
(1981) 10 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 1517 of 1981

Khemchand Koyalaji Gorme

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 14-10-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311, 311(2)

Citation : (1982) 2 BomCR 68 : (1982) 1 LLJ 398

Hon'ble Judges : M.P. Kanade, J;D.B. Deshpande, J

Bench : Division Bench

Judgement

Deshpande, J.—This writ petition is filed under Art. 226 of the Constitution of India challenging the simpliciter order of termination of his services by the State Government, i.e., respondent No. 1 and it arises out of the following facts.

2. The petitioner admittedly belongs to a community recognised as Scheduled Caste by the State Government. In 1964, the petitioner passed his M.A. examination with Political Science as his subject in higher second class. In November, 1965, he was selected by the Marathwada University as a research fellow. Sometime in July, 1969, he was appointed as a part time lecturer in an institution known as Azad College at Aurangabad. On 25-5-70, an advertisement appeared in the local newspaper that there was a vacancy of a lecturer in Political Science in the Government College of Arts & Science at Aurangabad. This advertisement was given by way of filling the post by local arrangement. The petitioner applied for such post and he appeared for selection before the Selection Board and was ultimately selected by the Selection Board for appointment as a lecturer in Political Science in the Government College of Arts & Science at Aurangabad. The Principal of the college, who is respondent No. 3 to this writ petition issued an order of appointment dated 27-6-70 to the petitioner and it is produced at original page in the additional paper book. The petitioner was informed that his appointment was on purely temporary basis and his services could be terminated at any time without any notice. The petitioner

accepted this appointment by virtue of his letter dated 29-6-70, produced at Ext. E B to this petition. By this letter, the petitioner informed the principal that he would be joining the College from 1-7-70 as a lecturer and the terms & conditions mentioned in the appointment letter were acceptable to him. Accordingly, the petitioner joined the services on 1-7-70.

3. It appears that sometime in the year 1980, the petitioner obtained degree in Ph.D in Political Science from Marathwada University.

4. In 1973, the Maharashtra Public Service Commission (hereinafter referred to as MPSC) issued an advertisement for four posts of lecturers in Political Science and out of there four posts was reserved for candidate belonging to Scheduled Caste. The advertisement issued by MPSC is not produced but it appears that the advertisement showed that the selected candidates were to be appointed in the first instance on probation for a period of 2 years. The petitioner was one of the applicants for this post. The petitioner appeared for interview before MPSC and accordingly the petitioner was selected as a suitable candidate for the posts of lecturer in Political Science. But before the petitioner was actually appointed by the State Government on the recommendation of the MPSC. A communication was addressed by the State Government to the petitioner, wherein there was a variation in respect of some of the terms & conditions of service. By virtue of letter dated 16-5-74 a copy of which is produced by the petitioner as Ext. E-3 along with the petition, the petitioner was informed by the State Government that although the post was advertised with a stipulation that the selected candidates would be placed on probation for a period of 2 years the State Government had revised the existing pattern of education and consequently there was a probability of reduction in existing number of teaching staff in the Colleges. The petitioner was, therefore, informed by the State Government that it was proposed by the State Government to appoint the petitioner on a purely temporary basis instead of on probationary basis for a period of 2 years and the petitioner was further informed that his services were liable to be terminated at any time if exigency arose. The petitioner was further informed by the State Government that if this term was acceptable to him then the Government might consider him for appointment. To this letter the petitioner sent a reply dated 24-5-75, a copy of which is produced by the petitioner as Ext. E-2. By this letter, the petitioner informed the State Government that the proposed appointment was acceptable to him and the conditions laid down in the office letter dated 16-5-74 would also be binding upon him. This letter was actually addressed Under Secretary in the Education Department. After this acceptance was received by the State Government, the petitioner was appointed as a lecturer in Political Science and the order of appointment is at page 40 of the paper book. The actual order is in Marathi, which is produced in additional paper book at page No. 13. The authenticity of the English translation, which is Ext. E-1, is not challenged and therein it is clearly mentioned that three candidates mentioned in the State Government Resolution were appointed as lecturers in Political Science in the time scale of Rs. 300-25-600 in the Maharashtra Educational Services Class II

College Branch from the date of acceptance of these posts. The petitioner is at Serial No. 3 in this Government resolution and he was appointed in the Government Arts & Science College at Aurangabad. Accordingly, the petitioner submitted his resumption report on 1-7-74 under his letter, a copy of which is produced at Ext. E-2. Thereafter the Principal of the College informed the Director of Education Maharashtra State by virtue of letter dated 4-7-74 that the petitioner had resumed his services. A copy of this letter is produced at Ext. E-4.

5. It appears that thereafter the petitioner served in the Government College of Arts & Science and the College Authorities were not happy with his teaching, etc, to the details of which, we shall come later on and, therefore, higher authorities were informed that the petitioner should be transferred from this College. It appears that the petitioner was thereafter in 1976 transferred in the same capacity to Rajaram College at Kolhapur. It appears further that the authorities of Rajaram College, Kolhapur were also not satisfied with the manner of the working of the petitioner and they also represented to the State Government that the petitioner should be transferred from Rajaram College. As a result thereof, the petitioner seems to have been transferred to the Government College of Arts and Science at Aurangabad in 1979. It appears further that in the Annual Confidential Reports submitted by the authorities to the Competent Authorities in this behalf, there were adverse remarks against the petitioner for the year 1975-76, 1977-78 and 1978-79. These adverse remarks were communicated to the petitioner in the order that the petitioner should show improvement. The petitioner not only denied all these adverse remarks against him but made representations to the the effect that the authorities were prejudiced against him and in one of his letters he went to the length of writing to the Director of Higher Education that one of his immediate superiors deserves to be transferred from this institutions.

6. During the process, on 19-4-79, the State Government issued a show-cause notice to the petitioner informing the petitioner that he was irregular in his attendance and was in the habit of taking leave frequently and was not taking interest in the teaching work at college. The petitioner was further informed that in the month of December, 1978, he had not taken a single lecture allotted to him and that even if he remained present in the college, he did not take lectures. The petitioner was further apprised of the college, fact that he had not sent his reply to the letter addressed to him by the Principal of the college asking for his explanation. The petitioner was further informed that he had refused to set a question paper for mid-semester examination. The petitioner was also informed that the Director of Higher Education had warned him but still he had not taken care to show any improvement. The petitioner was further directed to show cause within 15 days as to why disciplinary action should not be taken against him. A copy of this show-cause notice is produced at Ext. G-1. To this show-cause notice, the petitioner sent his reply dated 7-5-69, a copy which is produced at Ext. G-2. We shall come to the details later on but it appears that the matter was left at that stage only, and nothing happened between this date

and 24-4-81. On 24-4-81, the petitioner received a memorandum from the State Government under the signature of Under Secretary to the Government in Education Department and we shall reproduce the content of this memorandum as it is, this order which is impugned in this writ petition. This memorandum was as follows :

"Shri K. K. Gorme, lecturer in Political Science, Government College of Arts and Science, Aurangabad, is hereby informed that his services stand terminated from the 30th May, 1981 A.N. as they are no longer required. This should also be treated as an advance notice of termination of his services."

In pursuance of this letter, the Principal of the college informed the petitioner by virtue of letter dated 19-5-81 to hand over copy of charge report by 30-5-81. This is produced at Ext. C H-2 to this petition and along with this letter a copy of aforesaid Government Memorandum was annexed. Thus the services of the petitioner were terminated with effect from 30-5-81 A.N. and it is this order of termination of service which is challenged by the petitioner by virtue of this petition under Art. 226 of the Constitution of India.

7. Shri S. C. Bora, appearing for the petitioner, challenged the order of termination mainly on three grounds. His first ground was that the order of termination offends Art. 311(2) of the Constitution. His second ground was that the order of termination violates Arts. 14 and 16 of the Constitution and the third ground was that the order of termination was bad as it was issued mala fide.

8. Taking the first ground first, we first of all turn to the submission made by Shri Bora that the order of termination, offends Art. 311(2) of the Constitution. Now, it is not disputed that the petitioner was purely a temporary Government servant. It is also not disputed that the order of termination of service is an order simpliciter terminating the service of the petitioner without any stigma attached to him. It is also not disputed that the service of a temporary Government servant could be terminated by virtue of an order simpliciter terminating the service of a Government servant. According to Shri Bora, although this is ex facie an order of simpliciter termination of petitioner's service, it is not so and it is actually an order issued by way of punishment to the petitioner and hence according to Shri Bora it offends Art. 311(2) of the Constitution. In this behalf, Shri Bora placed heavy reliance upon the fact that a show-cause notice was actually issued to the petitioner in the year 1979 and he further urged that nothing happened between this date and the date of termination of service and, therefore, according to Shri Bora the order of termination of service is apparently by way of punishment and according to him the order of termination simpliciter is camouflage. Now it is an undisputed fact that the petitioner was appointed on a time scale. It is nowhere alleged by the petitioner in his petition and it is never submitted by Shri Bora in his submission before us that any increment of the petitioner was at any time withheld or postponed by the State Government dispute issuance of show-cause notice in 1979. It will, therefore, be legitimate to infer that dispute issuance of show-cause notice, the petitioner earned his

regular increment even after the show-cause notice was issued to him in his behalf. It is, therefore, clear that no action of any kind was taken against the petitioner in pursuance of show-cause notice issued to him and the matter actually seems to have been dropped at that stage. Hence the mere fact that show-cause was given to the petitioner in 1979 is not indicative of the fact that the order of termination issued in 1981 was by way of punishment and was in pursuance of the earlier show-cause notice issued in 1979. It is significant to note that even minor punishment of postponing or withholding of increment was not imposed upon petitioner in spite of the show-cause notice. It is, therefore, not proper to say that merely on account of issuance of show-cause notice, in 1979, a stigma is attached to the character of the petitioner by virtue of this order of termination simpliciter.

9. Now in this behalf, reference is made by Shri Bora to several rulings and in reply Shri B. S. Deshmukh, appearing on behalf of the State, has made a reference to one or two rulings. Now the first ruling in this respect to which Shri Bora invited our attention is the ruling of Parshotam Lal Dhingra Vs. Union of India (UOI), Now in a later decision, Supreme Court itself has summarised the principles laid down by it in Dhingra's case cited supra and this would be appearance from the decision in State of U.P. and Others Vs. Sughar Singh, In para 9 of this ruling, these principles are summarised and there can hardly be any quarrel about the proposition of law that is laid down by the Supreme Court in Dhingra's case. Supreme Court has clearly laid down that Art. 311 makes no distinction between permanent and a temporary post and extends its protection equally even to persons holding temporary posts. It further shows that Article 311 is available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is further apparent that if termination of service is not by way of punishment, Art. 311(2) is not attracted. Then, therefore, other propositions do not really arise for decision in the present case. The next ruling on which Shri Bora placed reliance is that of The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, . In this ruling Supreme Court has laid down tests for applicability of Art. 311 and Supreme Court has further pointed out that the impugned order need not necessarily referred to the stigma attributable to the conduct of Government servant and the Supreme Court has further laid down that the circumstances attendant on impugned order are relevant. The observations of Supreme Court are as follows :

"For applicability of Art. 311 of the Constitution it is not necessary that there should be express words of stigma attributable to the conduct of Government servant in the impugned order. There is no rigid principle that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government officer it must be held to have been made in the ordinary course of administrative routine and the Court is debarred from looking at all the attendant circumstances to discover whether the order has been made by way of punishment. The form of order is not conclusive of its true nature and it might merely be a clock or

camouflage for an order founded on misconduct. It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order."

These are only general observations laying down principles of law in this case. The next ruling is *Madan Gopal Vs. State of Punjab*, . In that case, it was held by the Supreme Court that Art. 311(2) applied to the facts of that case and it was further found that no reasonable opportunity was given to the employee who could not be dismissed from the service. Then there is a next ruling in *Madan Gopal Vs. State of Punjab*, . In this ruling following facts are disclosed. One Bhup Singh was appointed as Sub-Inspector of Police on temporary basis in 1957. Bhup Singh was discharged from service on 13-7-57 by virtue of order of termination of his service. This order of discharge was challenged by Bhup Singh by virtue of a writ petition which was allowed by Allahabad High Court, on 4-8-1959. In pursuance of this decision of the Allahabad High Court Bhup Singh was reinstated in service on 15-12-59. Thereafter, on 21-1-60 service of Bhup Singh was terminated by the Deputy Inspector General of Police, Agra Range, Agra, who passed the order terminating the services of Bhup Singh on the ground that they were no longer required. Bhup Singh's service was terminated on payment of one month's salary in lieu of notice, under the general rules for termination of services of temporary Government servant. Bhup Singh thereafter filed a suit for declaration that the order dated 21-1-60 was illegal and was void. The Supreme Court held that the order terminating the service had not been made by way of punishment but was an order of termination simpliciter passed in accordance with the rules applicable to temporary Government servants. The Supreme Court further observed that if this order was attributed to the complaint against Bhup Singh concerning his conduct relating to one Fulmati it was open to the Deputy Inspector General of Police to take this circumstance in this case into account for the purpose of considering the suitability of Bhup Singh for continuing in service. The Supreme Court further pointed out that there was nothing to prevent the D.I.G. from deciding that instead of instituting disciplinary proceedings against Government servant, he should consider whether Government servant was suitable for retention in service or not. It will, therefore, be seen that in spite of earlier order of discharge, which was set aside by the High Court in a writ petition, the Supreme Court held that the subsequent order of termination simpliciter issued about one month and 5 days after his reinstatement was a simple order of termination and, therefore, the Supreme Court allowed the appeal filed by the State Government and reversed the decision of the Court below, which allowed the writ petition filed by Bhup Singh. It is significant to note that this order was passed in the background of the fact that the petitioner's earlier discharge order was set aside by the High Court and it is

also significant to note that Bhupsingh's conduct with one Fulmati was also concerned by way of consideration of the fact whether he should be continued in service or not.

10. Then Shri Bora relied upon a decision of the Supreme Court in *The Regional Manager and Another Vs. Pawan Kumar Dubey*, . In that ruling order of reversion was challenged and the Supreme Court has pointed out that in the facts and circumstances of that case, order of reversion was violative of Art. 311(2) of Constitution. In this ruling the Supreme Court has considered in detail the implications of the observations made by Supreme Court in *Sughar Singh's* case (supra). It will, therefore, appear that on the facts and circumstances of this case, Supreme Court held that the order of reversion was violative of Art. 311(2) of the Constitution. Pawan Kumar was reverted from the post of Senior Station Incharge to his substantive post of Junior Station Incharge. Then the next ruling on which Shri Bora placed reliance is the ruling of *S.P. Vasudeva Vs. State of Haryana and Others*, . Shri Bora placed reliance upon this ruling in order to show that Court can go behind the order to find out whether the order that is passed is by way of punishment etc. This principle of law was never in dispute. Then Supreme Court observed as follows :

"Where an order of reversion of a person who had no right to the post, does not ex facie that he was being reverted as a measure of punishment or does not cast any stigma on him, the Courts will not normally go behind that order to see if there were any motivating factor behind that order."

"The Supreme Court observed that the whole position in law was confusing. It is time that the whole question was considered de novo and it would be better for all concerned and avoid a lot of avoidable litigations if it should be held that reversion of a probationer from a higher to a lower post, or the discharge of a probationer, or the discharge from service of a temporary servant cannot be questioned except on the basis of mala fides in the making of the order."

And lastly, Shri Bora placed reliance upon a Division Bench ruling of this Court in *Manik v. State of Maharashtra*, 1979 M. L.J. 828. In this ruling the Division Bench of this Court took a resume of all the decisions of the Supreme Court and Division Bench and further pointed out that Article 311 is not attracted to such cases where unsatisfactory work or conduct merely furnishes the motive and not the basis for the order. As against this, Shri Deshmukh placed reliance upon a decision of Supreme Court in *State of Maharashtra v. V. R. Saboji* : (1979) IILLJ393SC . In this ruling also it is clearly observed by the Supreme Court that even in cases of temporary or officiating Government servants, their services cannot be terminated by way of punishment casting stigma on them in violation of the requirements of Art. 311(2) of the Constitution. Further observations of the Supreme Court regarding the nature of appointment of Saboji are not relevant for our consideration in this case.

11. Then there is still one more ruling and it is *Bishan Lal Gupta Vs. The State of*

Haryana and Others, Therein Supreme Court observed as follows :

"Where the intention behind an inquiry against a probationer was not to hold a full departmental trial to punish but a summary inquiry to determine only suitability to continue in service of the probationer Sub-Judge and the probationer was given ample opportunity to answer in writing whatever was alleged against him in show-cause notices, the innocuous order of termination following such summary inquiry could not be said to be an order of punishment which entitled him to a full-fledged departmental enquiry contemplated by Art. 311. If, in such a case, the innocuous order involved some reflection on the capabilities of the probationer, it could not be helped. There should be at least some difference, as to the nature of or the depth of the inquiry to be held as between a probationer whose services can be terminated by a notice and a confirmed Government servant who has a right to continue in service until he reaches a certain age. It is true that neither can be "punished" without a formal charge and inquiry. But, a less formal inquiry may be sufficient to determine whether a probationer who has no fixed or fully formed right to continue in services (treated in the eye of law as a case of "no right" to continue in services) should be continued. A confirmed Government servant's dismissal or removal is a more serious matter. This difference must necessarily be reflected in the nature of inquiries for the two different purposes".

12. As a result of consideration of all these rulings, it is apparent that if the misconduct of the servant is the very foundation of the order of termination, then such an order can be challenged but if the misconduct of the concerned Government servant is merely a motive for the termination of his services then such an order cannot be challenged in the Court of law. In the instant case, there is nothing to show that the alleged misconduct of the petitioner, on the strength of which, show-cause notice was issued to him in 1979, was the foundation of the order of termination of services issued in 1981. We have already alluded to the fact that the petitioner was appointed in a regular time scale and we have also alluded to the fact that the petitioner had never alleged despite the issuance of show-cause notice to him, his increment was ever withheld by the State Government. It, is, therefore, legitimate to infer that even in spite of issuance of show-cause notice 19-4-79, the petitioner was allowed to earn his increment even after that date and hence it cannot be said that the issuance of show-cause notice had any relation whatsoever to the order of termination of service.

13. It is apparent that the petitioner was informed by letter dated 27-8-78 by the Directorate of Educational Department that the petitioner was irregular in the matter of taking lectures and in attending the college resulting in adverse effects on studies of student and that the petitioner should take care to see that he attended the lectures regularly and did not give any scope for any complaint in future. The petitioner was further informed that in case of repetition of complaint, stern action will be taken against him. It is also clear from two other letter which are dated 13-9-79 and 19-5-79 that the petitioner again repeated

the same old story as before. We shall refer to these letters in detail later on but it is clear from all these facts that the issuance of show-cause notice has nothing to do with the order of termination issued about two years after the issuance of show-cause notice. Hence it cannot be said that the the alleged misconduct of the petitioner, which was disclosed in the Confidential Reports for the year 1975-76, 1977-78 and 1978-79 was the very foundation of order of termination of service. It was open to the State Government to take into consideration all these confidential reports for considering whether the petitioner was suitable for continuing in the Government service and on the basis of the material before it the State Government came to the conclusion that the petitioner was not suitable. In this behalf one more contention raised by Shri Bora deserves to be considered. According to Shri Bora in the affidavit filed on behalf of the State it is nowhere specifically mentioned by the State Government that the petitioner was considered unsuitable and, therefore, his services were terminated. It is true that in the exact words there is no such averment but in para 8 of the affidavit sworn by Under Secretary, it is clearly mentioned that the factual reports of the petitioner were recorded in the confidential reports of the petitioner and adverse remarks were also communicated to him with an advice to show improvement. It is further sworn by the Under Secretary that even though an advice was given to the petitioner to show improvement, no improvement was shown by him. It is further sworn by the Under Secretary that in spite of issuance of show-cause notice to the petitioner, no action was initiated against the petitioner. All these averments in the affidavit clearly go to show that all these facts are considered by the State Government while considering whether petitioner was suitable for continuing in service or not, and hence it can not be said that the alleged misconduct reflected in the confidential remarks was the foundation of the order of termination of the service and, therefore, petitioner has failed to prove that this order offends Art. 311(2) of the Constitution of India.

14. Now the next challenge is on the basis of Arts. 14 and 16 of the Constitution. According to Shri Bora, there are five other Government servants who are juniors to him in service and who are still retained in service although he himself is served with an order of termination of service. According to Shri Bora those other five junior Government servants were also similarly placed as he was placed in category of temporary Government servants and hence according to Shri Bora there was discrimination against the petitioner inasmuch as those five other junior Government servants are retained and the petitioner is served with an order of termination of service. In this behalf also, Shri Bora placed reliance upon some rulings. The first ruling in this behalf is of State of U.P. and Others Vs. Sughar Singh, In that ruling there was reversion of one out of several officers from the officiating posts to substantive posts and this reversion was on the basis of adverse entries in character roll. The only adverse entry in 1966 was that Sughar Singh was suspected to have got entries of date of birth and educational qualification altered on the authority of a fictitious certificate which had to be corrected later on with a severe warning. On the facts and

circumstances of that case, Supreme Court found that this alleged a ground was not at all existent and in this background it was observed by the Supreme Court that there was no reason whatsoever for discriminating the petitioner as against the several officers who were also in the officiating posts. In that ruling Supreme Court came to the conclusion that the order of reversion was no doubt an order which was passed by way of punishment, though all outward indications show that the order was a mere order of reversion. It will, therefore, be seen that in the facts and circumstances of that case, it was found that the order of reversion was discriminatory and hence it was struck down as it contravened Arts. 14 and 16 of the Constitution. Then Shri Bora placed reliance upon another decision of Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, In this ruling, Supreme Court in considered its earlier decision in *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, and in para 23 of this ruling, Supreme Court made the following observations after considering the observations of the Supreme Court in *Champaklal's* case. The following observations are very pertinent :

"The principle that can be deduced from the above analysis is that if the services of temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or a like reason which marks him off a class apart from other temporary servants, who have been retained in service, there is no question of applicability of Article 16."

So this is the principle that is deduced by the Supreme Court on the basis of earlier ruling of the Supreme Court and these observations clearly go to show that if petitioner is a class by himself, then there was no question of applicability of Art. 16 to his case. We shall point out from the fact of this case that the present petitioner has been a class by himself and the record shows that the petitioner as marked himself off a class apart from the temporary servants, who have been retained in service. Incidentally, we may state here that those five junior Government servants are not made parties to this petition. Shri Bora placed heavy reliance upon *Belliappa's* case but the facts in that case were totally different. There was nothing against *Belliappa* and the only defense of the Government was that *Belliappa* was a temporary Government servant and the Government had a right to terminate his services. Supreme Court pointed out that there was no reason whatsoever for terminating the services of *Belliappa*. There was no record to show that there was any reason whatsoever to consider that *Belliappa* was unsuitable for his post and all these facts led Supreme Court to hold the order as violating Articles 14 and 16 of the Constitution. In the instant case the conduct of petitioner was unsatisfactory and he was unsuitable for service also.

15. In this behalf, Shri Bora placed reliance upon *Pawan Kumar's* case cited supra. He placed reliance upon para 9 of this ruling. This has a reference to the *Sughar Singh's* case cited supra wherein 200 officers junior to *Sughar Singh*

were still retained in the officiating cadre whereas Sughar Singh was reverted to his substantive post. In this ruling, Supreme Court observed as follows :

"Before Art. 16 is held to have been violated by some action, there must be a clear demonstration of discrimination between one Government servant and another similarly placed, which cannot be reasonably explained except an assumption or demonstration of malice in law or malice in fact."

It will, therefore, be seen that on the basis of all these facts of this case, observations are made by Supreme Court in Pawan Kumar's case. In this respect, Mr. Bora placed reliance upon a Division Bench ruling of this Court in Manik's case (supra) and he placed reliance upon Head Notes C and D. In Head Note C it is observed as follows :

"No question of discrimination arises in case where services are terminated on account of unsatisfactory record. If, however, allegations as to unsatisfactoriness is demonstrated to be pretended or baseless, the act becomes arbitrary and open to a conduct of discrimination."

Mr. Bora's reliance was on the latter part of these observations. In Head Note D it is stated that although there is a contract permitting termination of service without reasons, still services cannot be terminated arbitrarily.

16. With this background, we now turn to the facts of this case. In the confidential remarks for the year 1975-76, there are following remarks against the petitioner and these remarks are communicated to the petitioner by the Director of Higher Education by virtue of his letter dated 15-8-79. The remarks are reproduced at page 90 of the paper book, which are as follows :

i) Industry and application : Poor

ii) Relations with colleagues and the public : Poor

iii) General Assessment : After having displayed some degree of tolerable performance in the past he has this year retreated into slackness, carelessness, irresponsibility in a fair measure constantly out of bounds. Surprisingly, the students do not complain against his irregularities for he too on the pattern of another colleagues at this Department has started fortifying himself by forging a clique a clienteles and a racket among them. He is constantly cutting classes, often he is not available when required for the departmental work, and is not seen in the college, even during his schedule lecture (aside, he seems to be a liquor addict and sometimes appears to be intoxicated when he comes to the college) ".

Then we turn to the confidential remarks for the years 1977-78 and a copy of the same is annexed by the petitioner himself to the petition as Ext. F-2. These remarks are as follows :

"I) Industry. - does not show any application.

II) Relations with colleagues and the public - His relations with department were always strained.

III) General Assessment - He should strive more to improve his teaching and behavior with his Head of the Department.

IV) Behavior with the students - I think there is no rapport between him and his students."

These adverse remarks are also communicated to the petitioner and then this takes us to the adverse remarks for the years 1978-79 and a copy of the same is annexed to the petition as Ext-F-4. These remarks are as follows :

"I. Industry and application - Very poor.

II. Relation with colleagues and the public - Not cordial.

III. General Intelligence - He lacks initiative, drive and judgment.

IV. General Assessment - i) He is always in the habit of remaining absent on duty without prior intimation to the authorities.

ii) He does not take any interest in his teaching and guiding the students in tutorial classes, etc. He has not completed the portion as per syllabus and the allotted paper.

iii) He does not plan and prepare the lectures which adversely affect the general discipline in the class room.

iv) Many times is found drunk in the college.

v) He may be advised to indicate the basic qualities of a teacher in him."

These confidential remarks, therefore, clearly indicate that the petitioner was a class by himself and the petitioner did not show any improvement whatsoever in spite of communication of adverse remarks to him by the concerned authorities. It will be seen from the record that the petitioner has annexed to this petition as Ext. F-1 a copy of letter addressed to the Principal, Rajaram College on 12-9-77. This was in reply to the confidential letter No. 3427 dated 3-9-77 by the Principal to the petitioner. However, a copy of this confidential letter is not annexed to the petition. In addition to denying the allegations made against him, the petitioner went to the length of informing the Principal that one Mr. Kapse, who was actually a competent person to pass remarks against the petitioner, could not be treated as Competent Authority at all and he proceeded to give reasons for the same. This itself goes to show the quarrel some nature of the petitioner. Whether Mr. Kapse was actually competent to hold that post or not is the lookout of the Government and not of the petitioner, who was subordinate to Mr. Kapse. In his letter dated 17-8-78, the petitioner went to the length of informing the Director of Higher Education that this Kapse deserves to be immediately transferred from this place. Then while giving his reply to the communication of confidential remarks for the years 1978-79 the petitioner intimated the Under Secretary to

the Government that the C.R. for the years 1978-79 is totally baseless, imaginary and written with malign intention and, therefore, are not acceptable to him. He further informed the Under Secretary that he was a M.P.S.C. candidate and the exact line is as follows :

"I request you to note this seriously as I am a M.P.S.C. candidate."

It is not known what speciality was attached to him because he was selected by M.P.S.C. The appointment of a lecturer was positively to be made on the selection made by M.P.S.C. and, therefore, there was nothing special in the selection of the petitioner by the M.P.S.C. but the petitioner went to the length of pointing out that he was a M.P.S.C. candidate. There is no specific denial in this letter about the allegations that he was many times found drunk in the college. Similarly, while sending his reply dated 7-5-79, a copy of which is annexed at Ext. G-2, the petitioner has made allegations even against the Principal. Mr. Bora went to the length of saying that these persons had formed a racket against the petitioner. We are unable to accept this submission. It is clear from the record that the Head of the Department and the Principal of the Government Arts and Science College and similar authorities in Rajaram College have reported against the petitioner. The Government Arts and Science College is situated at Aurangabad, whereas Rajaram College is situated at Kolhapur. There is absolutely no material on record to infer that all of them must have formed a racket against the petitioner.

17. Then the record shows that on 19-1-79, i.e., before issuance of show-cause notice dated 19-4-79, Director of Higher Education had written to the Secretary, Education Department about this petitioner. The Director informed the State Government that the Principal of the college was asked to observe petitioner's work and to submit special report by the end of first term. Accordingly, Principal submitted confidential report on 15-1-79 and the Director further invited attention of the State Government to the fact that the petitioner did not show any improvement and was still irregular and did not take interest in teaching. It is thereafter that the show-cause notice was issued to the petitioner and the matter of show-cause notice was left there only without taking any further action. Presumably, the petitioner was time to improve in this respect but the record shows that the petitioner did not improve. The record shows that on 13-9-79. Dr. Verma, who was Principal of the college, informed Director of Higher Education about the manner of working of the present petitioner. This letter is as follows :

"To,

The Director of Higher Education, Maharashtra State, Pune-1

Subject : Disobedience in discharge of duties-by Shri K. K. Gorme, Lecturer in Political Science of this college.

Sir,

In continuation of this office confidential letter No. EST/79-80/2695 dated 1-9-1979 on the subject mentioned above, I have to state that inspite of repeated oral/written instructions, Shri Gorme is not engaging classes assigned to him as per Time-table. Even upto this date he has not engaged a single class, Due to this irregularity, studies of the students are suffering a lot. Moreover, he is not attending college punctually. Under these circumstances, it requested to transfer him elsewhere so that the students should not suffer from their studies.

Yours faithfully, Sd/- (Dr. S. S. Verma), Principal, Govt. College of Arts and Science, Aurangabad."

The record further shows that on 19-5-79, Principal. Rajaram College, informed the Director of Higher Education about the unsatisfactory working of the petitioner. The letter runs into about 6 paragraphs and therein the Principal informed the Director that the petitioner's behaviour was irresponsible and that the petitioner was always irregular in attendance and the Principal further intimated the Director that he had personally observed about this irregularity and principal has affirmed that he had no ulterior motive in communicating this fact to the higher authorities. The Principal further informed that in December 1978, petitioner did not engaged himself even in a single lecture and that he himself has ascertained this fact from the Head Department. The Principal also affirmed that the petitioner was in a habit of speaking-lies. The Principal has informed that the petitioner failed to set up question paper for mid-semester. In this behalf, it is the contention of the petitioner that the student by name Mr. Patil did not attend the lecture whereas Principal reported to the Director that because the petitioner did not take any lecture student Mr. Patil could not attend lecture. It will, therefore, be seen that inspite of the fact that no action was taken against the petitioner in pursuance of show cause notice and inspite of the fact that the petitioner repeatedly given chance to improve, the petitioner did not show any improvement whatsoever and this entire record clearly goes to show that the petitioner has marked himself as a class and it cannot be said that the order of termination violates Arts. 14 and 16 of the Constitution of India and, therefore, there is no force in this contention.

18. Lastly Mr. Bora contended that the order is violative because it is a mala fide order. We have already pointed out from the record that there are no mala fides whatsoever and on the other hand a spirit of tolerance is shown by the authorities and the State Government in bearing with the petitioner for such a long period even after several adverse remarks such as not attending to duties regularly, being under influence of liquor were communicated to him and, therefore, we are satisfied that there are no mala fide.

19. The result is that there is no merit in this writ petition and it deserves to be dismissed and is accordingly dismissed. Rule is discharged but in the circumstances, there will be no order as to cost.