
(2002) 03 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Second Appeal No. 44 of 2002

Pradeep Kumar

APPELLANT

Vs

Sate of Rajasthan and Others

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 46
Civil Procedure Code, 1908 (CPC) — Section 100, 9
Constitution of India, 1950 — Article 141, 226, 311
Industrial Disputes Act, 1947 — Section 2A

Citation : (2002) 4 WLC 198 : (2003) 1 WLN 30

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This second appeal has been filed against the judgment and order of the learned Appellate Court dated 25.9.2001, allowing the appeal of the respondent.

2. The facts and circumstances giving rise to this case are that vide order dated 19.4.1980, appellant had been appointed temporarily as a Lower Division Clerk with a clear stipulation that his services would be liable to be terminated without any notice. His services stood terminated without providing any opportunity of hearing or issuing show cause notice vide order dated 3.3.1981. Being aggrieved and dissatisfied, appellant filed Civil Suit No. 178/1981 in the Civil Court, Bikaner, which was allowed vide judgment and decree dated 5.11.1999 with the direction that appellant should be reinstated with all consequential benefits. However, as in the meanwhile, appellant had joined the service in the Government of Rajasthan Secretariat, Jaipur with effect from 26.3.1984, he was deprived of the back wages from the said date. Being aggrieved and dissatisfied, the State preferred first appeal, which has been allowed vide impugned judgment and order dated 25.9.2001, mainly on the ground that the said civil suit was not maintainable and even otherwise as appellant's services were

temporary and liable to be terminated without any notice, the termination, vide order dated 3.3.1981, was not illegal. Hence this appeal.

3. Mr. G.K. Vyas, learned Counsel for the appellant, has submitted that the first appellate court has erred in holding that services of an employee, appointed temporarily, can be terminated without complying "with the principles of natural justice and there is an absolute bar of civil court's jurisdiction in service matters and the suit cannot be entertained under any circumstance.

4. Undoubtedly, the second appeal can be entertained only on a substantial question of law. The Hon"ble Apex Court has been taking a very serious view of the matter emphasising that the High Courts should not entertain a second appeal u/s 100 of the Code of Civil Procedure, 1908 (for short, "the Code") unless it raises a substantial question of law. In Panchugopal Barua and others Vs. Umesh Chandra Goswami and others, , the Court observed that while entertaining the second appeal, the Court should not over-look the change brought about by the Amendment Act of 1976 restricting the scope of second appeal drastically and now it applies only to appeals involving substantial question of law, specifically set-out in the memorandum of appeals and formulated by the High Court. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the amended provisions of Section 100 of the Code. It is the obligation on the Court of Law to further the clear intendment of the Legislature and not to frustrate it by ignoring the same.

5. Similarly, in Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, the Apex Court held that right of appeal is a creation of the Statute. Thus, being a substantive statutory right, it has to be regulated in accordance with law in force, ensuring the full compliance of the conditions mentioned in the provision. Therefore, the Court has no power to enlarge the scope of those grounds mentioned in the statutory provision. Second appeal cannot be decided merely on equitable grounds as it lies only on substantial question of law, something distinct from the substantial question of fact. The Court cannot entertain the second appeal unless the substantial question of law is involved.

6. In Kashibai v. Parwatibai (1995) 6 SCC 273, the Hon"ble Supreme Court held that the High Court cannot ignore the statutory provisions of Section 100 of the Code and re-appreciate the evidence and interfere with the findings of facts unless the substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

7. In Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others, . the Supreme Court observed that while deciding the second appeals, mandatory statutory requirements are seldom borne in mind and second appeals are being

entertained without conforming to the above discipline. It further placed reliance upon its earlier judgments in *Mahendra and Mahendra Ltd. v. Union of India* AIR 1979 SC 798, wherein the Hon"ble Supreme Court observed as under:

....It is not every question of law that could be permitted to be raised in the second appeal. The parameters within which a new legal plea could be permitted to be raised, are specifically stated in Sub-section (5) of Section 100. Under the proviso, the Court should be "satisfied" that the case involves a substantial question of law and not a mere question of law. The reason for permitting the substantial question of law to be raised, should be recorded by the Court. It is implicit therefrom that on compliance of the above, the opposite party should be afforded a fair or proper opportunity to meet the same. it is not any legal plea that would be alleged at a stage of second appeal. It should be a substantial question of law. The reasons for permitting the plea to be raised should also be recorded.

8. In *Ram Prasad Rajak Vs. Nand Kumar and BOrs. and Another*, the Supreme Court held that existence of substantial question of law is a sine-qua-non for the exercise of jurisdiction u/s 100 of the Code and entering into the question as to whether need of the landlord was bonafide or not, was beyond the jurisdiction of the High Court as the issue can be decided only by appreciating the evidence on record.

9. Similar view has been reiterated in *Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah*, ; *State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs.*, ; *Rajapps Hanamantha Ranoji v. Mahadev Channabasappa and Ors.* AIR 2000 SC 2108 ; *Santakumari and Others Vs. Lakshmi Amma Janaki Amma (D) By Lrs. and Others*, ; *Sayamma v. Basamma (dead) by L.Rs.*, (2000) 8 SCC 567 ; *Santosh Hazari v. Purushottam Tiwari* AIR 2001 SC 965 ; *Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc.*, ; *M.S.V. Raja and Another Vs. Seeni Thevar and Others*, ; *Shri Hafazat Hussain Vs. Abdul Majeed and Others*, ; *V. Pechimuthu Vs. Gowrammal*, ; and *Neelakantan and Others Vs. Mallika Begum*,

10. There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; on issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:

A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong." (Vide *Salmond, on Jurisprudence*, 12th Edn. page 69, cited in *Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others*,

11. In AIR 1947 19 (Privy Council) the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing as under:

....that miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happens not in the proper sense of the word "judicial procedure" at all. That the violation of some principles of law or procedure must be such erroneous proposition of law that if that proposition is to be corrected, the finding cannot stand, or it may be the neglect of some principle of law or procedure, whose application will have the same effect.

The question whether there is evidence on which the Courts could arrive at their finding, is such a question of law.

That the question of admissibility of evidence is a proposition of law but it must be such as to affect materially the finding. The question of the value of evidence is not sufficient reason for departure from the practice...

12. In (1949) 17 ITR 269 the Apex Court held as under:

A fact is a fact irrespective of evidence, by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient evidence.

13. In *Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay*, the Hon'ble Supreme Court considered large number of its earlier judgments, including *Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras*, and held that where the question of decision is whether certain profit is made and shown in the name of certain intermediaries, were, in fact, profit actually earned by the assessee or the intermediaries, is a mixed question of fact and law. The Court further held that inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or a "mixed question of law and fact" and that a finding on fact without evidence to support it or if based on relevant or irrelevant matters, is not unassailable.

14. In *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, the Supreme Court held as under:

The proper test for determining whether a question of law arises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

15. A Constitution Bench of the Hon'ble Supreme Court, in *State of Jammu and Kashmir and Others Vs. Thakur Ganga Singh for self and on behalf of other shareholders of Jammu and Kashmir Mechanics and Transport Workers Co-operative Society Limited and Another*, considered as what may be the

substantial question and held that authentic interpretation of the Constitutional provisions amounts to substantial question of law. However, where the substantial question of law had already been decided by the Authority which is binding on the other Courts like the judgments of the Hon''ble Supreme Court under Article 141 of the Constitution is binding on all other Courts etc., it does not remain a substantial question of law because there remains no scope to interpret further the said provision. While deciding the said case, the Hon''ble Apex Court placed reliance upon its earlier judgments in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, and Mohd. Hanif Quareshi and Others Vs. The State of Bihar, . The same view has been reiterated by the Hon''ble Supreme Court in Bhagwan Swaroop v. State of Maharashtra AIR 1965 SC 682.

16. In Reserve Bank of India and Another Vs. Ramkrishna Govind Morey, , the Hon''ble Supreme Court held that whether trial Court should not have exercised its jurisdiction differently, is not a question of law or a substantial question of law and, therefore, second appeal cannot be entertained by the High Court on this ground.

17. In view of the above, no substantial question of law is involved in this appeal and the appeal is liable to be rejected at the threshold.

18. Even otherwise, if the case is examined from other angle, the Rajasthan Civil Services Appellate Matters Act, 1976 was in force twenty-six years ago and Section 10 thereof bars the jurisdiction of the Civil Court to entertain any service matter. The suit was filed in 1981 and decided on 5.11.1999, against which appeal has been filed and decided on 25.9.2001. If the provisions of Section 10 of the aforesaid Act of 1976 bars the jurisdiction of the Civil Court, it requires consideration whether under such circumstances, the suit could have been entertained.

19. In Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, , the Hon''ble Apex Court held that in a case where jurisdiction of Civil Court has expressly been barred, a suit should not be entertained even if it is impliedly barred u/s 9 of the Code, but a suit in the civil court "will always lie to question the order of a Tribunal created by a Statute, even if its order is, expressly or by necessary implication, made final if the said tribunal abused its power or does not act under the Act but in violation of its provisions.

20. A Constitution Bench of the Hon''ble Supreme Court in Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, , placing reliance upon the judgments of the Privy Council in AIR 1940 105 (Privy Council) and Raleigh Investment Co. Ltd. v. Governor General in Council AIR 1947 PC 78, held as under:

....there is a general presumption that there must be a remedy in the ordinary civil court to a citizen claiming that an amount had been recovered from him

illegally and that such a remedy can be held to be barred only on very clear and unmistakable indication to the contrary. The exclusion of the jurisdiction of a civil court to entertain civil cause will not be assumed unless the relevant statute contains an express provision to that effect or leads to a necessary and inevitable implication of that nature...

21. The Court further held that if the jurisdiction has been conferred upon a particular Authority/Tribunal, entertaining a civil suit would make the proceedings before the appropriate authority illegal and without jurisdiction. The Court further held that as the provisions of Section 18-A of the Sales Tax Act expressly excludes the jurisdiction of the civil court, hence the court had no jurisdiction to entertain such a suit.

22. An another Constitution Bench of the Hon''ble Supreme Court, in Lala Ram Swarup and Others Vs. Shikar Chand and Another, held that the jurisdiction of civil courts to deal with civil causes can be excluded by the legislature by Special Act which may deal with special subject matters, but the statutory provision must expressly provide for such exclusion or must necessarily and impliedly lead to that inference. However, the said bar would not be relevant if the plea raised before the Civil Court goes to the root of the matter and would, if up-held, lead to the conclusion that the impugned order is a nullity. While deciding the said case, the Court placed reliance upon large number of judgments including the judgment in Secretary of State v. Jitendra Nath Chowdhary AIR 1924 PC 175.

23. Yet another Constitution Bench of the Hon''ble Supreme Court in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , held that exclusion of the civil court by express provision may not be a complete bar to entertain a suit if party satisfies the civil court that the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. Moreso, the Statutory Tribunal must be competent to provide all the remedies normally associated with the actions in civil courts, which are prescribed by the said Statute or not. Moreso, the exclusion of jurisdiction of the civil court is not readily to be inferred unless the aforesaid conditions are fulfilled.

24. In Sardara Singh (Dead) by Lrs. and Another Vs. Sardara Singh (Dead) and Others, , the Hon''ble Supreme Court held that civil court's jurisdiction is available wherever action is taken without jurisdiction under any statute.

25. In D.R. Chamlu and Ors. v. Corporation of Delhi (1993) 3 SCC 162, the Supreme Court held that where statutory enactments only creates rights or liabilities without providing forums for remedies, any person having a grievance that he had been wronged or his right is being affected, can approach the ordinary civil court, but in case a Special Forum is provided for enforcement of such right or for protection or enforcement of a liability without any authority in law, the ouster of the civil court's jurisdiction can be up-held on the finding that the rights and liabilities in question have been created by the Act without touching the existing Common Law rights and the remedy provided therein is

adequate and complete. But where adequate redressal machinery is not provided under the Statutory Forum, the civil court can still examine the correctness of the order passed under the Statute.

26. In Pavitter Singh and Ors. v. Niranjan Lal Malhotra, JT 2001 (8) SC 641, the Apex Court held that Section 46 of the Administration of Evacuee Property Act, 1950 bars the jurisdiction of civil court in certain cases. The Court held that in such an eventuality, civil court cannot entertain and try a suit as its jurisdiction has expressly been barred and the only remedy in such cases, if any person is aggrieved by the order passed under the Act in respect of those evicted, is to resort to writ jurisdiction of the Writ Court.

27. Similar view has been reiterated by the Hon''ble Supreme Court while dealing with the provisions of the Motor Vehicles Act, 1939. in Shri Chand Vs. Government of U.P., Lucknow and Others, ; and Anwar Vs. First Additional District Judge, Bulandshahr and Others, , observing that in most of the matters pertaining to the Motor Vehicles Act, a the jurisdiction of the Civil Court is impliedly barred as the matter can be adjudicated upon by the State Transport Appellate Tribunal only.

28. In Sankaranarayanan Potti (Dead) By L.R.S. Vs. K. Sreedevi and Others, , the Hon''ble Supreme Court observed as under:

It is obvious that in all types of civil disputes, civil courts have inherent jurisdiction as per Section 9 of the CPC unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other Tribunal or authority.

29. Similar view has been reiterated in Shri Panch Nagar Parakh Mandsaur Vs. Purushottam Das, .

30. In P.A. Ahammed Ibrahim Vs. The Food Corporation of India, , the Hon''ble Supreme Court held that the applications under the provisions of various Statutes cannot be treated as suits or claims unless such possibility is specifically provided for under those particular Statutes.

31. In Bhanu Construction Co. (P) Ltd. v. Andhra Bank, Hyderabad AIR 2001 SC 477, the Hon''ble Supreme Court considered the provisions of recovery of the debts due to banks and financial institutions under the Act, 1953 and held that after the commencement of provisions of the said Act into force, the suit could not be instituted as conferring the jurisdiction upon the Tribunal under the Act would take away the jurisdiction of the Civil Court.

32. In Vannattankandy Ibrayi v. Kunhabduula Hajee (2001) 1 SCC 565, the Hon''ble Supreme Court considered the provisions of the Kerla Building & Lease Control Act, 1965, which barred the jurisdiction of civil court for recovery of premises on various grounds by the landlord before the Authority prescribed under the Act and the suit was not maintainable. The Court held that where the building stood washed off because of natural calamity, possession of the

remaining land may be recovered before the Civil Court. The Court held that under such circumstances, civil court may have jurisdiction, but had the building been there, its jurisdiction was barred by Section 9 of the Code because it ceased to be a building and remained land and in such a situation, only civil court was competent to entertain and try the suit.

33. In *Shri Ram and Another Vs. Ist Addl. District Judge and Others*, , the Apex Court held that in tenancy matters, generally revenue court has the jurisdiction. But in case a suit is filed for cancellation of a void document, Section 9 of the Code does not impliedly bar such a suit because the document has been obtained by fraud or impersonation as in such a case the mere declaration of title is required and the document, being void, is merely to be ignored for giving relief for declaration and possession.

34. In *Ghulam Qadir Vs. Special Tribunal and Others*, the Hon''ble Supreme Court held that in case the title is to be established, the remedy of civil court is available and in such case, Section 9 of the Code would not bar the civil suit and would ask the authority only to avail the remedy under the provisions of J&K State Evacuees (Administration of Property) Act, 1949.

35. So far as the services matters of the employees are concerned which may be dealt with by the Industrial Tribunal, the Hon''ble Supreme Court considered the aspect from time to time. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , held that if the dispute is not an industrial dispute within the meaning of Section 2-K or Section 2-A of the Industrial Disputes Act, 1947 and it is obvious that there is no provision for adjudication of such dispute under the Act, civil court will be the proper forum. But where an industrial dispute is for the purpose of enforcing any right, obligation or liability under the General Law or the Common Law and not a right, obligation or liability created under the Act, the alternative forms are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court; however, he cannot have the both.

36. In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, the Hon''ble Supreme Court considered large number of its earlier judgments and held that in case the dispute falls within the ambit of the Industrial Disputes Act, the civil court's jurisdiction is impliedly barred. The Apex Court explained its earlier judgment in *Premier Automobils* (supra) that when it refers to the order under the Act, it should be understood as refraining not only to the Industrial Disputes Act but also all other sister enactments like Industrial Employment Standing Orders Act, which do not provide a special forum thereunder for enforcement of the rights and liabilities created by them, and held that where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of General Law of Contract, a suit filed in civil court cannot be said to be not maintainable even though such a dispute may constitute an industrial dispute within the meaning of Section 2-K or Section 2A of the Industrial Disputes Act, 1947. However, if the dispute involved recognition,

observance of enforcement of any right or obligation created by the Industrial Disputes Act, the only remedy is to approach the forum created by the said Act. Similarly, where the dispute involves the recognition, observation or enforcement of right and obligation created by enactment like Industrial Employment (Standing Orders) Act, 1946, not providing a forum for resolution of such dispute, the forum should be Industrial Disputes Tribunal in case of an industrial dispute, otherwise the course to the civil court is open.

37. Considering all the aforesaid cases, the Hon^{ble} Supreme Court, in Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, , held that the industrial dispute should be raised only before the Industrial Tribunal and in case of an industrial dispute, civil court's jurisdiction is barred.

38. Thus, in view of the above, the judgment and order of the First Appellate Court that civil court's jurisdiction was barred, does not deserve any interference.

39. Coming to the validity of the impugned termination order, it is settled legal proposition that a person holding the post temporarily does not have any right to the post.

40. In State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , the Apex Court has categorically held as under:

Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service.

41. In a case like the instant the Court has to be satisfied as what is the legally justiciable right of the petitioner which has been infringed and for which the petitioner can resort to the discretionary relief under Article 226 of the Constitution of India. The Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), , has held that "A person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier" and further held that "a Government servant holding a post temporarily does not have any right to hold the said post." In Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another, , the Apex Court has taken the same view.

42. A temporary employee has no right to hold the post and his services are liable to be terminated 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 servants. Similarly, in Triveni Shankar Saxena Vs. State of U.P. and others, ; Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another, ; Ram Chandra Tripathi v. U.P. Public Service Tribunal and Ors., 1994(2) JT 84 ; Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, and Kaushal Kishore Shukla (supra), the Apex Court has categorically held that incumbent to a post who has been given appointment on temporary

basis, terminable without notice, has no right to hold the post and he is not entitled for any opportunity of hearing before his services are dispensed with as his termination does not amount to forfeiture of any legal right.

43. In *Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others*, , the Hon"ble Apex Court has placed reliance on the observations made in *Malloch v. Aberddden Corporation* 1971 (2) All E.R. 1278, wherein it has been observed as under:

A breach of procedure, whether called a failure of natural justice or an essential administrative fault cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The Court does not act in vain.

44. In *Life Insurance Corporation of India v. Raguuvendra Sheshgiri Rao Kulkarni* (1997) 8 SCC 460, the Apex Court explained the difference of a permanent employee and an employee holding the post on probation and held that the services of a probationer cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. "This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that post becomes entitled to hold a lien on that post." However, interpreting/enforcing the terms of appointment, which provided for discharge of the said probationer from service at any time during the period of probation or extended period of probation, without any notice or without assigning any cause, the Court held that as his termination was in consonance with the terms and conditions of his appointment letter, he cannot be heard raising grievance.

45. In *State of Punjab and others Vs. Surinder Kumar and others*, , the Apex Court has held that the court must seek the adherence to the terms and conditions of the appointment and there is no reason why terms and conditions of appointments cannot be enforced in a contract of service.

46. In *Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others*, , the Apex Court has held that where the rules specifically provide for permanent appointment on probation for a specific period and an employee is appointed without stipulating any condition regarding probation, the inference is to be drawn that he was not appointed in substantive capacity. In *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others*, , the Apex Court has held that a society can terminate the services not only of a temporary employee but also of a permanent employee by giving him one month's notice or three months' pay and allowances in lieu thereof if the terms of appointment and rules so permit and such termination may be valid in a given cases even if the principles of natural justice have not been complied with.

47. In *Chandra Deo Gautam Vs. State of U.P. and Others*, , the Hon"ble Supreme Court held that the termination of services of temporary employee does not

require interference on being removed on any ground as it does not cast any stigma or aspersion on him. In *Nazira Begum Laskar and Ors. v. State of Assam* AIR 2001 SC 102, the Apex Court held that where appointment neither confers any right nor any equity in favour of the employee, as the appointment was purely temporary and could be terminated without notice, no grievance can be entertained by such employee. Moreso, he cannot claim any equitable relief from any Court.

48. this Court in three judgments, namely, *Sayed Mansoor Ali v. State of Rajasthan and Ors.* 1988 (2) RLR 216; *Bhanwar Lal Malwar v. State of Rajasthan and Ors.* 1990 RLR 576; and *R.S. Rawat v. State of Rajasthan and Ors.* 1993 (1) WLC 79, laid down the law that if the appointment had been made after due process of selection, such an appointment is to be considered as substantive even if it provided for appointment on temporary basis. While deciding those cases, reliance had been placed on various Supreme Court judgments, particularly, *Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others*, ; *State of Uttar Pradesh and Another Vs. Dr. M.J. Siddiqui and Others*, ; *Ashok Gulati and Others Vs. B.S. Jain and Others*, ; and *P.D. Aggarwal and Others Vs. State of U.P. and Others*, . All the aforesaid judgments of the Supreme Court, which have been referred to and relied-upon, are on the principle of determining the seniority and the issue involved therein had been: whether the period served by an employee on temporary/officiating basis, is to be reckoned for the purpose of determining the seniority?

49. In *M.J. Siddiqui (supra)* the Hon"ble Supreme Court had to adjudicate upon the issue of seniority. the issue of termination of services was not involved therein and while deciding the controversy, the Hon"ble Supreme Court has observed as under:

One of the dominant question to be determined in this case is whether the appellants were appointed purely on temporary basis or in a substantive capacity though against temporary posts. In our opinion, the High Court seems to have led undue stress on the fact that the appellants were appointed on a temporary basis while over-looking the surrounding circumstances and the terms of advertisement and the rules, referred to above, under which the appellants were appointed In order, therefore, to determine the nature of the appointment, we have to look to the heart and substance of the matter, the surrounding circumstances, the mode, the manner and the terms of the appointment and other relevant factors. In the instant case we cannot ignore the advertisement which forms the pivotal basis...

50. this Court, in *S.B.C.W.P. No. 144/1998, Shambhoo Kumar v. District Judge, Udaipur*, decided on 27.7.1987, after placing reliance upon a large number of judgments of the Hon"ble Supreme Court, categorically held that a person holding the post temporarily, does not have a right to the post.

51. The judgment in *Shambhoo Kumar (supra)* has been upheld by the Division

Bench of this Court wherein, speaking for the Bench, the Hon'ble Chief Justice Dr. AR. Laxmanan, in the appeal filed by Shambhoo Kumar, RLW 2000 (1) 1407 has held that "the services of the temporary employee can be terminated under the terms of the contract of employment and as the termination of the services of the appellant is only a termination simplicitor and, therefore, it will not attract the operation of Article 311 of the Constitution. Termination of the services of the appellant does not cast an aspersion against his character or integrity and, therefore, cannot be considered to be one by way of punishment."

52. A Constitution Bench of the Hon'ble Supreme Court in Rudra Kumar Sain v. Union of India and Ors. AIR 2000 SCW 2945, has held that if adhoc appointment has been made by following the complete selection process with approval and consultation of appropriate authority if so required and the person possessed the qualification for the said post and continues in service for a very long period, under those circumstances, his appointment can be held not to be stop-gap adhoc or fortuitous. But in the instant case, the petitioner does not fulfil the condition of continuity for a fairly long period and the said judgment is not applicable.

53. Thus, in view of the above, I am of considered opinion that the services of the appellant could be terminated without complying with the principles of natural justice.

54. To sum up, in view of the above, the Court reaches the inescapable conclusion that suit filed by the appellant was barred by the Statutory provisions of the Act, 1976 and, thus, was not maintainable. Being temporary, he has no right to the post. The case does not involve any substantial question of law and, thus, second appeal is not worth entertaining.

55. The appeal is dismissed accordingly.