

(1995) 05 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : CWP No. 191 of 1981

Milap Chand and Others

APPELLANT

Vs

Hon"ble Chief Justice and Others

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Constitution of India, 1950 — Article 14, 16, 235, 311, 311(2)

Citation : (1995) 2 ILR HP 970

Hon'ble Judges : S.N. Phukan, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Indar Singh, General for Respondent 4 and Chhabil Dass, for Respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—We propose to decide both these writ petitions (Civil Writ Petition No. 191 of 1981 and Civil Writ Petition No. 222 of 1981) by a common judgment since the questions involved for determination in both of them are common in nature, content and result. However, reference to certain facts pertaining to individual cases is being made where-ever it has been found relevant and necessary.

CWP No. 191 of 1981

2. Petitioner-1 joined as Naib-Nazir in the Court of Sub Judge, Kullu on November 27, 1971. In August, 1974 he was promoted as Steno-typist in the Court of Sub Judge (2), Shimla and worked in that capacity in other Courts as well (Annexures P-1 and P-2). Petitioner-2 joined as a Process Server in the Court of Senior Sub Judge, Kalpa on June 23, 1970. He was promoted as Naib-Nazir on December 11, 1979 in the Court of Senior Sub Judge, Shimla (Annexures P-3 and P-4). Petitioner-3 was appointed as Clerk-cum-Typist in the Court of Senior Sub Judge, Bilaspur on July 17, 1976 (Annexure P-5). Petitioner-4 was appointed as Ahalmad in the Court of District & Sessions Judge,

Mahasu & Kinnaur Districts on February 23, 1971 and thereafter became Reader. He also worked as Steno-Typist in the Court of Sub Judge (2), Shimla (Annexures P-5/A to P-7). Petitioner-5 was appointed as Ahalmad in the Court of Judge Small 1-Causes, Shimla in October, 1971. He worked there till September 12, 1980 when he was appointed Clerk-cum-Typist in the Court of Sub Judge, Theog (Annexure P-8).

CWP No. 222 of 1981

3. Petitioner-1 was appointed as Process Server and Orderly in the Court of Senior Sub Judge, Dharamshala on May 4, 1970. He worked in various capacities in the Courts of District Judges, Mandi and Dharamshala (Annexures P-1 and P-2). Petitioner-2 was appointed as Clerk on April 4, 1980 and worked as Execution Clerk also (Annexures P-3 and P-4). Petitioner-3 was appointed as Process Server in the Court of Senior Sub Judge, Chamba on May 24, 1979 (Annexure P-5). Petitioner-4 was appointed as Chowkidar in the Court of Sub Judge, Palampur on September 30, 1974 and worked as Orderly also in the Court of Sub Judge, Dehra (Annexures P-5 and P-6). Petitioner-5 was appointed as Process Server on March 1, 1976 (Annexure P-7).

4. The Petitioners in both the petitions submit that during the course of their employment, their work and conduct had been satisfactory and to the satisfaction of their superiors. The Non-Gazetted Employees of Himachal Pradesh went on strike in support of their demands on September 9, 1980. The employees of Judiciary in the State of Himachal Pradesh also joined the strike with the employees of Himachal Pradesh Government. The Petitioners also took part in the strike from various dates. They submit that the Full Court of the Himachal Pradesh High Court took a decision during this period that the striking temporary employees of the Judicial Department be terminated forthwith by sending them one month's salary according to the rules. The employees who had not been confirmed against the posts to which they had been promoted, were to be reverted to their original posts and subjected to disciplinary action. The decision of the High Court was conveyed by the Registrar to the District & Sessions Judges in the State and it was also affixed on the notice board for information of all concerned (Annexure P-8 in CWP No. 222/81). Since the Petitioners and various other employees of District and Sessions Divisions Shimla and Kangra went on strike, their services were dispensed with by various orders like Annexure P-10 (in CWP No. 191/81) and Annexures P-9, P-10/1 to P-10/4 (in CWP No. 222/81) in the months of September and October, 1980.

5. The strike continued upto 10th October, 1980 when the Government of Himachal Pradesh entered into an agreement with the Negotiation Committee of Joint Action Committee of H.P. Non-Gazetted employees and Trade Unions. The following decisions were taken (Annexure P-11):

S. No. Item. Decision. 1. Release of Hill Agreed in principle. Compensatory allowance Arrears for the year w.e.f. 1.1.78 on 1979 will be paid in revised pay

scales. cash in two installment two instalments. One in once in current financial current financial year year and second in April 1981. Payment in respect of the year 1978 will be debited to the GPF accounts but this will be announced within two months. 2. Restoration of old Agreed would be decided CA rates at Kulu, in negotiation. Dalhousie and Distt. Solan areas. 3. Cancellation of all Agreed. In many cases transfers of office list of transfer of bearers active, office bearers/activists workers of the will be supplied by the Federation and its Federation. Extended affiliated units so halt will be regularised by as to restore position the head of office. as on 1.4.80. Period of absence from date of relieving shall be treated as period of extended halt be vested in head of office as a special case. 4. All court cases are 1. All court cases will withdrawn and all be withdrawn. those arrested in 2. All employees in connection with NGO's jail will be released agitation are released unconditionally. unconditionally and 3. Position as on Sept. conviction orders to 4th,1980 will be be got vacated by the restored. Govt. including Judiciary.

4. All punitive action taken earlier to Sept. 4, 1980 in connection with present agitation will also be withdrawn. 5. Convicted employees will also be taken in service without pre judice to Court pending appeals. 6. Employees involved in Shri Krishan Dutt Sultanpuri case will 6. Employees involved in Shri Krishan Dutt Sultanpuri case will not be harassed by taking any departmental punitive action. to be seen in 7. In case of employees negotiation of the Judiciary department, the Hon"ble CM. will take personal interest to vacate their victa- misation so as to personal interst to of Sept.4,1980. 5. Regularisation of i) Period w.e.f. 8.9.80 of strike period. to 30.9.80 will be treated period spent on duty ii) The period w.e.f. 1.10.80 onwards will be treated period leave of the kind due. iii) No monetary loss will be caused to any section of employees for the strike period.

iv) This decision will apply to all including including workcharge and staff of local bodies, Corporation and board of H.P. 6. Regular meetings of Agreed. NGO's shall be held quarterly under the chairmanship of Cabinet Minister. 7. House rent upto block Negotiable, level by allowing relaxation in popul- ation bar 8. Functioning of Agreed and will be review committee. presided by a senior Cabinet Minister. 9. Implementation of will be reviewed and package deal agree- implemented mentand other decision alongwith assurances to order transfers onlyin accordance with clared transfer policy. 10. Recognition of Agreed. Federation. 11. Time bound impleme- Agreed. ntation sub committee. ...Sd/- Shiv Kumar ...11.10.80.

6. The State Government honoured the agreement and re-instated the striking employees but the agreement was not implemented by the Judiciary with respect to its employees. The Petitioners and other employees filed appeals challenging the termination orders since their services had been terminated for their going on strike. Their appeals were considered by the Hon"ble Chief Justice but were rejected for the reason that the Petitioners had gone on strike. Before rejecting

their appeals(Annexures P-12/1 to P-12/5 in CWP No. 191/81), and Annexures P-11/1 to P-11/5 in CWP. No. 222/81), the service records of the Petitioners and other employees must have been examined. Orders of dismissal of these appeals were conveyed to the Petitioners(Annexures P-13/1 to P-13/5 in CWP. No. 191/81, and Annexures P-12/1 to P-12/5 and P-13 in CWP. No. 222/81).

7. The Petitioners filed review petitions (Annexure P-14 in CWP. 191/81, and Annexures P-14/1 to P-14/6 in CWP. 222/81. These review petitions were also rejected (Annexures P-15/1 in CWP.191/81, and Annexures P-15/1 to P-15/3 in CWP. 222/81). Certain Petitioners sought the reasons for terminating their services and rejection of their appeals and review applications but the same were not supplied. However, they were permitted to copy the documents and from some of them it could be ascertained that the ground for rejection was that the Petitioner(s) had not tendered apology and had claimed a right to go on strike. Although other Petitioners are out of service, Petitioner 2 has been appointed as Process Server against leave vacancy of Smt. Vijay Kumari Sood in the Court of Senior Sub Judge, Shimla(Annexure P-20 in CWP. 191/81).

8. The Petitioners further submit that orders of dismissal have been passed against the temporary employees of the Judiciary in the State for the reason that they went on strike and for the same reasons their appeals and review petitions have been dismissed. They believe that the Hon"ble Chief Justice had decided that all temporary employees who had less than two years service, should not be retained in service and their appeals should be dismissed and the employees whose confidential reports were good, should be retained in service and their appeals may be accepted and those of the others dismissed. After settling the principles for deciding the appeals, individual cases were disposed of by the Hon"ble chief Justice. But while dealing with the individual cases, these principles have not been uniformly followed. Shri Gian Chand, Civil Ahalmad in the Court of Senior Sub Judge, Shimla and Shri Babu Ram, Process Server of the same Court had also gone on strike but they were not dismissed. Petitioner-1(in CWP.191/81) had outstanding confidential records while Petitioners-2,3 and 4 had good records with more than two years service, but they had been dismissed from service by way of punishment whereas the appeals of Sunder Singh, Ahalmad of Senior Sub Judge, Bilaspur, Virender Thakur, Nazir in the Court of District Judge, Nahan, Ram Dittu and Sewa Dass, Sweeper and Process Server with Senior Sub Judge, Bilaspur with adverse confidential records, had been retained in service. Sunder Singh had faced a departmental inquiry in which two increments were stopped and six months" salary was with-held. Further, the persons who were junior to the Petitioners, namely, Dhian Singh, Steno-typist in the Court of Sub Judge(1), Shimla and Surya Dev, Steno-Typist in the Court of Sub Judge(2), Shimla were retained in service. Similarly, Rajinder, Peon in the Court of Addl. District Judge , Kangra, Harnam Singh, Peon in the Court of Sub Judge, Palampur have been retained though they were junior to Petitioners Hari Ram, Pritam Singh and Dhani Ram(in CWP. 222/81). Satish Kumar and Ram Dass, Process Servers of District Judge, Kangra and Sub Judge, Palampur were

also retained. The action is, therefore, discriminatory and not sustainable.

9. The State Government had agreed when the strike was called off that the period of the strike would be regularised in the manner detailed in the agreement after taking back the employees and the same was implemented with respect to the State Government employees. Non-implementation of the agreement with respect to the employees of Judiciary is also an act of discrimination though both the classes of employees were similarly circumstanced. The Petitioners are also entitled to the benefits granted by the Government to its employees through letter of October 15, 1980 since the High Court has granted only a limited benefit (Annexures P-21 and P-22 in CWP. 191/81, and Annexures P-17 and P-18 in CWP. No. 222/81). During the strike of 1971, the staff of the Judiciary was treated as employees of the Government as per orders of the Government and the High Court (Annexures P-23 and P-24 in CWP.191/81), as such, both sets of the employees are entitled to similar treatment.

10. Consequently, the orders terminating the services of the Petitioners have been challenged on the ground that they are violative of Article 311 of the Constitution of India since the very basis and foundation for passing these orders was by way of punishment and they have been passed without holding an enquiry in accordance with law. They violate the principles of natural justice and provisions of the Central Civil Service(CCA) Rules inasmuch as no opportunity was granted to the Petitioners to defend themselves. They are discriminatory in nature since the Petitioners have not been treated like the State Government employees in recruitment, regularisation of the strike period etc. Further, uniform standard has not been applied while dealing with their appeals and review petitions, thereby violating Articles 14 and 16 of the Constitution of India. In addition, it is also alleged that the Respondents are estopped from going out of their undertaking and are bound to take back the Petitioners in service as per agreement with the employees.

11. Respondents 1 to 4 have filed their reply affidavits in this case though separately by Respondent No. 4. We first refer to the reply by Respondents 1 to 3 wherein it has been stated, inter alia, that all the Petitioners were temporary employees with no right to the posts as such they have no justification to assail the impugned orders. The Court would not go behind the orders of termination which ex-facie do not show that the terminations are by way of punishment as they do not cast any stigma nor do they ex-facie show that the services of the Petitioners were terminated on account of alleged mis-conduct on their part. Participation in the strike by the Petitioners may be a motive behind the passing of the orders but that is not the foundation of the orders and as such the same is not justiciable. Services of the Petitioners have been terminated in accordance with their terms of appointment by giving one month's salary in lieu of the notice.

12. Further it has also been submitted that the Petitioners themselves admit that they participated in the strike. To go on strike is not a Fundamental Right nor

even statutory right. The Petitioners having admitted that they went on strike, it constitutes mis-conduct. Having admitted the mis-conduct, holding of enquiry is not essential. The explanations given by the Petitioners were duly considered before they were rejected. Having availed the opportunity of appealing the action, complaint that they have not been heard in the matter is highly unsustainable.

CWP. No. 191/81

13. It has been stated that Petitioner-1 joined as Naib-Nazir in the Court of Sub Judge, Kullu but he was later posted in the Court of District Judge, Shimla from November 1, 1973 on his own request. Post of Steno-typist is not a promotion post. It is equivalent to the post of Copyist except that special pay of Rs. 25/- is paid to a person assigned the work of Steno-typist. The Petitioner was facing a departmental enquiry for the late deposit of amount of fine received by him in criminal case in the Court of Judicial Magistrate, I-Class (2), Shimla. Before the enquiry could be concluded, his services were terminated because he was a temporary employee.

14. Petitioner-2 has withdrawn from the petition vide Court order dated June 8, 1984. Petitioner-3 was only a temporary employee but it is denied that his conduct was satisfactory till the termination of his service. Petitioner-4 was appointed as Ahalmad in the Court of District Judge, Mahasu and joined on March 3, 1971. It has been denied that he was appointed as a Reader in August, 1980. He was transferred and posted as Reader to Sub Judge, Theog in the same pay scale and not by way of promotion. It is denied that the conduct of the official was satisfactory at the time of termination of his service. He was facing departmental enquiry for his misconduct and negligence. Before the enquiry could be concluded, his services were terminated in terms of the service.

CWP. No. 222/81

15. Service particulars of Petitioner-2 have been admitted, however, it has been denied that his work and conduct was satisfactory all through. It has been admitted that there was strike of Non-Gazetted Officials from September 8, 1980. They decided to go on mass casual leave which itself was illegal and a mis-conduct under the Service Rules. The Petitioners also absented from duty for participating in this strike which was a mis-conduct on their part which has been admitted by them and they were not entitled to any regular enquiry under the Central Civil Service(CCA) Rules. It has been denied that the High Court had issued any instructions as alleged and the authenticity of Annexure P-8 has been denied. There were no instructions of the Full Court or the Hon''ble Chief Justice to the Registrar for conveyance in the form alleged by the Petitioners. Similarly, it has been admitted that the services of the Petitioners were terminated in terms of Rule 5 of the Central Services (Temporary Service) Rules, 1965 by the competent authority. The Petitioner denied service of the notice of termination, therefore, one month''s salary could not be tendered to them alongwith the same

but they could received the same at any time.

16. Any assurances given by the State Government to the Joint Action Committee or other persons were not binding on the High Court as the ministerial staff with the Courts in the State is a class by itself and as such the High Court has nothing to do with the undertaking given by the State Government. No assurance or undertaking was given by the High Court or its representative to its staff in the Subordinate Courts. Neither the Chief Justice nor any other authority of the High Court was associated in the aforesaid talks nor the High Court received any notice of demand or of the strike from any of the employees. Therefore, the alleged agreement, arrived at between the Government and the Non-Gazetted officials, could not be made applicable ipso facto to the employees of the Judiciary since it would amount direct interference in the control of High Court over its staff under Article 235 of the Constitution of India. Accordingly, such temporary employees, whose services had been terminated but had tendered unqualified apology and had given undertakings not to repeat it in the very first instance, were re-instated provided such employees had good record of service and had about more than two years of service. This policy was uniformly adopted by the Hon"ble Chief Justice vide his order dated October 29,1980(Annexure R-1/A). Thereafter, some of the employees had tendered their unqualified apology and their cases were considered again on merit and such persons who had tendered unqualified: apology and whose service record was satisfactory, were re-instated in service as against those whose record of service was not satisfactory. The orders of the Hon"ble Chief Justice in review cases of the Petitioners are also mentioned (Annexure R-1/B).

17. The appeals of the Petitioners were rejected after consideration on merit. The review petitions were also treated similarly. The Hon"ble Chief Justice considered their representations and went-through their confidential records so as to find their suitability to be retained in service. Temporary employees whose services are terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules,1965 in terms of their appointment, are not entitled to full-fledged enquiry as it is not required. During the consideration of review petitions, re-instatement orders of those persons who had tendered unqualified apology, had also given an undertaking not to repeat this mis-conduct in future and in whose cases the service record was found satisfactory, were passed. The Petitioners did not fall in this category, therefore, their cases were rejected. Again, it has been denied that these orders were passed by way of punishment. As a matter of fact, the Petitioners were not dismissed from service on account of mis-conduct. Their services have been dispensed with by simple order of termination. The allegation of different treatment in similar cases has been vehemently denied by asserting that the Hon"ble Chief Justice examined each case comprehensively before allowing or rejecting the representations in order to see the suitability of the Petitioners for service in the Judiciary. Particularly, it has been denied that there had been any discrimination with respect to Shri Sunder Singh, Virender Thakur and Sewa Dass(in CWP. 191/81) and Shri Gian Chand, Civil Ahalmad, Babu Ram,

Process Server in the Court of Senior Sub Judge, Shimla, Sunder Singh, Ahalmad, Ram Dittu, Sweeper etc.(in CWP. 222/81). Various matters which were relevant were applied while considering" these cases objectively, though, it was not necessary. After terminating the Services of the Petitioners and others, the Hon"ble the Chief Justice examined these cases on merit and found some of them suitable for re-engagement. The cases were assessed objectively and the High Court was free to adopt same policy about such cases and was not bound by the agreement arrived at by the State Government with its employees.

18. Violation of Articles 14, 16 and 311 of the Constitution of India has been denied. Similarly, it has been stated that there has not been any violation of the principles of natural justice or the provisions of the Central Civil Service (CCA) Rules and the policy adopted by the High Court in these cases does not smack arbitrariness. Other challenges set up by the Petitioners against the impugned orders have also been denied.

19. Respondent-4 had admitted that the employees of the State Government went on strike v. in support of their demands from September 8, 1980 and that the employees of Judicial Department of Himachal Pradesh also participated in it. Agreement(Annexure P-11) between Shri Shiv Kumar, Education Minister, H.P., and the Negotiation Committee of Joint Action Committee of H.P. Non-Gazetted Officials dated October 11, 1980 has been admitted which was later implemented by the State Government (Annexure R14/1). The State Government implemented the agreement with the employees within its administrative control. As regards the employees working in the Judiciary, the Government only agreed to request the Hon"ble High Court to treat the employees working in the Judiciary at par with other employees of the Government. The Government could not and did not commit itself beyond what has been stated above. In pursuance to the above mentioned commitment, a copy of the Government order dated October 15, 1980 (Annexure R-4/1) was duly forwarded to the Registrar of High Court vide Home Department endorsement No. Home-(B)/80, dated October 22, 1980.

CWP. 191/81

20. Through the rejoinder, it has been denied that the Petitioners have no right to the posts or they have no justiciable cause. It is stated that this Court can go behind the orders of termination and hold that the same are by way of punishment. It is patently clear from the record that the punishment is the foundation of these orders. Strike has been the ground of termination of their services which could not be made use of unless procedure prescribed by law is followed. This safe-guard is available to all the employees irrespective of their nature of appointment. The consideration of appeals is no substitute to giving of hearing before the impugned action was taken. Although Petitioner-2 had filed an application for withdrawal of writ petition, yet he had been confirmed from June 18, 1970 thereby making the order of termination as temporary employee" void. The work and conduct of Petitioner-2 had been "Good" for the year 1976-77,

1977-78, 1979-80 and "Very Good" in 1978-79. Pendency of departmental enquiry has been admitted against himself and against other including Petitioner-4. It is re-asserted that since the Government had implemented the order, the High Court should also have implemented the same in order to treat the employees similarly. Claim about the equal application of the criteria for considering the representation of such employees by the Respondents has been disputed and it has been stated that the Petitioners who had submitted unqualified apology in their review petitions and had put in more than two years service, have not been re-instated. The matter had to be decided by the Full Court and not by the Hon"ble Chief Justice. Other averments in reply of Respondents 1 to 3 have been denied.

21. Having extracted the relevant facts of the cases, we turn to the submissions raised before us by the learned Counsel for the parties. Shri K.D. Sood contended that the services of the Petitioners have been terminated by way of punishment for taking part in the strike. Learned Counsel persuaded us to go behind the orders of termination by looking at the relevant record for appreciating his submissions and hold that the orders have been passed by way of punishment without giving opportunity to the Petitioners of being heard, therefore, these are illegal and liable to be set aside. Shri Chhabil Dass, on the other hand, vehemently asserted that these are simple orders of termination. They do not cast any stigma on the Petitioners and have not been passed by way of punishment. The Petitioners were temporary employees and their services have been terminated in accordance with the terms of their appointment. No provision of law has been violated.

22. We addressed ourselves to these submissions carefully but see no substance in the contentions raised by the Petitioners.

23. In *Parshottam Lal Dhingra v. Union of India* (AIR 1958 SC 36), Das, C.J. speaking for the majority, made the following observations:

But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary, either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment To put it in another way, if the government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by contract or the rules is, *prima facie* and *per se*, not a punishment and does not attract the provisions of Article 311.

24. In *Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*, the Supreme Court refused to interfere with an order of termination of an officer who had been temporarily appointed to the judicial service of Madhya Pradesh, without passing any stigma on the officer concerned and merely stating that his services were terminated from a specified date. Even though the order of termination had been

preceded by an informal inquiry into the conduct of the officer with a view to ascertain if he should be retained in the service. The apex Court confirmed the view taken in *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, and observed:

On the face of it the order did not cast any stigma on the Appellant's character or integrity nor did it visit him with any civil consequences. It was not passed by way of punishment and the provisions of Article 311 were not attracted.

25. In *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, , the Supreme Court enunciated and reiterated the principle that:

Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment.

26. In *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, K.N. Singh, J.* (as he then was) examined large number of cases on this point and said in para 7 that:

7. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In *Parshotam Lal Dhingra v. Union of India*, a Constitution Bench of this Court held that the mere use of expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests namely; (1) whether the temporary government 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 order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary government servant has not right to hold the post and termination of such a government servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra case has been reiterated and affirmed by the Constitution Bench decisions of this Court in State of Orissa v. Ram Narayan Dass; R.C. Lacy v. State of Bihar; Champaklal Chimanlal Shah v. Union of India; Jagdish Mitter v. Union of India; A.G. Benjamin v. Union of India; Shamsheer Singh v. State of Punjab. These decisions have been discussed and followed by a three Judge Bench in State of Punjab v. Sukh Raj Bahadur.

27. As recorded above, it has been pointed out by Respondents 1 to 3 that the Petitioners were temporary employees with no right to the posts. The termination orders do not ex-facie show that they are by way of punishment nor do they cast any kind of stigma against the Petitioners for taking part in the strike. Participation in the strike may be the motive behind the passing of the orders but that is not the foundation for these orders. Motive behind the orders is irrelevant when termination is not by way of punishment. (See: R.K. Gupta v. State of U.P. (1977 (2) S.L.R. 78 . Even if the record is seen, the case sought to be set up by the Petitioners is not strengthened. The suitability of the Petitioners for the service was examined before their services were terminated. This could be done by the employer and the Petitioners being temporary employees, their services were terminated as per terms of their appointment, terminable as per Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965. Their cases were re-considered during the time of their appeals and review petitions, but no case for setting aside the termination orders was made out. In these circumstances, the decisions like: 1991(2) S.L.R. 796 , (Shri Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd. Shimla); and State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others, (State of U.P. and Anr. v. Km. Prem Lata Misra and Ors.) cannot be relied upon since they turn upon their own facts.

28. Next, it was contended that Respondents 1 to 3 did not honour the agreement which was entered into between the State Government and the Non-Gazetted Officials Federation. The State Government has implemented it while the Judiciary has not done so thereby violating the provisions of Article 14 of the Constitution of India.

29. This contention is completely devoid of force. It is noticeable that the State Government employees went on strike raising certain demands against the Government. The employees of Judiciary participated in the strike but before doing so they did not raise any demand nor gave any notice of participation in

the strike. The negotiation took place between the representative of the Government and Negotiation Committee of the Joint Action Committee of the Non-Gazetted Officials Federation. Judiciary was not party to this negotiation. Therefore, the parties to the agreement could not bind the Judiciary for the settlement arrived at between the Government and the employees. This is clear from the affidavit of the State Government in this case.

30. Judiciary is one of the Three Wings of the State. It is not a department of the Government. It has its own rules and policies. Therefore, it cannot be expected that Judiciary should also have accepted the terms of settlement and re-instated the Petitioners against the posts they were occupying before going on the strike.

31. Lastly, it was contended that the Petitioners may be given the benefit of the strike period for the purposes of seniority and other allowances. We see no reason to allow this prayer after having found that the termination of the Petitioners' services was legally justified. Petitioner Milap Chand has become an Advocate while other Petitioners have been employed by the State Government in various departments and in State Electricity Board. This should be the end of the matter. Even otherwise, re-opening of the matter would result in unsettling the settled position in the Judiciary. However, this judgment will not prevent the State Government/organisation from extending any relief to the Petitioners, if approached by them.

32. No other point was urged before us by the learned Counsel for the parties. Consequently, there is no merit in these writ petitions and the same are accordingly dismissed leaving the parties to bear their own costs.