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**(1966) 06 KL CK 0016**  
**In the High Court Of Kerala**

Madhavan (K.)

APPELLANT

Vs

Directorate of Plant Protection, Quarantine and Storage and  
Others

RESPONDENT

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**Date of Decision :** 28-06-1966

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** (1968) 1 LLJ 51

**Hon'ble Judges :** V.P. Gopalan Nambiyar, J

**Bench :** Single Bench

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**Judgement**

V.P. Gopalan Nambiyar, J.—The petitioner was appointed as sweeper in the Plant Quarantine and Fumigation Station in Cochin with effect from 8 January 1968 by the Plant Protection Adviser to the Government of India, Directorate of Plant Protection, Ministry of Food and Agriculture. Exhibit P. 1 is the office order appointing the petitioner. By Ex. P. 2 dated 17 December 1964 the petitioner was informed that his services were terminated at the expiry of one calendar month from the date of the notice, under Rule 6 of the Central Civil Services (Temporary Service) Rules, 1949, to be referred hereafter as the Temporary Service Rules. In this writ petition, the petitioner seeks to quash Ex. P. 2 and to have it declared that the petitioner continues in service.

2. That the order of termination, Ex. P. 2, having been issued under the Temporary Service Rules, did not involve any violation of the constitutional guarantee under Article 311 of the Constitution, was freely admitted he only point urged on behalf of the petitioner was that Ex. P. 2 had been issued by an authority who had no Jurisdiction to issue the same under the aforesaid rule. The Temporary Service Rules being the statutory rules, that any contravention of the same would be redressable in these proceedings, was a matter on which again there was no controversy.

3. The only point that then arises for consideration is whether the termination was in accordance with Rule 5 of the Temporary Service Rules, The said rule

reads:

5. (a) The service of a temporary Government servant who is not in Quasi-permanent service shall be liable to be terminated at any time by notice in writing given either by the Government servant to the appointing authority or the appointing authority to the Government servant.

(b) The period of such notice shall be one month unless otherwise agreed to by the Government and by the Government servant:

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or, as the case may be, for the period by which such notice falls short of one month or any agreed longer period ;

Provided further that the Compensatory (City) and House-rent Allowances, where admissible, shall be payable on the expiry of the notice-period and after it is certified by the competent authority that the Government servant continued to reside during the period of notice at the station where he was last employed, notwithstanding the fact that he was not expected to return to duty at that station.

The term "appointing authority" is not defined in the Temporary Service Rules. But it is claimed for the petitioner that the definition of the said term in the Central Civil Services (Classification, Control and Appeal) Rules, 1957 (referred to for brevity as the Control Rules), would be attracted. The said definition is contained in Clause 2(a) of the Control Rules which reads as follows:

2. Interpretation.-In these rules, unless the context otherwise requires-

(a) "appointing authority" in relation to a Government servant means

(i) the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, or

(iv) where the Government servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that service or to any grade in that service or to that post.

"whichever is the highest authority".

(Italicizing mine.)

4. The counsel for the petitioner submitted that the definition of the term "appointing authority" in the Control Rules, must be read into the Temporary Service Rules; while the counsel for the respondent demurred to the said proposition. Rule 3 of the Control Rules states that those rules shall apply to all Government servants except the six excepted categories listed in Clauses (a) to (f) thereof. Clause (e) is material in the present context, and Rule 3 read along with Clause (e) reads:

3. Application.-(1) These rules apply to all Government servants except-

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) Persons for whose appointment and other matters covered by these rules special provision is made by or under any law for the time being in force, in regard to the matters covered by each law; and

(f) \* \* \*

5. The above rule seems, to my mind, to make the application of the Control Rules comprehensive to all Government servants and Clause (a) thereof excludes the operation of the Control Rules, only in regard to the matters covered, for instance, by the Temporary Service Rules. The definition of the term "appointing authority" is not covered by the Temporary Service Rules, and to that extent, therefore, going by the language of Rule 3(e) of the Control Rules, the latter would seem to have application. Yet another Indication is also available in the Control Rules that it would be applicable even to persons governed by the Temporary Service Rules. Sub-clause (viii) to the explanation to Rule 13 of the Control Rules provides that the termination of services of a temporary Government servant in accordance with Rule 5 of the Temporary Service Rules is not a penalty within the meaning of the rule.

6. It seems to me that the definition of the term "appointing authority" contained in Rule 2(a) of the Control Rules would control the provisions of the Temporary Service Rules. So understood, the "appointing authority" is the highest among the authorities mentioned is Sub-clauses (i) to (vi) of Rule 2(a) of the Control Rules. It is admitted that since the date of Ex. P. 1. and at present the appointing authority in respect of the petitioner is respondent 1, namely, the Chief Administrative Officer. It is admitted also that the authority which actually appointed the petitioner under Ex. P. 1 is higher in rank than respondent 1. On the terms of Section 2(a) of the Control Rules, it should follow that respondent 1 is not the "appointing authority" and that he had no Jurisdiction to terminate the services of the petitioner. I hold accordingly.

7. Counsel for respondents tried to avoid this result by relying on Part III of the

Control Rules dealing with "appointing authorities." From the provisions of the said part, there can be little doubt that the power to make the appointments can be delegated by the President by general or special order (see Rule 10). In this particular case, It is claimed, and it is not denied, that the President had done so in favour of respondent 1. By reason of the provisions of Part V of the Control Rules, and in particular, of Rule 14 thereof, the "appointing authority" or the authorities specified in the schedule are competent to impose any of the penalties specified in Rule 13. Both by reference to the President's power of delegation under Rule 10 and by reference to Rule 14 and the schedule to the Control Rules, the power to terminate in the present case, is claimed for respondent 1. There seems to be a fallacy underlying this argument. Termination of services of a temporary Government servant In accordance with Rule 5 of the Temporary Service Rules is excluded expresses verb is from the scope of penalties under Rule 13, by Sub-clause (viii), to the explanation to the said rule, in the control Rules. It follows therefore that the provision of Part III or V of the Control Rules read with the schedule thereof cannot be stretched so as to spell out the expectances of a power in respondent 1 to terminate the service of the petitioner in the present case. Rule 2(a) of the Control Rules, which in my view would cover the proceedings under the Temporary Service Rules, cannot be denied its full effect and implication, and respondent 1 was therefore not competent to terminate the service of tae petitioner. I would therefore quash Ex. P. 2.

8. The petitioner has prayed for a declaration that he continues in service. This should follow the quashing of Ex. P. 2 and it is unnecessary to grant a declaration to that effect. The petitioner's counsel prayed for relief of reinstatement at the stage of arguments. I must decline to grant such a relief especially in view of the provisions of the proviso 1 to Rule 5(6) of the Temporary Service Rules.

9. I allow the writ petition and quash Ex. P. 3. There will be no order as to costs.