

(1969) 04 BOM CK 0028

In the Bombay High Court

Case No : Second Appeal No's. 1306 and 1307 of 1967

Dinkar Keshav Bedbkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-04-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1969) 71 BOMLR 867 : (1970) MhLj 364

Hon'ble Judges : Chandrachud, J

Bench : Single Bench

Judgement

Chandrachud J.

1. The appellant brought a suit for a declaration that the order dated January 30, 1964, issued by respondent No. 2(ii), the Secretary, State Board of Literature & Culture, terminating his services in the Vishwakosha Project at Wai, was illegal and void and that he continued to be in the services of respondent No. 1, the State of Maharashtra. The appellant contended, in the alternative, that he was appointed for a fixed period of five years and that; as his services were terminated prematurely, he was entitled to claim damages in the sum of Rs. 35,930, being the salary he would have drawn for the unexpired portion. He restricted this claim to Rs. 5,000 on the ground that he was not in a position to pay Court-fees 011 the full claim.

2. By a resolution dated November 19, 1960, in the General Administration Department, the Government of Maharashtra established a "State Board for Literature and Culture", for a period of five years in the first instance. The Board decided to compile an encyclopaedia in Marathi called "Vishvakosh" and for that purpose a Vishwakosha Project Unit was established at Wai in the District of Satara. Mr. Laxmanshastri Joshi was appointed as Chairman of the Board.

3. In 1962, the appellant was working- in the Gokhale Institute of Politics & Economics, Pooria, as an Editor of a quarterly journal conducted by that

Institute. Dr. D. R. Gadgil, now the Vice-Chairman of the Planning Commission, was then the Director of the Gokhale Institute. Respondent No. 2(ii), the Secretary of the Board, wrote two letters to Dr. Gadgil, in one of which an express request was made that the Gokhale Institute should release the appellant so that he could be appointed as a Section Editor in the Vishwakosha Project, On Dr. Gadgil agreeing, the Secretary of the Board issued an order on April "21, 1962, appointing the appellant "to work in the post of a Section Editor in the pay-scale of Rs. 700-50-950 in the office of the Vishwakosha Unit at Wai, sanctioned under Government Resolution, General Administration Department, No. BLC 1666.K dated 29th December 1961". The appointment was to take effect from May 2, 1"962. The resolution dated December 29, 1961, mentions, in so far as is relevant, that sanction was accorded to the proposal to create five posts of Section Editors in the Vishwakosha Unit of the Board, that the posts should be created for a period ending February 28, 1962 and that the recruitment to the posts should be made by the Chairman of the Board. Similar resolutions were passed from year to year extending the appointments of the Section Editors and other employees of the Board.

4. On September 20, 1963, the Secretary of the Board issued an order appointing one S. N. Athavale, who like the appellant was a Section Editor, to "hold and manage the overall charge" of the Humanities Wing-. The office order states that the Vishwakosha Project was a time limit project and the work had therefore to be finished with expedition. The appointment of Athavale was apparently made in order to ensure expedition of work. Athavale's appointment as a Section Editor in charge of the Humanities Wing¹ was not to the liking of the appellant and by a letter exh. 56 dated October 3, 1963, he protested to Athavale in regard to the directions given by the latter under office orders dated October 1, 1963. On the same date, that, is the 3rd, the appellant wrote a letter exh. 58 to the Chairman of the Board stating that he should be taken as working under protest. A long" correspondence thereafter followed between the appellant and Athavale and between the appellant and the Chairman of the Board. The gist of that correspondence is that the appellant resented Athavale's appointment but that the Chairman felt that the appointment was justified and that the appellant had no reason to complain about it.

5. By his letter exh. 57 dated November 6, 1963, the appellant withdrew his protest, obviously in pursuance of an assurance given to him by the Chairman that Athavale's appointment was not made with a view to causing any day to day interference with the appellant's work. Inspite of the withdrawal of the protest by the appellant, the bickerings between him and Athavale continued unabated. Several unpleasant incidents took place between the two and these incidents culminated in a long letter exh. 76 dated December 4, 1963, written by the appellant to the Chairman containing various accusations against Athavale. A copy of this letter was forwarded by the appellant to the Chief Secretary to the Government of Maharashtra and to the Secretary of the Board for Literature and Culture. The appellant mentioned in the letter that in an interview which he had

with the Chairman, the latter had charged him with organising discontent in the office. On December 7, 1963, the "Chairman sent a reply exh. 77 stating that the appellant had attributed several statements to him which he in fact had not made and reiterating that Athavale's appointment was justified. The Chairman further said in the letter that all that he had told the appellant was that the appellant was unnecessarily displeased at Athavale's appointment, that he should not permit his conduct to be influenced by that discontent, that if there was a feeling of displeasure or discontent, the harmony of the office was likely to be disrupted and that it was therefore better that the appellant should tender resignation of his post. On December 12, 1963, the appellant sent a further letter exh. 78 to the Chairman affirming his own stand and complaining against the attitude adopted by Athavale. A copy of this letter was forwarded by the appellant to the Chief Secretary to the Government of Maharashtra, the Secretary to the Board for Literature and Culture, and the Members of the Board.

6. On December 14, 1963, the Secretary to the Board sent a memorandum to the appellant stating that "his services will not be required by the Vishwakosha Unit with effect from Thursday, the 16th January 1964. He should accordingly treat this memorandum as the requisite one month's notice and "deem his services as terminated with effect from that date". The memorandum purports to be issued in reference to the letter exh. 76 dated December 4, 1963, sent by the appellant to the Chairman of the Board. On January 15, 1964, the appellant received a telegram from the Secretary of the Board withdrawing the memorandum of December 14, 1963 and asking the appellant to resume his duties. The telegram was followed by a letter of confirmation exh. 74 dated January 17, 1964."

7. On January 30, 1964, the Secretary to the Board wrote a letter exh. 85 to the appellant giving him notice that "the Vishwakosha Unit will not need your services with effect from Monday the 2nd March 1964. Your services are accordingly being terminated with effect from the said date". A formal order referred to in the aforesaid letter and appended thereto reads to say that "the services of Shri D. K. Bedekar (that is the appellant), working in the Vishwakosh Unit, Wai as a Section Editor in a temporary capacity are terminated with effect from Monday, the 2nd March 1964." On April 15, 1965, the appellant brought the present suit challenging the order terminating his services and, in the alternative, claiming damages for premature termination of his services.

8. By their written statement exh. 12 the respondents contended that the appellant was appointed to a temporary post in a purely temporary capacity, that the post to which the appellant was appointed was renewed from year to year under the resolutions passed by the Government and that no assurance was ever given to the appellant that his services would be continued at least for a period of five years. The respondents also denied that the appellant's services were intended to be continued during the entire period of the subsistence of the Vishwakosha Project. The respondents stated that in terminating the services of

the appellant, the Government had exercised its right to terminate the services of a temporary servant and the order terminating the services of the appellant was not passed by way of penalty or punishment.

9. The trial Court dismissed the suit holding that the appellant was appointed in a temporary capacity to a temporary post, that the order terminating his services was a simple order of termination and not of dismissal, that the appellant was not appointed for a term of five years certain and that the Government was not liable to pay damages to the appellant for premature termination of his services. In appeal, the learned District Judge has held that the appellant was neither a permanent servant nor was he appointed for a period of five years, that he was appointed as a temporary servant in a temporary post, but that the order terminating the services of the appellant was not an order of termination simpliciter but was an order dismissing him for his misconduct. The learned District Judge has, however, held that even though the appellant was unlawfully dismissed from service, he was not entitled to a declaration that he still continued to be in service because having regard to the fact that the appellant was not amenable to the appointment of Athavale as a Section Editor-in-Charge, it would not be possible for him to work in the Vishwakosha Unit smoothly or harmoniously and therefore, this was not a fit case for granting a declaration that the appellant continued to be in the services of the Board. The learned District Judge observes that it was not necessary to pursue the question of reinstatement of the appellant as "it is a matter of far-reaching consequences laying down a very important question of law". Having held that the appellant was not a permanent servant, that the order terminating his services was one of dismissal but that the appellant could not be reinstated, the learned District Judge proceeded to hold that the only relief which could be granted to the appellant was salary in lieu of two months' notice. Ordinarily, says the learned Judge, one month's notice is "good enough for most of the servants", but "having regard to the specialised nature of the qualifications of the plaintiff two months' notice would be quite adequate". As the appellant was given one month's notice, the learned District Judge has passed a decree in favour of the appellant in the sum of Rs. 850, being one month's salary.

10. The decree passed by the learned District Judge is challenged before me in these two companion Second Appeals. Appeal No. 1306 of 1967 is filed by the plaintiff whose grievance is that a decree as claimed by him. should have been passed by the learned District Judge, while appeal No. 1307 of 1967 is filed by the defendants whose grievance is that the learned District Judge was in error in holding that the appellant was dismissed from service wrongfully and that he was entitled to a decree in the sum of Rs. 850. In this judgment I have referred to the plaintiff as the appellant for the sake of convenience.

11. Mr. Ganatra who appears on behalf of the appellant has urged the following points before me; (1) That the appointment of the appellant was to last during the subsistence of the Vishwakosha Project and as his services were terminated

before the end of the project, the order of termination must be deemed to be an order of dismissal; (2) That the appellant was in any event appointed to the post of a Section Editor for a period of five years certain and as his services were terminated before the expiry of that period, he is entitled to a declaration that he was wrongfully dismissed and to damages for premature termination of services; (3) That if the appellant was appointed for a period of five years certain and though that period may have expired now, the appellant would be entitled to a declaration that he continued to be in the services of the Government on the date of the suit, because the period of five years had not expired on that date. In that event, the appellant would be entitled to the salary for the unexpired portion and the consequent benefits accruing due for the period subsequent to the institution of the suit; and (4) That even assuming that the appellant was appointed in a temporary capacity to a temporary post, the antecedent facts would show that the order terminating his services was a mere camouflage for dismissing him and that the order is, in substance, an order of dismissal. As the appellant was, admittedly, not given an opportunity to meet the charges against him, he is entitled to a declaration that he continues to be in the services of the Government and to consequential benefits.

12. [His Lordship after dealing with the first three points, continued.] The last contention is that even assuming that the appellant was appointed in a temporary capacity to a temporary post, the order terminating his services is, in substance, an order of dismissal, and as no opportunity was given to him to show cause against the order, it is unconstitutional and must therefore be set aside. Now, it is well-settled that Article 311 applies to all classes of Government servants regardless of whether they are permanent or temporary (See, for example, *Parshotam Lal Dhingra Vs. Union of India (UOI)*,). It is, therefore, necessary to see whether the order terminating the services of the appellant is an order of termination simpliciter or is truly an order of dismissal or removal from service.

13. The letter (exh. 85) dated January 30, 1964, written by the Secretary of the Board to the appellant reads thus:

To Shri D.K. Bedekar, Section Editor Vishwakosha Unit, Wai, District : Satara. Subject : Vishwakosha Unit, Wai Services of Shri D.K. Bedekar, Section Editor at the...

Sir,

You are aware that the Vishwakosha unit, Wai is a temporary Government office and all the staff therein is temporary. Your services as a Section Editor therein are thus purely temporary and liable to be terminated by giving one month's notice.

2. Notice is hereby given to you that the Vishwakosha Unit will not need your services with effect from Monday the 2nd March 1964. Your services are accordingly being terminated with effect from the said date. A formal order in

this behalf is appended herewith.

3. You should hand over charge of your work as Section Editor to Shri S. N. Athavale., Section Editor, I/c Humanities Wing of the Unit.

The formal order referred to in the letter and appended to it reads thus:

OFFICE ORDER

- The services of Shri D. K. Bedekar, working in the Vishwakosha Unit, Wai as a Section Editor in a temporary capacity are terminated with effect from Monday, the 2nd March 1964.

14. This is, ex facie, an order of termination simpliciter and contains no imputation or stigma or any implication of misbehaviour or incapacity. It is however contended by Mr. Ganatra that for ascertaining whether a particular order is one of termination or of dismissal, one must look at the substance of the matter and not at the mere form. In support of this submission, he relies on the decisions of the Supreme Court in Jagdish Mitter Vs. The Union of India (UOI), and S.R. Tewari Vs. District Board Agra and Another, In Jagdish Hitter's case an order discharging a temporary servant working- in the office of the Post-Master General was passed. The order stated that the employee "having been found undesirable to be retained in Government service" was served with a month's notice of discharge. It was held that though considerations of motive operating on the mind of the authority had to be eliminated in determining the true character, of the termination of services, the form in which the order terminating the services is expressed is not decisive. In para. 13 of the judgment, it is observed that it was necessary to bear in mind that the real character of the termination of services must be determined, by reference to the relevant facts that existed prior to the order and what the Court has to examine in each case is whether having regard to the material facts existing upto the time of discharge, the order of discharge is in substance an order of dismissal. If the answer is that "notwithstanding the form which the order took, the appointing authority, in substance, really dismissed the temporary public servant, Article 311 would be attracted".

15. Mr. Ganatra says that one must enter into all the facts and circumstances leading to the order of termination and if these facts showed that the motive operating on the mind of the authority was to punish the appellant, an order of simple termination of services would be a mere camouflage for an order of dismissal. I do not think that this submission is justified by anything said in Jagdish Hitter's case. The appellant in that case was served with an order which purported to be one of discharge. However, the order itself stated that the appellant was found undesirable to be retained in Government service. It is for that reason that the Supreme Court held that the order expressly cast a stigma on the appellant and it was therefore an order of dismissal and not a mere order of discharge. In para, 21 of the judgment it is stated (p. 456) :

...It is obvious that to say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant, while in the second case, termination of services is due to the consideration that a temporary servant need not be continued, and in that sense, no stigma attaches to him. It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part.

In the instant case, the impugned order casts no stigma or aspersion on the appellant and is in no sense a camouflage for an order of dismissal. The very decision on which Mr. Ganatra relies, namely, Jagdish Hitter's case, says (p. 456) :

...When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be; does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal.

As the order in the instant case does not cast any aspersion on the appellant, it cannot be held to be an order of dismissal or removal.

16. In Tewari's case on which also Mr. Ganatra relies, it was held that (p. 1686) :

...It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order. The form may be merely to camouflage an order of dismissal for misconduct, and it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form merely of determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee.

In that case, the District Board of Agra resolved to terminate the services of its employee after giving him three months' salary in lieu of notice. The contention of the appellant was that he had rendered flawless service as an Engineer of the Board but that a Member of the Board felt annoyed with him for reasons unconnected with his duties and that the President of the Board was also not happy with him for reasons best known to him. The appellant filed a petition in the High Court of Allahabad under Article 226 of the Constitution challenging the termination of his services as unconstitutional. The High Court dismissed the petition holding that the Board had acted within its powers in terminating the

services of the petitioner and that the termination was not by way of punishment. In appeal, it was held by the Supreme Court that the Board had the power to determine the employment of the petitioner and that the Board had in fact exercised the power of termination only. It was urged on behalf of the petitioner before the Supreme Court that the affidavit filed on behalf of the Board, which set out his entire service-sheet, referred to several acts of commission and omission on his part and therefore, the order of termination was in truth and substance an order of dismissal for reasons appearing from the affidavit filed on behalf of the Board. This contention was rejected by the Supreme Court on the ground that the petitioner had not alleged in the petition that "the order terminating the employment was one in reality of the nature of dismissal as punishment, and the form used in the resolution of the Board was merely to camouflage the real object of the Board". As the question regarding the object and intention of the Board was a question of fact, the Supreme Court refused to entertain the contention that the order of termination was in substance an order of dismissal. The observations therefore that there may be cases in which the form of discharge is used merely to camouflage an order of dismissal for misconduct and that it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order, cannot be understood to mean that every antecedent fact which covers the entire span of the employee's service has to be scanned for the purpose of determining the real nature of the order.

17. In this behalf it would be useful to refer to another decision of the Supreme Court reported in *Champaklal v. Union of India* (1963) 66 Bom. L. R. 319, to which the learned Assistant Government Pleader has drawn my attention. The appellant in that case was a temporary Government servant and his services were terminated without assigning any reason therefore and no opportunity was given to him for showing cause in regard to the action taken against him. The appellant brought a suit in the City Civil Court, Bombay, for challenging the termination on the ground that the order of termination was, in substance, an order of dismissal and his services were terminated unjustifiably and maliciously because of the animus which a certain officer in the department bore against him. The appellant contended that he was called upon to explain a certain irregularity in his work and also to show cause why disciplinary action should not be taken against him. Certain inquiries were alleged to have been held against him behind his back, and after he was transferred to Bombay, his services were suddenly terminated. At page 326 of the report, the legal position in regard to the applicability of Article 311(2) has been summarised by Wanchoo J. (as he then was) thus:

...It is well settled that temporary servants are also entitled to the protection of Article 311(2) in the same manner as permanent government servants, if the government takes action against them by meeting out one of the three punishments i. e. dismissal, removal or reduction in rank: (see *Parshotam Lal Dhingra v. The Union of India*). But this protection is only available where

discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is also not disputed that the mere use of expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned in Parshotam Lal DMngra's case, namely-(1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant.

In the next paragraph, his Lordship continues (p. 326) :

It is well known that government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly, a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to government. It may decide to dispense with the services of the servant or revert him to substantive post without any action being taken to punish him for his bad work and/or conduct. Or the government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Article 311(2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. ...This is what is known as a formal departmental enquiry into the conduct of a public servant. ...The government or the authority makes up its mind on the enquiry report as to whether the charges have been proved or not and if it holds / that some or all the charges have been

proved, it determines tentatively the punishment to be inflicted on the public servant concerned. ...

So far as the preliminary enquiry is concerned there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein.... But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of Article 311...

In the light of these observations, the Supreme Court rejected the contention of the appellant that once the Government issued a memorandum calling for his explanation in regard to certain matters, it was not open to the Government to decide not to hold a departmental enquiry and to terminate the services of the employee by a simple order of discharge. The attention of the Supreme Court was drawn in this case to its previous decision in *The State of Bihar Vs. Gopi Kishore Prasad*, . That was a case of a probationer and the third proposition out of the five propositions laid down in that case was in these terms (p. 691) :

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 of Article 311(2) of the Constitution.

Belying on this proposition, it was urged before the Supreme Court in *Chamaklal's* case that as soon as any kind of enquiry is held against a government servant, the protection of Article 311(2) would be available. This contention was rejected by the Supreme Court by holding that the third proposition in *Gopi Kishore's* case did not justify that contention. In *Gopi Kishore's* case the Government, after holding an enquiry, said in the order terminating the services of the appellant that confidential enquiries showed that he had the reputation of being a corrupt officer, that there was ample material to show that the report about his resorting to corrupt practices was justified, that his work was wholly unsatisfactory and that it was therefore provisionally, decided to terminate the probation. An explanation of the appellant was called for and after considering it, the Government decided to discharge him. In *Champaklal's* case the Supreme Court observed that it was because of these facts that in *Gopi Kishore's* case it was held that if instead of terminating a

person's service without an enquiry, the employer chooses to hold an enquiry into the alleged misconduct or inefficiency, the termination of service would be by way of punishment, Towards the end of the judgment in Champaklal's case the Supreme Court expressly holds that

the third proposition in Gopi Kishore's case must be restricted only to those cases whether of temporary government servants or others, where government purports to act under Article 311(2) but ends up with a mere order of termination. In such a case the form of the order is immaterial and the termination of service may amount to dismissal or removal.

18. The argument advanced by Mr. Ganatra before me is precisely similar to the argument advanced on behalf of the appellant in Champaklal's case. He says that the Chairman of the Board appointed Athavale as a Section Editor-in-Charge of the Humanities Wing without justification, that the appellant was rightly aggrieved by the appointment, that he protested against the appointment, that the protest was not to the liking of the Chairman, that the Chairman wrongly charged the appellant with organising discontent in the office, that the Chairman asked the appellant to resign from his post and that thereafter a simple order terminating the services of the appellant was passed. According to the learned Counsel, these antecedent facts show unmistakably that the order of termination is a mere camouflage for dismissing the appellant by way of punishment,

19. I find it impossible to accept this contention. The motive operating on the mind of the authority terminating the services of a temporary servant does not alter the character of termination and is not relevant in determining the true character of termination. It is common ground that not even an informal inquiry was held against the appellant either by the Chairman or any other officer and it is also common ground that the appellant was never called upon by the Chairman or by the Secretary of the Board to offer an explanation of any misconduct on his part. There were continuous bickerings between the appellant and Athavale and those bickerings were carried to the Chairman in the hope that he would be able to resolve them. In an effort to find a solution to the differences between the appellant and Athavale, alternative courses were suggested by the parties but ultimately it became clear that the appellant was not amenable to Athavale's appointment. If in these circumstances, a simple order terminating the services of the appellant was passed, it would be impossible to hold that because the order of termination has been passed in the background of differences between the appellant and the other members of his Unit, the order of termination must be construed to be an order of dismissal.

20. It is needless to multiply authorities, for the position emerging from these decisions is very clear. Putting it briefly, a temporary government servant is entitled to the protection of Article 311(2) of the Constitution, no less than a permanent servant. If the authority decides to dismiss or remove or reduce a temporary servant in rank by way of punishment, the provisions of Article 311(2) must be complied with and the necessary opportunity to show cause against the

proposed order must be afforded to him. If he is dismissed or removed or reduced in rank without observing the safeguards prescribed by Article 311(2), the order of termination is unconstitutional and void. While considering whether an order terminating the services is a simple order of termination or is an order of dismissal or removal by way of punishment, the words used in the order are not conclusive. It is open to the "Court to go behind the order and it is its duty to consider the substance of the matter. The order, for example, may say that the services are terminated but it may add a rider that the services are being terminated because the servant is found to be inefficient, incompetent or corrupt. In such a case, an aspersion or stigma is cast on the servant by the order itself and therefore, the mere words that the services are being terminated are not conclusive of the matter. The substance of the matter is that the servant is being dismissed for misconduct. It may also happen that the order by itself does not cast an aspersion or stigma on the servant but the antecedent facts may show that the order was being passed by way of punishment. This contingency would arise if a show cause notice was served on the servant, a departmental enquiry as distinguished from an informal antecedent enquiry was held against him and a conclusion was recorded in that inquiry that the charges levelled against him were established. If these are the antecedent facts, a simple order of termination would be a mere camouflage for an order of dismissal by way of punishment. In such a case, the Court is entitled to go behind the order of termination and ascertain the true character of the order. Lastly, though antecedent facts are open to scrutiny in this sense, one must guard oneself against mixing up a preliminary enquiry for collection of relevant data with a formal departmental enquiry and against mixing up motives operating on the mind of the authority with antecedent facts, like the holding of a departmental inquiry, which are an integral part of the final order, whether expressed or not expressed to be so. Motives for terminating services are not relevant but antecedent facts showing that in a departmental enquiry the government servant was in fact found guilty of the charges levelled against him are relevant. It is not open to the authority to find a government servant guilty in a departmental enquiry, to proceed to punish him on the basis of that conclusion but to pass a simple order of termination. It is in such a case that the simple order of termination becomes a camouflage for an order of dismissal by way of punishment.

21. A few other incidental points were canvassed by the learned Counsel for the appellant, but they lose their importance in view of the conclusion which I have come to. It was, for example, urged that an adverse inference should be drawn because the Chairman of the Board did not step into the witness-box, though an application was made by the appellant in the trial Court that the Chairman should offer himself for cross-examination. I am unable to agree that any adverse inference can be drawn in this case. In the first place, as held by the Supreme Court in *Union Territory, Tripura, v. Gopal Chandra A. I. R.*[1968] S.C. 601, the onus to prove that the real intention behind the order was different from the one

expressed in the order is on the employee. There is no onus on the employer to justify the order by leading evidence to show that no other motive operated on his mind or that a different intention was not entertained. But what is more important is that even if the Chairman were to step into the witness-box, all that could have been put to him would be the several disputes between him and the appellant and between the appellant and Athavale, Assuming everything in favour of the appellant, the Chairman might even have admitted in the witness-box that he felt concerned that the harmony of the office was likely to be disrupted if the appellant were permitted to work in an atmosphere of discontent. As I have indicated earlier, if the services of a temporary government servant are terminated for the reason that his general conduct in the office and his attitude towards his colleagues shows that he did not fit in the scheme of things, an order of termination cannot amount to an order of dismissal. In fact, in a large number of cases, the view has been consistently taken that the Government does not dispense with the services of its temporary servants or its probationers without rhyme or reason and some sort of an informal inquiry is always held for the purpose of ascertaining the desirability of continuing such persons in office. If experience in this case showed that the appellant was not prepared to overcome the feeling that he was superseded by Athavale, the conclusion had to be come to, however regretfully, that it was not in the interests of the Unit that the appellant should be permitted to continue in its services.

22. [His Lordship after dealing with some other points not material to this report, proceeded].

23. In the result, I dismiss Second Appeal No. 1306 of 1967 filed by the plaintiff and allow Second Appeal No. 1307 of 1967 filed by the defendants. The decree passed by the learned District Judge is set aside and that of the trial Court is restored. In the circumstances, there will be no order as to costs throughout.

24. [The rest of the judgment is not material to this report.]