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**(1994) 04 RAJ CK 0011**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No"s. 5921 and 5923 of 1993

Kanwar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 11-04-1994

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226, 311, 39

**Citation :** (1994) 1 RLW 516 : (1994) 1 WLN 441

**Hon'ble Judges :** V.K. Singhal, J;Arun Madan, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

Arun Madan, J.—The aforesaid writ petitions have come up before us for hearing on a reference by the learned Single Judge of this Court vide his order dated the 27th of October, 1993, when the learned Single Judge after hearing the learned Counsel for the petitioner at the admission stage was pleased to observe as under:

This writ petition involves a challenge to the constitutional validity of proviso to Rule 5(1) of the Central Civil Service (Temporary Service) 1965. Such writ petition can be heard by a Division Bench. Put up this case before Division Bench

Sd/- (G.S. Singhvi), J.

2. It is in these circumstances that the aforesaid writ petitions have been put up before us.

3. Since both the writ petitions involve a common question of law, they are being disposed of by a common order which would be applicable to both the matters. The only question of law with which we are concerned in the present writ petitions is challenge to the constitutional validity of proviso to Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965 (hereinafter referred to as "the CCS. (Temporary Service) Rules") and the question of law to be decided is

as under:

Whether the services of temporary employees of the Central Reserve Police Force can be terminated by having resort to Rule 5 of the C.C.S. (Temporary Service) Rules?

4. For the sake of convenience and since the question of law to be decided is identical in both the cases, it would be appropriate to refer to the facts in D.B. Civil Writ Petition No. 5921/93 (Kanwar Singh v. Union of India and Ors.) which for the sake of convenience is treated as the main petition. The petitioners in both the cases were appointed as constables/drivers in Central Reserve Police Force (Hereinafter referred as "the C.R.P.F.") on temporary basis by the respondents on advertisement being issued by the respondent No. 2, the Commandant, 123 Batallion, C.R.P.F., Ajmer.

5. The facts giving rise the above writ petitions, briefly stated, are as under: The petitioner, in Writ Petition No. 5921/93 was issued a driving licence u/s 8(1) of the Motor Vehicles Act, 1939, with effect fro. 28.9.1987 which was renewed upto 27.9.1993. The licence was valid for driving light motor vehicles, medium motor vehicles and heavy motor vehicles.

6. It is contended by the learned Counsel for the petitioner that he was eligible to be appointed as a constable/driver with C.R.P.F. since he fulfilled the qualifications of minimum age and education. In response to the advertisement issued by the respondent No. 2 for appointments of constables/drivers in C.R.P.F. on temporary basis, the petitioner joined his duty on 19.10.1991 at Ajmer and thereafter he was placed under training for a period of 9 months with effect from 19.10.1991 to 9.8.1992 during which period he remained under training at Ajmer from 10.8.1992 to 23.8.1992 at Patiala. Thereafter, the petitioner continued to serve at Ajmer where the Detachment Group of C.R.P.F. 123 Batallion having its Headquarters at Mohali, Ropar (Punjab) was located. The petitioner served in the capacity of constable/driver by performing his duties satisfactorily during the aforesaid period.

7. It is further contended by the learned Counsel for the petitioner that in May 1993, the Commandant, 123 Batallion, C.R.P.F., Ajmer, respondent No. 2 herein, terminated the services of the petitioner by having resort to proviso to Sub-rule (6) of Rule 5 of the CCS (Temporary Service) Rules. It is further contended by the learned Counsel for the petitioner that he remained in service of the respondents from 19.10.1991 to May 1993.

8. It will be relevant to refer to the office order No. D.V.1/93-123-EC-IV dated 31.5.1993 issued by the respondent No. 2 in this connection:

In pursuance of the proviso to Sub-rule (1) of Rule-5 of the Central Civil Services (Temporary Services) Rules, 1965, I, B.D.S. Chauhan, commandant-123 Battalion CRPF, Ajmer (Raj.), hereby terminate forthwith the service of No. 913237255 Ct/Dvr. Kanwar Singh and direct that he shall be entitled to claim a

sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

sd/- 315 (B.D.S. CHAUHAN COMMANDANT

9. It will also be relevant to refer to Rule 5 of the CCS (Temporary Service) Rules which is reproduced as under:

5-Termination of temporary service:

(1)(a) The services of temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

(b) The period of such notice shall be one month.

Provided that the service 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 them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

10. The concerned employee by virtue of Rule 5(1) of the CCS (temporary Services) Rules has thus an option of either continuing with the tenure or leaving the same by giving one month's notice. Hence, in any event no prejudice would be caused to the delinquent temporary employee since he would be entitled to pay and allowances as admissible under the rules in lieu of notice period and further he had voluntarily accepted the appointment in terms of the above rule knowing-fully well the implications thereof. Consequently, there is no violation of principles of natural justice nor it would amount to any discrimination.

11. The language of the above Rule makes it clear that the services of a temporary Government servant shall be liable to termination at any time by giving one month's notice on either side. The only safeguard which Rule 5 mandates is that prior to such termination on the receipt of the notice, the Government servant shall be entitled the claim of the sum equivalent to one month's pay plus allowances for the notice period at the same rate at which he was drawing them immediately prior to the termination of his service.

12. Shri Alok Sharma, the learned Counsel for the petitioner, argued that the said Rule 5 of the CCS (Temporary Services) Rules is contrary to constitutionally prescribed norms and against the principles of natural justice, since the services of the petitioner were terminated without assigning any reasons for such termination by having resort to Rule 5. According to the learned Counsel, the termination order is thus violative of Articles 14 & 16 of the Constitution of India,

and the order of termination is arbitrary and unconstitutional. The learned Counsel for the petitioner placed reliance on Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr. AIR 1916 SC 1571, wherein the Apex Court on interpretation of Rule 9(i) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979 held that the Rule empowering Government Corporation to terminate the services of its permanent employees by giving notice or pay in lieu of the notice period is opposed to the public policy and violative of Article 14 and directive principles of State policy contained in Article 39(a) and 41 of the Constitution of India. While interpreting the aforesaid Rule in connection with permanent employees of the Corporation, the Apex Court observed that the type of contracts to which the principle formulated above, applies are not the contracts which are tainted with illegality but are the contracts which contained terms which are so unfair and unreasonable that they shock the conscience of the court. The said interpretation of the Apex Court is not applicable to temporary employees but only to the cases of the permanent employees of the Corporation.

13. The above principle, however, cannot be universally applied to each and every case. The court must judge each case on its own facts and merits. Hence, the proposition advanced by the learned Counsel for the petitioner does not help the petitioner in any manner since the petitioners in both the writ petitions were temporary employees of the disciplined force whose services were terminated by the respondents by invoking of Rule 5 of the CCS (Temporary Services) Rules. The petitioners has accepted the temporary appointments as drivers/constables in C.R.P.F. knowing fully well in advance the implications of the said appointments. The law is well settled that even in case of ad-hoc appointment, an ad-hoc appointee ought to make a room for regular appointee even though the period of appointment was yet to expire.

14. These are the cases of termination simpliciter or under Rule 5 of the CCS (Temporary Services) Rules, 1965 which do not envisage any constitutional safeguard which are admissible to permanent employee of the Central Government under Article 311(2) of the Constitution of India. Hence, an order of termination of the petitioners cannot be interpreted as punitive or vindictive nor it can be alleged to be malafide and therefore, the petitioners are not entitled to assail the same before this Court.

15. We have given our thoughtful consideration to the arguments advanced by the learned Counsel for the petitioner and the contentions urged by him with reference to the aforesaid Rule. We are of the considered opinion that there is nothing arbitrary, unreasonable or unconscionable and nor there is any violation of the principle of "audi alteram partem rule" or the directive principle of State policy inasmuch as we are dealing herewith the cases of temporary Government servants who cannot be equated with permanent employees of the Central Government and hence, there can be no equation between the two. The temporary Government servant unless he is confirmed always stands the risk of

facing termination from service since his conduct is put on the test of judgment by his superiors who reserve the right of watching his conduct during the period of probation till such employee is confirmed in service.

16. In our opinion, no interference is called for inasmuch as sufficient safeguards had been observed by the appointing authority in compliance of the aforesaid provisions before terminating the services of the petitioners.

17. In the matters of Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, and Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, wherein the Apex Court held that the order of termination simpliciter does not amount to an order of removal from service and as such it is not open to challenge. In the Management Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik (supra), the Supreme Court held as under:

If the discharge of an employee has been ordered by the management in bona fide exercise of its power, the industrial Tribunal will not interfere with it.

On an analogy, the said ratio of the law propounded by the Apex Court would equally apply to the cases of Discharge Simpliciter" of the temporary Government employees if the same is challenged before the High Court in exercise of its powers under Article 226 of the Constitution of India.

18. The Apex Court has thus, consistently taken the view that the order of termination simpliciter does not amount to an order of removal from service and as such, it is not open to challenge. This view of the Apex Court has been confirmed in its later decision in the matter of Governing Council of Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another, wherein the Apex Court held that:

If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry, it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge and as such termination is penal in nature.

In this case the Apex Court was of the view that the appointment of a temporary employee is like that of a probationer. The Apex Court further held as under:

Appointment made on a probation presupposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. He is to be confirmed after the expiry of probation only when his service during the period of probation is found to be

satisfactory and he is considered suitable for the post against which he has been appointed. The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken to terminate the service of an employee during the period of probation after taking into consideration the overall performance and some action or inaction on the part of such employee, then it cannot be said that it amounts to removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation is entitled to look into any complaint made in respect of such employee while discharging his duties for the purpose of making assessment of the performance of such employee.

An order of termination simpliciter of a probationer will not be vitiated merely because some preliminary enquiry or examination of some allegations had been made."

19. It is, thus, clear from the above that the temporary employee cannot equate himself to a permanent employee in the matter of his service conditions and always faces the risk of termination till his services are confirmed by the management.

20. It is well settled law that there is always a presumption in favour of constitutionality of an enactment (maxwell on Interpretation of Statutes) and that the courts should not place their own interpretation which would be contrary to the legislative intent and the spirit of the enactment.

21. Keeping in view, the above propositions of law, we are of the considered opinion that there is nothing wrong with the vires of Rule 5 of CCS (Temporary Services) Rules and that the said Rule is intra-vires and not ultra-vires of the Constitution as contended by the learned Counsel for the petitioner. We are further of the view that there is no discrimination nor there is any violation of Articles 14 & 16 of the Constitution of India and that there is no violation of principles of natural justice.

22. If the termination of a temporary employee has been ordered by the management or by the Government as in this case, the said order of termination which has been passed in bona fide exercise of power is not open to challenge and that no interference is called for in such matters. In this case, since the petitioner had voluntarily accepted the appointment as driver/constable in C.R.P.F. on temporary basis knowing fully well the implications of his appointment, it is not open to him at a later stage to challenge the termination order since the respondents were not satisfied with the services of the petitioner and the petitioner had already been directed to be given the pay and allowances in lieu of notice period of one month as admissible under the law. Hence, in any event no prejudice has been caused to the petitioner who was admittedly a

temporary employee of C.R.P.F.

23. In the result, no interference is, therefore, called for and the writ petitions are consequently dismissed with no order as to costs. The Reference of the learned Single Judge of this Court stands answered in terms of this order.