

**(1996) 09 MP CK 0043**  
**In the Madhya Pradesh High Court**  
**Case No : L.P.A. No. 95 of 1996**

|                                          |            |
|------------------------------------------|------------|
| High Court of Madhya Pradesh and Another | APPELLANT  |
| Vs                                       |            |
| Anand Mohan Agarwal and Another          | RESPONDENT |

**Date of Decision :** 19-09-1996

**Acts Referred:**

Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service)  
Rules, 1960 — Rule 12, 2, 3, 3A

**Citation :** (1997) 1 JLJ 304 : (1997) 2 MPLJ 63

**Hon'ble Judges :** Usha Shukla, J; S.K. Dubey, J

**Bench :** Division Bench

**Advocate :** Ravish Agarwal and V.S. Shroti, for the Appellant; T.S. Ruprah, for the Respondent

**Final Decision :** Allowed

## Judgement

S.K. Dubey, J.

This is an appeal under Clause 10 of Letters Patent against the order of learned Single Judge passed in W. P. No. 523/95, decided on 12-4-1996.

Facts giving rise to this appeal are those :

The respondent No. 1, the writ petitioner was appointed vide Annexure P-1 on 4-12-1990 for three months on the leave vacancy as a Lower Division Clerk (L.D.C.) in the establishment of District and Sessions Judge, Narsinghpur. As there was another leave vacancy, the writ petitioner was allowed to continue vide order dated 28-2-1991. In the meantime, posts were advertised for selection of L.D.C.-cum-Steno. After selection the writ petitioner was appointed temporarily until further orders on the terms and conditions of appointment order dated 29-6-1991 (Annexure P-3), one of the terms was that the services shall be liable to be terminated at any time after giving one month's notice under Rule 12 of the M.P. Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 (for short "Rules"). The writ petitioner was posted as Clerk-Steno in the

Court of Additional Judge to the Court of District Judge, Narsinghpur. Since the inception of the employment the writ petitioner was in the habit of taking leave frequently and remaining absent from duty without permission or intimation. Almost within a week of his appointment on 29-6-1991, he was absent from 8-7-1991 to 13-7-1991, for which period of six days he was granted leave without pay. During the same month, absence of further 5 days from 22-7-1991 to 26-7-1991 was treated as leave without pay vide order dated 29-7-1991. In May, 1992, after giving him show cause notice, an order dated 29-5-1992 was passed giving him character roll warning that if it is repeated, his services would be liable to be terminated. The record shows that again in January, 1993, he remained absent from 1-1-1993 to 6-1-1993 without prior sanction of leave. This time also his absence was treated leave without-pay. In December, 1993 he was involved in a criminal offence and was facing prosecution in the Court of Judicial Magistrate, First Class, Gadarpur, but this information was suppressed and was disclosed in ?vuqizek.ku? attestation form filed by him on 14-7-1994. Considering the conduct and the service being not satisfactory appointing authority passed the order of termination simpliciter dated 25-7-1994 (Annexure P-6). Aggrieved of that writ petitioner made a representation to the Registrar, High Court of M.P. Jabalpur which was rejected vide order dated 1-2-1995 Annexure P-7. Hence the writ petitioner approached the writ Court for quashment of the two orders.

In the writ petition after return filed by the appellants, the writ petitioner filed rejoinder and stated that the criminal prosecution relates to offence sections 324 and 148, Indian Penal Code on the false report lodged by his cousin on an incident which took place on 12-12-1993. After hearing parties the writ Court observed that a perusal of annexures demonstrates that the grounds taken for dismissal of the writ petitioner from service are unsustainable. The writ petitioner had proceeded on leave after sanction of the leave and the period of overstay after the leave was treated as casual leave by the District Judge. The alleged involvement of the writ petitioner in a criminal case was much after the date of his joining in the service and the nature of the criminal case was trifling. Relying on a decision of the Supreme Court, in case of Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others, , the writ Court held that the case of the writ petitioner is squarely covered by the Sumati P. Shere's case (supra), wherein it has been observed that if services of an ad hoc employee is to be discontinued on ground of unsuitability it is proper and necessary that he should be told in advance that his work and performance are not up to the mark.

Shri Ravish Agarwal, learned counsel for the appellants submitted that the writ petitioner did not acquire the status of quasi permanent employee, no declaration was issued by the appointing authority Under Clause (ii) of Rule 3 declaring him to be a quasi permanent Government servant. The writ petitioner did not complete continuous five years service, hence Under Rule 3-A the writ petitioner also could not have been deemed to be a quasi permanent servant. Therefore, in terms of appointment order and Under Rule 12 the service of the

writ petitioner was terminated by an innocuous order on payment of one month's notice pay. Reliance was placed on two recent decisions of the Supreme Court, in *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others*, and *State of U.P. and Others Vs. Kamla Devi (Smt) and Another*, .

Shri T. S. Ruprah, learned counsel for the writ petitioner submitted that from the return it is evident that the termination was because of alleged absence from duty and overstay on leave without prior sanction. The leave for five days, when the writ petitioner remained absent in January 1993 was sanctioned as leave without pay and for that a warning was issued to the writ petitioner after issue of show cause notice and to that effect an entry was made in character roll. Therefore, if there was any lapse on the part of the writ petitioner that was condoned by the appointing authority, hence his services for that reason could not have been terminated. If the writ petitioner's performance was found not satisfactory he could have been informed so that he could have improved himself, as held in *Sumati P. Shere's case (supra)*. Without giving any timely communication of the assessment of work in case of the writ petitioner the termination of the writ petitioner's service was arbitrary and was by way of punishment, reliance was placed on *Jarnail Singh and Others Vs. State of Punjab and Others*, . It was also submitted that one month's notice pay was not given to the writ petitioner as per Rule 12 and in terms of service condition therefore also the order is illegal.

It is not disputed that the writ petitioner did not acquire the status of a permanent employee or Quasi permanent employee. He was in temporary service until further orders. His services could be terminated at any time by notice in writing under the terms of the appointment order and Under Rule 12(a) of the Rules. The order is innocuous without casting any stigma of evil consequences. An order can be treated as casting stigma, in the sense, that it contains a statement casting aspersion on his conduct or character, then the Court will treat the order as an order of punishment attracting provisions of Article 311(2) of the Constitution.

In *M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain (supra)*, the Supreme Court after considering the language of the order of appointment on temporary basis, observed that the appointment does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminated at any time and without notice. A temporary Government servant does not become a permanent Government Servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. The services of a temporary employee according to the terms of the order of appointment could be terminated at any time without any notice or assigning any reason. In such a case, it is not necessary to follow the formalities contemplated by Article 311 of the Constitution.

In case of State of U. P. v. Kamla Devi (Smt.) (supra), a case of temporary employee, while considering the question whether it is necessary for the Government to conduct an enquiry as contemplated Under Article 311(2) read with the statutory rules, as in the State of U.P. there are statutory rules, viz. U. P. Temporary Government Servants (Termination of Service) Rules, 1975, Rule 14(a) of which provides for termination of the service of temporary government servant either with one month's notice or pay in lieu thereof, the Supreme Court observed that under the circumstances, when the Government exercised the statutory power, the need to conduct enquiry as contemplated Under Article 311(2) by necessary implication got obviated.

In the circumstances of the case, in terms of the order of appointment, as the writ petitioner did not acquire the status of quasi-permanent service as defined in Sub-rule (b) of Rule 2, as no declaration was issued Under Rule 3(ii) nor the writ petitioner could be treated as deemed to be in quasi-permanent service Under Rule 3-A, the appointing authority in exercise of its statutory power Under Rule 12 terminated the service which reads thus :

"12(a) Subject to any provision contained in the order of appointment or in any agreement between the government and the temporary government servant, the service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority or by the appointing authority to the Government Servant:

Provided that the services of any such Government Servant may be terminated forthwith and on such termination, the Government Servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing then immediately before such termination or, as the case may be, for the period by which such notice falls short of one month :

Provided further that the payment of allowances shall be subject to the condition under which such allowances are admissible

(b) The period of such notice shall be one month unless otherwise agreed between the Government and the Government Servant."

Though one month's notice pay was not paid to the writ petitioner at the time of termination of his services the writ petitioner could claim the same in view of the proviso to Rule 12(a). For this reason the order of termination would not become illegal. See : Raj Kumar Vs. Union of India (UOI) and Others, .

The decision relied by the learned counsel for the writ petitioner in case of Sumati P. Shere (supra) is distinguishable in the facts of this case. The observations in paras 6 and 7 of the report are relevant which we quote :

"6. The counsel for the respondents argued that the appellant being temporary servant no enquiry need be held for her removal if her services are not up to the

mark. He placed reliance on the decisions of this Court in : (i) Champaklal Chimanlal Shah Vs. The Union of India (UOI), , and (ii) Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, . Both the cases pertain to the termination of a temporary Government servant who was on probation. The termination was on the ground that his work had never been satisfactory and he was not found suitable for being retained in the service. This Court held that the termination of service in such case on the ground of unsuitability for the post does not attract Article 311(2) of the Constitution.

There cannot be any dispute about this proposition. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not up to the mark."

The decision in case of Jarnail Singh (supra) is also distinguishable on facts wherein services of ad hoc employees were terminated on the basis of adverse remarks and allegations of embezzlement, hence it was observed that the termination was without following the procedure provided in Article 311(2) of the Constitution.

In the result we are of the view that the order passed by the learned Single Judge cannot be sustained and is to be set aside. Accordingly, the appeal is allowed and the order of the learned Single Judge dated 12-4-1996 in W. P. No. 523/95 is set aside. No costs.