its own reasoning.

29. The net result of the foregoing discussion is that the petitioner never held the permanent post of Assistant Director of Information which came into being with effect from 1st April 1953 in a substantive capacity. He held the same in an officiating capacity which is covered by the definition of temporary service given in the Government Order of January 30, 1953. Likewise his appointment as Deputy Director Panchayat Raj was in an officiating capacity. In either capacity his employment was governed by the Government Order of 30th January 1953. Under its provisions the State was entitled to put an end to his services by giving 30 days notice. Such a notice having been given in this case the petitioner cannot question the termination of his services.

30. In the result, therefore, the petition fails and is dismissed. No order is made as to costs.